

**Memorandum of Understanding (MoU)  
between  
the Securities and Futures Commission of Hong Kong (SFC)  
and  
the Securities and Exchange Commission of Thailand (SEC)  
Concerning Mutual Recognition of Covered Funds and Covered  
Management Companies and related Cooperation  
Dated 20 January 2021**

This MoU has been concluded between the SFC and the SEC in light of global financial market growth and increasing cross-border activity in asset management and the offering and distribution of collective investment schemes. Its purpose is to enhance cooperation in relation to (i) collective investment schemes domiciled in either Hong Kong or Thailand and offered to the public in Thailand and/or Hong Kong on a cross-border basis, and (ii) management companies of collective investment schemes, based in either Hong Kong or Thailand, with a view to enriching the types of financial products offered and deepening the mutual access between the two financial markets, according to the Memorandum of Understanding signed on 29 November 2019 between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Kingdom of Thailand on strengthening economic relations.

The SFC is the principal regulator of the securities and futures market in Hong Kong and the primary authority for regulating retail funds offered to the public in Hong Kong. The role of the SFC is as follows: licensing and supervision of the activities of intermediaries, including fund managers and distributors; authorising funds and their offering documents to be offered to the public in Hong Kong and the ongoing supervision of SFC-authorized funds.

As a statutory body, the SFC's regulatory objectives and functions are defined and governed by the Securities and Futures Ordinance. The SFC's regulatory objectives include:

- to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry;
- to help the public understand the workings of the securities and futures industry;
- to provide protection for the investing public;
- to minimise crime and misconduct in the securities and futures industry;
- to reduce systemic risks in the securities and futures industry; and
- to assist the Financial Secretary in maintaining Hong Kong's financial stability.

The SEC was established under the Securities and Exchange Act B.E. 2535 (1992). The SEC has the power and duty to formulate policies to promote and develop, as well as to supervise, matters concerning securities, securities businesses, the Securities Exchange, over-the-counter centers, and related businesses, organizations related to securities business, issue or offer of securities for sale to the public, acquisition of securities for business takeovers, and prevention of unfair securities trading practices.

The SFC and the SEC express their willingness to cooperate with each other in the interest of fulfilling their respective supervisory and regulatory mandates, particularly with the aim of protecting investors and ensuring that the financial markets function properly, and use their best endeavours to work towards a level playing field with relevant authorities in terms of the tax treatment between offering Hong Kong funds and Thai funds in their respective markets.

## **Paragraph 1 Definitions**

In this MoU:

- (a) “Authority” or “Authorities” means the SFC and/or the SEC, including their possible successor(s).
- (b) “CIS” means a collective investment scheme.
- (c) “Covered Entity” means a Covered Fund and/or Covered Management Company.
- (d) “Covered Fund” means a Thai CIS and/or a Hong Kong CIS managed by a Covered Management Company, authorised, approved, seeking authorisation, or seeking approval on a cross-border basis in accordance with Paragraph 3 of this MoU.
- (e) “Covered Management Company” means a Thai Management Company or a Hong Kong Management Company that is licensed (Thailand) by the Ministry of Finance upon the recommendation from the SEC or licensed/registered (Hong Kong) by the relevant Authority to manage Covered Funds and that meets the applicable conditions set out in Appendix B to this MoU.
- (f) “Cross-border On-site Visit” means any visit by one Authority to the premises of a Covered Entity located in the other Authority’s jurisdiction for supervisory purposes.
- (g) “Domestic Law” means any applicable laws, ordinances and other regulations or requirements in each Authority’s jurisdiction.
- (h) “Emergency Situation” means the occurrence of an event that could materially impair the financial or operational condition of a Covered Entity, the investors of Covered Funds or the proper functioning of the financial markets.
- (i) “Enforcement Purpose(s)” means a purpose referred to in Paragraph 10(a) of the IOSCO MMoU.
- (j) “Hong Kong” means the Hong Kong Special Administrative Region of the People’s Republic of China.
- (k) “Hong Kong CIS” means open-ended fund companies, unit trusts or other forms of collective investment schemes domiciled in Hong Kong (as defined in Section 1 of Part 1 of Schedule 1 to the SFO) which are authorised by the SFC under Section 104 of the SFO in accordance with the Overarching Principles Section and the UT Code.
- (l) “Hong Kong Feeder Fund” means a Hong Kong CIS that is authorised by the SFC as a feeder fund and invests substantially all of its assets, in accordance with the requirements in the UT Code, in a single Thai CIS that is eligible for the mutual recognition of funds arrangement between Hong Kong and Thailand (“Thai Master Fund”).
- (m) “Hong Kong Management Company” means a corporation which is licensed or registered for Type 9 regulated activity (asset management) in accordance with Part V of the SFO.
- (n) “IOSCO MMoU” means the multilateral memorandum of understanding concerning consultation and cooperation and the exchange of information established by the International Organization of Securities Commissions to which the SEC and the SFC are both signatories.

- (o) “Overarching Principles Section” means the Overarching Principles Section of the Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products issued by the SFC, as may be amended, supplemented or otherwise modified from time to time.
- (p) “Person” means a natural person or legal person, or an unincorporated entity or association, including partnerships, corporations and bodies corporate.
- (q) “Requested Authority” means the Authority to whom a request is made under this MoU.
- (r) “Requesting Authority” means the Authority making a request under this MoU.
- (s) “Securities and Exchange Act” means the Securities and Exchange Act B.E. 2535.
- (t) “SFO” means the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) which governs the securities and futures market and industry in Hong Kong, as may be amended, supplemented or otherwise modified from time to time.
- (u) “Thai CIS” means mutual funds domiciled in Thailand which are approved by the SEC under Section 117 of the Securities and Exchange Act, as may be amended, supplemented or otherwise modified from time to time.
- (v) “Thai Feeder Fund” means a Thai CIS that is approved by the SEC under Section 117 of the Securities and Exchange Act (as may be amended, supplemented or otherwise modified from time to time) as a feeder fund and invests substantially all of its assets, in accordance with the requirements in the Notification of the Capital Market Supervisory Board No. Tor Nor. 87/2558 Re: Investment of Funds issued by the SEC, as may be amended, supplemented or otherwise modified from time to time, in a single Hong Kong CIS that is eligible for the mutual recognition of funds arrangement between Hong Kong and Thailand (“Hong Kong Master Fund”).
- (w) “Thai Management Company” means an entity that has been granted a securities license from the Ministry of Finance upon the recommendation from the SEC to manage mutual funds in accordance with Section 90 of the Securities and Exchange Act, as may be amended, supplemented or otherwise modified from time to time.
- (x) “UT Code” means the Code on Unit Trusts and Mutual Funds of the SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products issued by the SFC, as may be amended, supplemented or otherwise modified from time to time.
- (y) “week” means seven calendar days.

## **Paragraph 2 General provisions**

1. This MoU is a statement of intent to cooperate in relation to Covered Entities to the extent possible under Domestic Law.
2. This MoU does not create any legally binding obligations, confer any rights on any Person, or modify or supersede any Domestic Law.
3. This MoU complements, but does not alter, the terms and conditions of existing arrangements between the Authorities such as the IOSCO MMoU. To the extent any provision of this MoU conflicts with the IOSCO MMoU in relation to any enforcement related assistance request or cooperation between the Authorities, the IOSCO MMoU prevails.
4. Within the framework of this MoU, each Authority will remain responsible for regulating and supervising the offering, marketing and distribution of a Covered Fund within its jurisdiction in compliance with the applicable Domestic Law. The offering, marketing and distribution of Covered Funds in the host jurisdiction shall comply with the applicable Domestic Law in the host jurisdiction.

5. Within the framework of this MoU, the Authorities will provide each other with the fullest cooperation in relation to Covered Entities. Following consultation, cooperation may be denied:
  - (a) where cooperation would require an Authority to act in a manner that would violate Domestic Law;
  - (b) where a request for information is not made in accordance with Paragraph 7 of this MoU;
  - (c) where the information could be used for any Enforcement Purposes in the jurisdiction of the Requesting Authority, in which case, it would be governed by the terms and conditions of the IOSCO MMoU; or
  - (d) on the grounds of public interest in the relevant jurisdiction.
6. In accordance with Domestic Law, each Authority has discretion:
  - (a) to regulate the offering, marketing and distribution of a Covered Fund within its jurisdiction, including by exercising the power to require Persons engaging in the offering, marketing and distribution of the Covered Fund to be authorised, approved, licensed, registered or to have the relevant qualifications, and to comply with applicable requirements;
  - (b) to suspend or terminate the offering of a Covered Fund within its jurisdiction notwithstanding that the Covered Fund has been authorised or approved, as the case may be, for offering, marketing and distribution within the parameters of this MoU; and
  - (c) to take appropriate enforcement action against a Covered Entity.
7. To facilitate cooperation under this MoU, the Authorities have designated contact points as set out in Appendix A.

### **Paragraph 3 Scope of mutual recognition**

#### **1. Recognition of Covered Funds**

- (a) Pursuant to this MoU, the Authorities agree to authorise or approve, as the case may be, Covered Funds for offering to the public in Hong Kong and Thailand through a streamlined process in accordance with Section 104 of the SFO or Sections 57, 65, 69, and 72 of the Securities and Exchange Act (as the case may be, and as may be amended, supplemented or otherwise modified from time to time), provided that the Covered Funds meet the applicable conditions and requirements as set out in Appendix B.
- (b) Appendix B may be amended from time to time by mutual agreement in any form, including electronic correspondence, between the Authorities and each Authority will publish the content of the latest version on its website.
- (c) In accordance with Domestic Law and subject to prior consultation, each Authority may impose specific requirements on a Covered Fund in light of the specific circumstances of that Covered Fund, whether upon or subsequent to the authorisation or approval, as the case may be, of the relevant Covered Fund.

#### **2. Management Companies**

Based on their common understanding of their regulatory and supervisory frameworks concerning management companies, the Authorities agree that their respective Covered Management Companies are eligible to manage Covered Funds authorised or approved, as the case may be, in

their home jurisdiction and to offer, market and distribute such Covered Funds in the host jurisdiction, provided that

- (a) the Covered Management Companies meet the applicable conditions set out in Appendix B; and
- (b) the offering, marketing and distribution of the Covered Funds in the host jurisdiction comply with the requirements set out in the Domestic Law of the host jurisdiction.

3. Delegation

- (a) SEC recognises Hong Kong Management Companies are eligible to undertake asset management activities as delegates for Thai CIS and other CIS (provided that the home authority of the relevant other CIS recognises Hong Kong Management Companies also as eligible) which are approved by SEC for offering to the public in Thailand provided that the delegation arrangement complies with the requirements provided in the Domestic Law of Thailand.
- (b) SFC recognises Thai Management Companies are eligible to undertake asset management activities as delegates for Hong Kong CIS and other CIS (provided that the home authority of the relevant other CIS recognises Thai Management Companies also as eligible) which are authorised by SFC under Section 104 of the SFO for offering to the public in Hong Kong provided that the delegation arrangement complies with the requirements provided in the Domestic Law of Hong Kong.
- (c) If the investment management function is delegated in accordance with sub-paragraphs 3(a) and 3(b) above to a Hong Kong Management Company or a Thai Management Company, that Hong Kong Management Company or Thai Management Company in its capacity of delegate is deemed a Covered Entity for the purpose of this MoU.

4. Expedited review of application for the establishment of Hong Kong Feeder Funds and Thai Feeder Funds, and clarifying how they may be operated in a streamlined manner

SEC agrees to expedite the approval process of a Thai Feeder Fund investing in a Hong Kong Master Fund, and clarify how such Thai Feeder Fund may be operated in a streamlined manner in compliance with Domestic Law; and SFC agrees to expedite the authorisation process of a Hong Kong Feeder Fund investing in a Thai Master Fund, and clarify how such Hong Kong Feeder Fund may be operated in a streamlined manner in compliance with Domestic Law.

**Paragraph 4 Scope of cooperation**

- 1. Cooperation includes, inter alia, consultation, exchange of information, Cross-border On-site Visits and matters of mutual supervisory interest, including regulatory developments, but does not include assistance for Enforcement Purposes which are covered by the provisions of the IOSCO MMoU.
- 2. Cooperation will be most useful in, but is not limited to, the following circumstances:
  - (a) the initial application of a Covered Entity from one jurisdiction for authorisation or approval, as the case may be, in the other jurisdiction; and
  - (b) the ongoing supervision of a Covered Entity.
- 3. Subject to the provisions of Domestic Law, the Authorities may cooperate:
  - (a) on an ongoing basis or ad hoc;
  - (b) orally or in writing; and
  - (c) upon request or on their own initiative (i.e. without a formal request).

## **Paragraph 5 Notification**

1. The Authorities will inform each other to the extent possible and as soon as practicable about:
  - (a) any known material event that could impact the proper functioning of the financial markets, or have a significant adverse impact on Covered Entities or investors of Covered Funds; and
  - (b) any significant enforcement action taken by them, including the revocation of, suspension of or modifications to relevant authorisations, approvals, licences, or registrations in respect of a Covered Entity which may have, in their reasonable opinion, a material impact on that Covered Entity.
2. With respect to a Covered Fund, each Authority will, to the extent possible, inform the other on a timely basis of:
  - (a) any decision or, where appropriate, pending decision to revoke the authorisation or approval, as the case may be, for distribution in or from Thailand or Hong Kong taken by it;
  - (b) relevant issues such as the revocation of, or any significant changes to, authorisations, approvals, licences or registrations of related Covered Entities; and
  - (c) (where applicable and practicable in the relevant jurisdiction) material complaints from investors in relation to the Covered Entity which are brought to the Authority's attention.
3. As necessary from time to time, each Authority will inform the other about any significant amendments to Domestic Law which are likely to have a material impact on the matters covered by, and/or cooperation under, this MoU.
4. Subject to any restriction on the disclosure or sharing of information under Domestic Law, each Authority may disclose non-public information which it considers likely to be of assistance to the other Authority in securing compliance with Domestic Law applicable to the latter on a voluntary basis.
5. Once a year, each Authority will provide the other with a list of the Covered Funds authorised or approved, as the case may be, in the other Authority's jurisdiction under the relevant Domestic Law in accordance with this MoU.
6. For the avoidance of doubt, this Paragraph 5 does not apply to the notification of non-public information for any Enforcement Purposes in the jurisdiction of the Authority receiving the information, which will be governed by the terms and conditions of the IOSCO MMoU.

## **Paragraph 6 Request for information**

1. Upon request and in accordance with Paragraph 7 below, each Authority will use its reasonable endeavours to provide the other Authority with assistance:
  - (a) in obtaining information not otherwise available to the Requesting Authority; and
  - (b) to enable the Requesting Authority to interpret and assess a Covered Entity's compliance with Domestic Law that is administered or made by the Requesting Authority.
2. The information exchanged may, subject to any restriction on the disclosure or sharing of information under Domestic Law, include:
  - (a) information which would enable the Requesting Authority to verify that a Covered Entity is in compliance with the relevant obligations and requirements of the Domestic Law in the Requesting Authority's jurisdiction that is administered or made by the Requesting Authority;
  - (b) information relevant to the financial and operational condition of a Covered Entity, including, for example, reports on capital reserves, liquidity or other prudential measures, and internal control procedures, where this is held and can be easily obtained;

- (c) relevant supervisory information and reports a Covered Entity is required to submit to an Authority including, for example: interim and annual financial statements and early warning notices;
  - (d) any inspection findings formally communicated to a Covered Entity in writing;
  - (e) information relevant for monitoring and responding to the potential implications of the activities of Covered Entities to ensure the proper functioning of the financial markets;
  - (f) other information which is relevant to a Covered Fund; and
  - (g) enforcement action against any Covered Management Company which has, had or may have significant impact on the operations of such Covered Management Company in the Requesting Authority's jurisdiction.
3. Each Authority intends, upon request of the other Authority, to provide information relating to a Covered Fund, including the status, additional terms and conditions, and any waiver granted, in respect of the authorisation or approval of a Covered Fund.
  4. For the avoidance of doubt, this Paragraph 6 does not apply to the disclosure or sharing of non-public information for any Enforcement Purposes in the jurisdiction of the Requesting Authority, which will be governed by the terms and conditions of the IOSCO MMoU.

#### **Paragraph 7 Form of requests for information**

1. A request for information in accordance with Paragraph 6 above would be made in writing and addressed to the relevant contact point set out in Appendix A.
2. A request would specify the following:
  - (a) the information sought by the Requesting Authority, including specific questions to be asked and indications of any sensitivity regarding the request;
  - (b) a concise description of the facts underlying the request and the supervisory purpose for which the information is sought, including the Domestic Law applicable to the supervisory activity; and
  - (c) the desired time period for responding and, where appropriate, the urgency thereof.
3. During Emergency Situations, requests for information may be made in any form, including orally, provided such a request is confirmed in writing as early as possible thereafter.

#### **Paragraph 8 Cross-border On-site Visits**

1. Authorities will discuss and reach an understanding on the terms for conducting Cross-border On-Site Visits, taking into full account each other's jurisdiction, legal framework and statutory obligations, particularly when determining the respective roles and responsibilities of the Authorities.
2. The Authorities will adhere to the following procedure before conducting a Cross-border On-site Visit:
  - (a) The Authorities will consult with each other about the intended timeframe for, and scope of, any Cross-border On-site Visit.
  - (b) The Authority in whose jurisdiction a Cross-border On-site Visit would be undertaken will decide whether the visiting officials or Persons mandated would be accompanied by its own officials during the visit.

- (c) When establishing the scope of any proposed Cross-border On-site Visit, the Authority seeking to conduct the visit will give due and full consideration to the supervisory activities of the other Authority and any information that was made available, or is capable of being made available, by that Authority.
- (d) The Authorities will endeavour to assist each other in interpreting the content of publicly and non-publicly available documents, and obtaining information from directors and senior management of Covered Entities, or any other relevant Person for supervisory purposes.

### **Paragraph 9 Permissible uses of information**

1. The Requesting Authority will use non-public information obtained under this MoU solely for the purpose of supervising the distribution of Covered Funds and the supervision of Covered Entities which includes application procedures and ongoing supervision.
2. The Authorities recognise that any information obtained under this MoU is not to be used for Enforcement Purposes. No information received under this MoU will be used in any judicial or any other proceedings. In cases where an Authority seeks to use non-public information obtained under this MoU for Enforcement Purposes, a request will be made pursuant to the IOSCO MMoU and any use of any such non-public information for Enforcement Purposes will be governed by the terms and conditions of the IOSCO MMoU.
3. Notwithstanding sub-paragraphs 1 and 2 above, the Authorities recognise that additional restrictions on the use of non-public information may be imposed under Domestic Law.

### **Paragraph 10 Confidentiality of information and disclosure**

1. Subject to sub-paragraphs 2 and 3 of this Paragraph, the Authorities will keep confidential any non-public information communicated between them within the scope of cooperation of this MoU, except:
  - (a) this MoU (including its appendices), including any possible revision thereof after its coming into effect by agreement between the Authorities; and
  - (b) the fact that this MoU has been terminated under Paragraph 11 of this MoU.
2. The Requesting Authority would obtain prior written consent from the Requested Authority before disclosing any confidential information received under this MoU to any third party. If consent is not obtained from the Requested Authority, the Authorities will – to the extent possible under Domestic Law – consult to discuss the reasons for withholding approval, and the circumstances, if any, under which the intended use by the Requesting Authority might be allowed.

3. Where confidential information received under this MoU is subject to a legally enforceable demand for onward disclosure in the Requesting Authority's jurisdiction, the latter will notify the Requested Authority prior to complying with such a demand, unless it would be a breach of Domestic Law to do so. Where consent to such onward disclosure is not granted, the Requesting Authority will use all reasonable legal means to resist such a demand and to protect the confidentiality of the information.
4. For the avoidance of doubt, confidentiality and disclosure of information provided or exchanged by the Authorities pursuant to the IOSCO MMoU will be subject to the corresponding terms and conditions in the IOSCO MMoU.

#### **Paragraph 11 Amendment; termination; succession**

1. This MoU may be amended by mutual written agreement.
2. Either Authority may terminate this MoU by giving 30 days' advance written notice to the other Authority. If either Authority gives such notice, cooperation will continue on all requests for cooperation that were made under this MoU until notice was given.
3. In the event of termination of this MoU, information obtained within the scope of cooperation of this MoU will continue to be treated as set out under Paragraphs 9 and 10 above.
4. Where the relevant function of an Authority is transferred or assigned to another supervisory authority or other supervisory authorities, the terms of this MoU will apply to the successor authority or authorities performing those relevant functions. No further amendments to this MoU are required for the successor to become a signatory to this MoU. This will not affect the right of the successor authority and its counterparty to terminate this MoU as set out in sub-paragraph 2 above.

#### **Paragraph 12 Validity**

1. This MoU comes into effect upon signature of the Authorities.
2. The Authorities will endeavour to take all actions necessary to implement the mutual recognition of Covered Funds as contemplated under this MoU (including its appendices) within 6 to 12 months from this MoU coming into effect.

For SFC

For SEC

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Ashley ALDER  
Chief Executive Officer  
Signed in Hong Kong on 20 January 2021

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Ruenvadee Suwanmongkol  
Secretary-General  
Signed in Thailand on 20 January 2021

## Appendix A

### Contact points

Authority	Contact details
SFC (Hong Kong)	Securities and Futures Commission 54/F, One Island East 18 Westlands Road, Quarry Bay Hong Kong Email address: mrfthailand@sfc.hk
SEC (Thailand)	Securities and Exchange Commission of Thailand 333/3 Vibhavadi-Rangsit Road, Chomphon, Chatuchak Bangkok 10900 Thailand Email address: mrfhongkong@sec.or.th

20 January 2021

### **Mutual Recognition of Funds (MRF) between Thailand and Hong Kong**

1. The Securities and Futures Commission (SFC) and the Securities and Exchange Commission of Thailand (SEC) signed a Memorandum of Understanding concerning Mutual Recognition of Covered Funds and Covered Management Companies and related cooperation (Memorandum) on 20 January 2021 (as amended from time to time).
2. In this circular, Thai domiciled funds that are eligible for SFC authorisation and/or have received SFC authorisation under the MRF are denoted as “Thai Covered Funds” while Thai management companies that are eligible to manage Thai Covered Funds are denoted as “Thai Covered Management Companies”.

### **General principles**

3. MRF operates on the principles that, in respect of a Thai Covered Fund that has been approved by the SEC and is seeking or has received authorisation for offering to the public in Hong Kong:
  - (a) the Thai Covered Fund shall meet the eligibility requirements in accordance with this circular and comply with all of the applicable requirements set out in this circular (see below);
  - (b) the Thai Covered Fund shall remain approved by the SEC and be allowed to be offered, marketed and distributed to the retail investors in Thailand;
  - (c) the Thai Covered Fund shall operate and be managed in accordance with the relevant laws and regulations in Thailand and its constitutive documents;
  - (d) the sale and distribution of units of the Thai Covered Fund in Hong Kong shall comply with the applicable laws and regulations in Hong Kong;
  - (e) where relevant, the Thai Covered Fund and the Thai Covered Management Company shall comply with the additional rules released by the SFC governing the authorisation, post-authorisation and ongoing compliance in the context of the offering, marketing and distribution of units of the Thai Covered Fund to the public in Hong Kong;
  - (f) the Thai Covered Management Company of the Thai Covered Fund shall ensure investors in both Thailand and Hong Kong receive fair treatment, including in respect of investor protection, exercise of rights, compensation and disclosure of information; and there must be no arrangements which provide an advantage for investors in Hong Kong or Thailand that would result in prejudice to investors in the other jurisdiction, and vice versa; and
  - (g) ongoing disclosure of information on the Thai Covered Fund shall be made available to investors in Thailand and Hong Kong at the same time (so far as is reasonably practicable given the different time zones and public holidays of the jurisdictions).

4. In general, funds that are seeking SFC authorisation or have received SFC authorisation for offering to the public in Hong Kong pursuant to Section 104 of the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) (SFO) must comply with the SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products (SFC Handbook) and the circulars, guidelines and other requirements as may be issued by the SFC from time to time (together with the SFO, the relevant Hong Kong laws and regulations). On the basis of the principles set out above, if a Thai Covered Fund complies with the relevant Thai laws and regulations and the conditions as set out in this circular, it is generally deemed to have complied in substance with the relevant Hong Kong laws and regulations and will enjoy a streamlined process of authorisation for offering to the public in Hong Kong.
5. In view of the differences between the Hong Kong and the Thai regulatory regimes, and to ensure proper investor protection and consistency with the existing Hong Kong regime for authorised retail funds, this circular sets out the additional requirements with which a Thai Covered Fund must comply when applying for SFC authorisation pursuant to Section 104 of the SFO for offering its units to the public in Hong Kong, as well as other requirements which a Thai Covered Management Company and a Thai Covered Fund must observe after obtaining SFC authorisation. The SEC will issue a separate circular which sets out the eligibility and ongoing requirements, as well as SEC rules, which a Hong Kong Covered Fund and/or Hong Kong Covered Management Company<sup>1</sup> must satisfy when seeking approval for public offerings of units/shares of the Hong Kong Covered Fund in Thailand from the SEC pursuant to Sections 57, 65, 69, and 72 of Securities and Exchange Act B.E. 2535 (SEA).

### **Eligibility requirements and types of eligible funds**

6. The eligibility requirements (Eligibility Requirements) are set out in Annex B to this circular.
7. Thai Covered Funds applying for SFC authorisation must fall within one or more than one of the following eligible fund types<sup>2</sup>:
  - (a) general equity funds, bond funds and mixed funds;
  - (b) feeder funds, where underlying fund is not itself a feeder fund and falls within one of the fund types in paragraphs 7(a), 7(c) and 7(d), and complies with the requirements in this circular;
  - (c) unlisted index funds; and

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<sup>1</sup> "Hong Kong Covered Fund" means a Hong Kong domiciled fund that is eligible for SEC approval and/or has received SEC approval under the MRF and "Hong Kong Covered Management Company" means a Hong Kong management company that is eligible to manage Hong Kong Covered Funds.

<sup>2</sup> Please note that these are not legally defined categories. They have no statutory legal meaning but are merely indications. For the avoidance of doubt, the eligible fund types of Thai Covered Funds classified by Thai laws and regulations are defined in Annex C to this circular.

- (d) passively managed index tracking exchange-traded funds (ETFs) including physical gold ETFs<sup>3</sup>.

The SFC and SEC may consider extending the MRF to include other types of funds in future in accordance with the Memorandum.

8. The Thai Covered Management Company of a Thai Covered Fund that is seeking SFC authorisation must indicate to the SFC the fund type within which the Thai Covered Fund belongs pursuant to paragraph 7 above. All Thai Covered Funds must comply with the requirements set out under the “Requirements applicable to all Thai Covered Funds” section below, as well as the relevant requirements set out under the “Requirements applicable to each specific type of Thai Covered Funds” section below.

### **Requirements applicable to all Thai Covered Funds**

9. To ensure proper investor protection and consistency with the existing Hong Kong regime for authorised retail funds, all Thai Covered Funds are required to comply with requirements set out in paragraphs 10 – 42 below, as well as the relevant requirements as set out in Annex A to this circular. The following paragraphs are without prejudice to the requirements of Thai domestic laws which may also apply to Thai Covered Funds and Thai Covered Management Companies.

#### *Representatives in Hong Kong*

10. Each Thai Covered Fund must appoint a firm in Hong Kong as its representative in compliance with Chapter 9 and 11.1(b) of the Code on Unit Trusts and Mutual Funds (UT Code).

#### *Operational and ongoing requirements*

##### Home jurisdiction supervision

11. The Thai Covered Fund must, on an ongoing basis, remain approved by the SEC for offering its units to the public in Thailand. The Thai Covered Management Company of the Thai Covered Fund must also remain licensed by the Ministry of Finance upon the recommendation from the SEC to manage collective investment schemes (CIS) in accordance with Section 90 of the SEA. Both the Thai Covered Fund and its Thai Covered Management Company must be subject to ongoing regulation and supervision by the SEC.

##### Jurisdiction

12. The Thai Covered Management Company shall ensure and procure its distributors to ensure that Hong Kong investors are able to bring actions concerning the Thai Covered Fund and the Thai Covered Management Company in the courts of Hong Kong.

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<sup>3</sup> Physical gold invested by such gold ETFs must possess a standard and fineness recognized by the London Bullion Market Association.

### Changes to Thai Covered Funds

13. No change shall be made to a Thai Covered Fund resulting in non-compliance with the Eligibility Requirements set out in Annex B to this circular. If the SEC is aware of such change, it will notify the SFC as soon as possible.
14. Changes to a Thai Covered Fund must be made in accordance with the applicable Thai laws and regulations and the provisions of its constitutive documents<sup>4</sup>. Changes to a Thai Covered Fund shall not contravene the applicable Thai laws and regulations and the requirements set out in this circular.
15. These changes shall be effective upon approval by the SEC or compliance with the appropriate procedures.
16. However, changes that affect Hong Kong investors only and revisions made to the offering documents of a Thai Covered Fund relating to such changes should be made in accordance with the requirements under the relevant Hong Kong and Thai laws and regulations. Prior consultation with the SFC and SEC concerning such changes is encouraged.
17. The Thai Covered Management Company shall ensure that the SFC is informed of any change filed with or approved by the SEC in respect of a Thai Covered Fund authorised by the SFC in Hong Kong as soon as possible and in any event within one week (so far as is reasonably practicable given the different time zones and public holidays of the jurisdictions) from the date of filing with or approval by the SEC.
18. The SEC will confirm to the SFC that the Thai Covered Fund effecting (i) changes by way of holders' approval; (ii) change of trustee/custodian<sup>5</sup>; and (iii) change of investment delegate continues to meet the Eligibility Requirements set out in Annex B to this circular.
19. Investors in Thailand and Hong Kong must be notified at the same time (so far as is reasonably practicable given the different time zones and public holidays of the jurisdictions) about any changes to the Thai Covered Fund by the Thai Covered Management Company. Equal treatment should be given to investors in both jurisdictions in terms of the form which that notice takes<sup>6</sup>.
20. For avoidance of doubt, changes that render the Thai Covered Fund ineligible under this MRF (for example – the fund changes strategy and this fund no longer meets the eligible fund type definition) must be notified to the SEC and SFC as soon as possible, and subject to paragraph 22, an application for withdrawal of authorisation of the fund is expected to be submitted to the SFC.

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<sup>4</sup> For the avoidance of doubt, change in entity to which the Thai Covered Management Company delegates the investment management function of the Thai Covered Fund under its management is subject to SEC's prior approval.

<sup>5</sup> The trustee/custodian of Thai Covered Fund generally refers to the mutual fund supervisor of Thai Covered Fund.

<sup>6</sup> To the extent there are requirements on minimum notice period and content of or template for notice to Hong Kong investors under relevant Hong Kong laws and regulations, the Thai Covered Funds should comply with these requirements and ensure that investors in Thailand and Hong Kong receive equal treatment in terms of the notice period and information disclosed.

### Breach

21. In the event of a material breach of Thai domestic laws and regulations or the requirements set out or referred to in this circular, the Thai Covered Management Company must endeavour to notify the SEC and SFC at the same time and rectify the breach promptly. The Thai Covered Management Company will notify the SFC once the breach has been rectified.
22. Following SFC authorisation of a Thai Covered Fund under Section 104 of the SFO, if a Thai Covered Fund ceases to meet the requirements as set out in this circular, its Thai Covered Management Company must notify the SFC immediately. The units of Thai Covered Fund must not continue to be offered to the public in Hong Kong and the Thai Covered Fund must not accept subscriptions from investors in Hong Kong, without SFC's prior approval.

### Withdrawal of authorisation

23. Following SFC authorisation of a Thai Covered Fund, if its Thai Covered Management Company no longer wishes to maintain the authorisation of the fund, it should apply for withdrawal of authorisation of the fund from the SFC and provide notice to Hong Kong investors of its intention not to maintain such authorisation in accordance with the relevant Hong Kong laws and regulations.
24. The SFC may at any time review a Thai Covered Fund's authorisation and may modify, add to or withdraw any of the conditions of such authorisation, or withdraw the authorisation, as it considers appropriate.

### *Sale/distribution, offering documents, ongoing disclosure and advertisements*

#### Sale/distribution

25. The sale and distribution of units of a Thai Covered Fund in Hong Kong must be conducted by intermediaries properly licensed by or registered with the SFC and must comply with the relevant Hong Kong laws and regulations relating to the sale and distribution of units/shares of funds.

#### Offering documents

26. The disclosure of information relating to a Thai Covered Fund must be complete, accurate, fair, clear, and effective. It must be capable of being easily understood by investors.
27. The offering documents of a Thai Covered Fund must be up-to-date and contain information necessary for investors to be able to make an informed judgement of the investment proposed to them.
28. A Thai Covered Fund may use the prospectus approved by the SEC. Unless otherwise provided for in this circular, matters such as the type of documents, content, format, frequency of update and the updating procedures must comply with the applicable Thai laws and regulations and the provisions of its constitutive documents. The SEC-approved prospectus may be supplemented by a Hong Kong covering document to comply with the disclosure requirements set out in Annex A to

this circular<sup>7</sup>. The prospectus should also disclose any other information which may have a material impact on investors in Hong Kong. The offering documents and the Hong Kong covering document shall not contain any information that would be inconsistent with the offering documents approved by the SEC and/or inaccurate/misleading regarding the Thai Covered Fund.

29. The Thai Covered Management Company of a Thai Covered Fund must take reasonable steps and measures to ensure that any updated offering documents and their changes are made available to investors in Thailand and Hong Kong at the same time (so far as is reasonably practicable given the different time zones and public holidays of the jurisdictions). The revised offering documents of a Thai Covered Fund shall be filed with the SFC as soon as possible and in any event within one week after the revised offering documents have received SEC's approval or are filed with the SEC<sup>8</sup>.

#### Ongoing disclosure

30. The Thai Covered Management Company of a Thai Covered Fund must take reasonable steps and measures to ensure that the ongoing disclosure of information of the Thai Covered Fund (including periodic financial reports, notices and announcements) is despatched and made available to investors in Thailand and Hong Kong at the same time (so far as is reasonably practicable given the different time zones and public holidays of the jurisdictions) and, in the case of suspension of dealings, immediately notify the SFC. A Thai Covered Fund must comply with the requirements set out in Annex A to this circular and, on an ongoing basis, disclose any other information which may have a material impact on investors in Hong Kong. The ongoing disclosure should be filed with the SFC as soon as possible and in any event within one week after it has received SEC's approval or is filed with the SEC.
31. Subject to paragraph 33, a Thai Covered Fund may use its Thai financial reports as the basis for distribution in Hong Kong, provided that the reports are supplemented by the additional information and meet the other requirements set out in Annex A to this circular.

#### Language

32. The offering documents and notices to Hong Kong investors of a Thai Covered Fund must be provided in English and Chinese.
33. The constitutive documents and financial reports of a Thai Covered Fund must be made available to Hong Kong investors in either English or Chinese. The language in which these documents are made available to Hong Kong investors should be clearly disclosed in the offering documents.

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<sup>7</sup> A disclosure requirement in Annex A to this circular would be considered met if the relevant disclosure is already included in the prospectus approved by the SEC. The Thai Covered Fund does not need to duplicate the disclosure in the Hong Kong covering document.

<sup>8</sup> For avoidance of doubt, revisions made to the Hong Kong covering document shall be filed with the SFC as soon as possible and in any event within one week from the date of issuance.

### Advertising

34. All advertisements in relation to a Thai Covered Fund of which the units are offered for sale in Hong Kong must comply with the relevant Hong Kong laws and regulations, in particular, the Advertising Guidelines Applicable to Collective Investment Schemes Authorised under the Product Codes<sup>9</sup>.

### Fees

35. For offering to the public in Hong Kong, the Thai Covered Fund/Thai Covered Management Company will be subject to the applicable (i) application, (ii) authorisation and (iii) annual fees. The Thai Covered Management Company must ensure that any SFC invoiced fees in respect of the Thai Covered Fund are paid.

### **Requirements applicable to each specific type of Thai Covered Funds**

36. In general, the SFC will deem a Thai Covered Fund to have complied substantially with the requirements of the UT Code. There are, however, requirements with which each specific type of Thai Covered Funds must comply. Please refer to Annex A to this circular for details.

### **Application process**

37. The SFC understands that this marks the first time Thai Covered Funds may seek authorisation from the SFC. The SFC therefore encourages applicants to consult the Investment Products Division early for any clarification or guidance as to how the relevant requirements may apply and be complied with in light of their specific circumstances.
38. The SFC may issue other circulars, frequently asked questions and other documents from time to time to provide practical guidance to the industry. Please refer to the SFC's website or contact the Investment Products Division.
39. Applicants shall request the SEC to provide directly to the SFC a certificate confirming that the Eligibility Requirements listed in Annex B to this circular are met. The SFC will not be able to take up an application if no such certificate is received from the SEC. Further details of the MRF application process for a Thai Covered Fund seeking authorisation from the SFC are set out in the Information Checklist, which will be available at the SFC's website upon implementation of the MRF arrangement.
40. Upon receipt of the application documents, the SFC will have five working days to assess that all application documents have been duly and properly submitted.
41. The SFC will thereafter grant authorisation to a Thai Covered Fund for offering, marketing and distribution of its units to the public in Hong Kong within 21 calendar days provided that the Thai Covered Fund meets all the applicable requirements set out in this circular and all outstanding issues have been addressed to the satisfaction of the SFC.

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<sup>9</sup> <https://www.sfc.hk/web/EN/rules-and-standards/codes-and-guidelines/guidelines/>



42. The SFC may refuse the application if outstanding issues are not addressed to the satisfaction of the SFC within 21 calendar days.

### **Implementation**

43. The SFC and SEC will endeavour to take all actions necessary to implement the MRF arrangement within 6 to 12 months following the signing of the Memorandum and will publish separate announcements informing the industry of the effective implementation of the arrangement.

### **Investment Products Division Securities and Futures Commission**

## Annex A

### **Requirements in the Overarching Principles Section of the SFC Handbook (Overarching Principles Section) and UT Code to be complied with by all Thai Covered Funds<sup>10</sup>**

	<b>Relevant provisions in the Overarching Principles Section and UT Code</b>
<b>1. General requirements</b>	
Mention of SFC authorisation	1.10 of the Overarching Principles Section
Naming of a Thai Covered Fund	5.1 and 5.2 of the Overarching Principles Section
Availability of constitutive documents	5.10(c) of the UT Code
Jurisdiction	9.10 of the UT Code
<b>2. Operational requirements</b>	
Scheme documentation	6.2 – 6.5 of the UT Code
Member register	6.8 of the UT Code
Pricing, issue and redemption of units	Note 1 to 6.11A, 6.13 and 6.14 of the UT Code
Fees	6.16 – 6.18 of the UT Code
Pricing errors	10.2A of the UT Code
Suspension of dealings	10.7 of the UT Code
<b>3. Disclosure requirements in relation to offering documents</b>	
Language	5.6 of the Overarching Principles Section
Product key facts statement	6.5 – 6.8 of the Overarching Principles Section and 6.2A of the UT Code
Use of disclaimers	6.12 of the Overarching Principles Section
Enquiries and complaints handling	7.4 of the Overarching Principles Section
Information to be disclosed in the offering document	Appendix C to the UT Code, except for C5, C6, C11 and C17

<sup>10</sup> For the avoidance of doubt, Thai Covered Funds and the Thai Covered Management Companies should also comply with the Frequently Asked Questions (FAQs) on Thailand-Hong Kong Mutual Recognition of Funds which will be available upon implementation of the MRF arrangement and other relevant FAQs issued by the SFC from time to time, including, FAQs on Advertising Materials of Collective Investment Schemes Authorized under the Product Codes, FAQs on the Code on Unit Trusts and Mutual Funds and FAQs on Post Authorization Compliance Issues of SFC-authorized Unit Trusts and Mutual Funds.

<b>4. Disclosure and reporting requirements</b>	
Notice to holders	11.1A (notice period), 11.1B (notice period) of the UT Code, 11.2 (bilingual notice and notice period for unitholder meetings), 11.2A and 11.2B of the UT Code
Withdrawal of authorisation	11.4 of the UT Code
Merger or termination	11.5 of the UT Code
Reporting requirements	11.6 (notification of availability of financial reports), 11.7 and 11.8 of the UT Code
Other documents to be made available to Hong Kong investors as specified in the offering documents	Upon request by investors, specific information regarding these documents should be made available to Hong Kong investors in English or Chinese. Information regarding how investors can make such information requests should also be clearly disclosed in the Hong Kong offering documents.

<b>5. Disclosure requirements in relation to financial reports</b>	
Contents of financial reports	Appendix E to the UT Code <sup>11</sup>

***Requirements in the UT Code to be complied with by each specific type of Thai Covered Funds***

	<b>Relevant provisions in the UT Code</b>
Feeder funds	7.12(a) – (e) of the UT Code
Unlisted index funds	8.6(a)(c) – (b), 8.6(d) – (f), 8.6(j) – (k), 8.6(m) of the UT Code <sup>12</sup>
Funds that invest extensively in financial derivative instruments	8.9(j) of the UT Code
Passively managed index tracking ETFs	Requirements applicable to unlisted index funds as set out above 8.6(o) – (x) of the UT Code

*Note:* The relevant Hong Kong rules and regulations specified in this Annex represent the requirements to be complied with by Thai Covered Funds.

<sup>11</sup> Financial reports must be prepared in compliance with internationally recognized accounting standards, including Hong Kong Financial Reporting Standards or International Financial Reporting Standards or such other accounting standards acceptable to the SFC.

<sup>12</sup> 8.6(c)(a) of the UT Code is not applicable as structured funds under 8.8 of the UT Code are not eligible for the MRF arrangement.

## Annex B

### Eligibility Requirements

#### Thai Covered Fund

1. The Thai Covered Fund must be established, domiciled and managed in accordance with Thai laws and regulations and its constitutive documents. It must be a CIS which is formally approved by the SEC in accordance with Section 117 of the SEA.
2. The Thai Covered Fund applying for SFC authorisation must fall within one or more than one of the following eligible fund types<sup>13</sup>:
  - (a) general equity funds, bond funds and mixed funds;
  - (b) feeder funds, where underlying fund is not itself a feeder fund and falls within one of the fund types in paragraphs 2(a), 2(c) and 2(d) of this Annex and complies with the requirements in paragraph 4(a) of this Annex;
  - (c) unlisted index funds; or
  - (d) passively managed index tracking ETFs including physical gold ETFs<sup>14</sup>.
3. The Thai Covered Fund's net exposure<sup>15</sup> resulting from the investment in derivatives must not exceed 100% of the fund's net asset value (NAV), as defined in Notification of the Capital Market Supervisory Board No. Tor Nor. 87/2558 Re: Investment of Funds.
4. The Thai Covered Fund is subject to the following investment restrictions in respect of its investment in funds:
  - (a) the underlying funds may be Thai-domiciled funds (including ETFs) that are approved by the SEC and comply with the requirements in this circular;
  - (b) the underlying funds may be UCITS schemes (including ETFs) domiciled in Luxembourg and Ireland, and CIS domiciled in the UK authorised as UK UCITS;
  - (c) the Thai Covered Fund may invest up to 10% of its NAV in unlisted funds<sup>16</sup> not falling within paragraphs 4(a) and 4(b) above;

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<sup>13</sup> Please note that these are not legally defined categories. They have no statutory legal meaning but are merely indications. For the avoidance of doubt, the eligible fund types of Thai Covered Funds classified by Thai laws and regulations are defined in Annex C to this circular.

<sup>14</sup> Physical gold invested by such gold ETFs must possess a standard and fineness recognized by the London Bullion Market Association.

<sup>15</sup> Such exposure limit should be calculated using commitment approach as prescribed in Notification of the Office of the Securities and Exchange Commission No. Sor. Nor. 92/2558 Re: Additional Regulation for a fund Investing in Derivatives and Structured Note.

<sup>16</sup> Such unlisted funds must be under supervision of a regulator who is a member of the International Organization of Securities Commission (IOSCO) and a signatory to the IOSCO Multilateral Memorandum of Understanding.

- (d) the Thai Covered Fund may have indirect exposure to restricted assets<sup>17</sup> via its investment in underlying funds falling within paragraphs 4(b) and 4(c) above not exceeding 20% of the Thai Covered Fund's NAV;
  - (e) investment in any single listed real estate investment trusts must not exceed 10% of the Thai Covered Fund's NAV; and
  - (f) investment in any single ETF other than those set out in paragraphs 4(a) and 4(b) above must not exceed 10% of the Thai Covered Fund's NAV.
5. The Thai Covered Fund must not directly invest in digital assets<sup>18</sup> in any form, save for any indirect exposure via underlying funds as permitted in paragraph 4 above.
  6. The Thai Covered Fund must not engage in a physical short sale transaction.
  7. The Thai Covered Fund is subject to an aggregate limit of 10% of its NAV in respect of borrowings or engaging in repurchase transactions (including direct and indirect exposure via investment in underlying funds falling within paragraphs 4(a), 4(b) and 4(c) above), on a temporary basis for the purpose of liquidity management.

#### Thai Covered Management Company

8. The Thai Covered Fund must be managed by a Thai Covered Management Company that is licensed by the Ministry of Finance upon the recommendation from the SEC to manage CIS in accordance with Section 90 of the SEA.
9. The Thai Covered Management Company of a Thai Covered Fund must not have been the subject of any major regulatory or enforcement actions (i.e. the suspension of the Thai Covered Management Company's licence by the SEC pursuant to Sections 142 and 143 of the SEA) by the SEC in the past three years or, if it has been established for less than three years, since the date of its establishment.
10. The Thai Covered Management Company of a Thai Covered Fund may delegate the investment management functions to any entity, provided that such delegation is accepted under the Thai laws and regulations<sup>19</sup> for Thai CIS approved for public offering, the Thai Covered Management Company remains responsible for any action of its delegate(s), and such delegate operates in one of the acceptable inspection regimes recognized under 5.1 of the UT Code<sup>20</sup>.

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<sup>17</sup> Restricted assets include loan participation, loan assignment, digital assets, writing of credit default swap protection and writing of credit derivative. The list of restricted assets is available at: <https://www.sec.or.th/TH/Pages/LawandRegulations/MutualRecognitionFunds.aspx>. Additions or removals of restricted assets set out therein are subject to prior consultation of the SFC.

<sup>18</sup> Digital assets are such as cryptocurrencies, utility tokens and certificates representing the assets referred to digital assets, and other assets of essentially the same nature.

<sup>19</sup> The legal framework regarding the delegation of functions by a Thai management company is laid down in Notification of the Capital Market Supervisory Board No. Tor. Thor. 60/2561 Re: Rules, Conditions and Procedures for Outsourcing Function related to Business Operation to Third Party.

<sup>20</sup> The list of acceptable inspection regimes are available at: <https://www.sfc.hk/web/EN/regulatory-functions/products/list-of-publicly-offered-investment-products/list-of-recognised-jurisdiction-schemes-and-inspection-regimes.html>



Thai Covered Fund's trustee/custodian

11. The Thai Covered Fund must have a trustee/custodian that qualifies to act as mutual fund supervisor for Thai CIS approved for public offering.

**Annex C**  
**Types of Thai Covered Funds**

Labelling of Thai mutual fund	Determination by type of asset class invested by mutual fund	Covered under the MRF arrangement
Equity Fund	1.1 of Division 2, Appendix 2 of Notification of the Capital Market Supervisory Board No. Tor Nor. 87/2558 Re: Investment of Funds	✓
Fixed Income Fund	1.2 of Division 2, Appendix 2 of Notification of the Capital Market Supervisory Board No. Tor Nor. 87/2558 Re: Investment of Funds	✓
Alternative Investment Fund	1.3 of Division 2, Appendix 2 of Notification of the Capital Market Supervisory Board No. Tor Nor. 87/2558 Re: Investment of Funds	X
Mixed Fund	1.4 of Division 2, Appendix 2 of Notification of the Capital Market Supervisory Board No. Tor Nor. 87/2558 Re: Investment of Funds	✓

Labelling of Thai mutual fund	Determination by Special Characteristics of mutual fund	Covered under the MRF arrangement
Money Market Fund	2.1 of Division 2, Appendix 2 of Notification of the Capital Market Supervisory Board No. Tor Nor. 87/2558 Re: Investment of Funds	X
Capital Protected Fund	2.2 of Division 2, Appendix 2 of Notification of the Capital Market Supervisory Board No. Tor Nor. 87/2558 Re: Investment of Funds	X
Sector Fund <sup>21</sup>	2.3 of Division 2, Appendix 2 of Notification of the Capital Market Supervisory Board No. Tor Nor. 87/2558 Re: Investment of Funds	✓
Fund of Funds	2.4 of Division 2, Appendix 2 of Notification of the Capital Market Supervisory Board No. Tor Nor. 87/2558 Re: Investment of Funds	✓
Feeder Fund	2.5 of Division 2, Appendix 2 of Notification of the Capital Market Supervisory Board No. Tor Nor. 87/2558 Re: Investment of Funds	✓

<sup>21</sup> For the avoidance of doubt, only Thai property sector fund that invest at least 80% of its NAV in shares of listed real estate / property companies and complies with the requirements in this circular is included in the eligible fund types.

Labelling of Thai mutual fund	Determination by Special Characteristics of mutual fund	Covered under the MRF arrangement
Long Term Equity Fund	2.6 of Division 2, Appendix 2 of Notification of the Capital Market Supervisory Board No. Tor Nor. 87/2558 Re: Investment of Funds	X
Gold Fund <sup>22</sup>	2.7 of Division 2, Appendix 2 of Notification of the Capital Market Supervisory Board No. Tor Nor. 87/2558 Re: Investment of Funds	✓
Index Fund	2.8 of Division 2, Appendix 2 of Notification of the Capital Market Supervisory Board No. Tor Nor. 87/2558 Re: Investment of Funds	✓
Exchange Traded Fund	2.9 of Division 2, Appendix 2 of Notification of the Capital Market Supervisory Board No. Tor Nor. 87/2558 Re: Investment of Funds	✓
Retirement Mutual Fund	2.10 of Division 2, Appendix 2 of Notification of the Capital Market Supervisory Board No. Tor Nor. 87/2558 Re: Investment of Funds	X
Guarantee Fund	2.11 of Division 2, Appendix 2 of Notification of the Capital Market Supervisory Board No. Tor Nor. 87/2558 Re: Investment of Funds	X
Country Fund	2.12 of Division 2, Appendix 2 of Notification of the Capital Market Supervisory Board No. Tor Nor. 87/2558 Re: Investment of Funds	X
Vayupak Fund	2.13 of Division 2, Appendix 2 of Notification of the Capital Market Supervisory Board No. Tor Nor. 87/2558 Re: Investment of Funds	X
Super Savings Fund	2.14 of Division 2, Appendix 2 of Notification of the Capital Market Supervisory Board No. Tor Nor. 87/2558 Re: Investment of Funds	X

<sup>22</sup> For the avoidance of doubt, only Thai gold ETFs that invest in physical gold possessing a standard and fineness recognized by the London Bullion Market Association and complies with the requirements in this circular is included in the eligible fund types.

<b>Labelling of Thai mutual fund</b>	<b>Determination by risks concerning foreign countries by mutual fund</b>	<b>Covered under the MRF arrangement</b>
Mutual fund focusing on investments <u>with foreign risk</u>	3.1 of Division 2, Appendix 2 of Notification of the Capital Market Supervisory Board No. Tor Nor. 87/2558 Re: Investment of Funds	✓
Mutual fund which its investment possessed <u>no foreign risks</u>	3.2 of Division 2, Appendix 2 of Notification of the Capital Market Supervisory Board No. Tor Nor. 87/2558 Re: Investment of Funds	✓
Mutual fund which its investment possessed <u>both local and foreign risks</u>	3.3 of Division 2, Appendix 2 of Notification of the Capital Market Supervisory Board No. Tor Nor. 87/2558 Re: Investment of Funds	✓

20 January 2021

### **Mutual Recognition of Funds (MRF) between Hong Kong and Thailand**

1. The Securities and Exchange Commission of Thailand (SEC) and the Securities and Futures Commission (SFC) signed a Memorandum of Understanding concerning Mutual Recognition of Covered Funds and Covered Management Companies and related cooperation (Memorandum) on 20 January 2021 (as amended from time to time).
2. In this circular, Hong Kong domiciled funds<sup>1</sup> that are eligible for SEC approval and/or have received SEC approval under the MRF are denoted as “Hong Kong Covered Funds” and Hong Kong management companies that are eligible to manage Hong Kong Covered Funds are denoted as “Hong Kong Covered Management Companies” while “Hong Kong Covered Entities” refers to Hong Kong Covered Funds and/or Hong Kong Covered Management Companies.

#### **General principles**

3. MRF operates on the principles that, in respect of a Hong Kong Covered Fund that has been authorised by the SFC and is seeking or has received approval for offering to the public in Thailand:
  - (a) the Hong Kong Covered Fund shall meet the eligibility requirements in accordance with this circular and comply with all of the applicable requirements set out in this circular (see below);
  - (b) the Hong Kong Covered Fund shall remain authorised by the SFC and be allowed to be offered, marketed and distributed to the retail investors in Hong Kong;
  - (c) the Hong Kong Covered Fund shall operate and be managed in accordance with the relevant laws and regulations in Hong Kong and its constitutive documents;
  - (d) the sale and distribution of units/shares of the Hong Kong Covered Fund in Thailand shall comply with the applicable laws and regulations in Thailand;
  - (e) where relevant, the Hong Kong Covered Entity shall comply with the additional rules released by the SEC governing the approval, post-approval and ongoing compliance in the context of the offering, marketing and distribution of units/shares of the Hong Kong Covered Fund to the public in Thailand;
  - (f) the Hong Kong Covered Entity shall ensure investors in both Hong Kong and Thailand receive fair treatment, including in respect of investor protection, exercise of rights, compensation and disclosure of information; and there must

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<sup>1</sup> It means open-ended fund companies, unit trusts or other forms of collective investment schemes (CIS) domiciled in Hong Kong.

be no arrangements which provide an advantage for investors in Thailand or Hong Kong that would result in prejudice to investors in the other jurisdiction, and vice versa; and

(g) ongoing disclosure of information on the Hong Kong Covered Fund shall be made available to investors in Hong Kong and Thailand at the same time (so far as is reasonably practicable given the different time zones and public holidays of the jurisdictions).

4. In general, Hong Kong Covered Entities that are seeking SEC approval or have received SEC approval for offering units/shares of Hong Kong Covered Funds to the public in Thailand pursuant to Sections 57, 65, 69, and 72 of the Securities and Exchange Act B.E 2535 (SEA) must comply with the relevant Thai laws and regulations and the guidelines, circulars, and other requirements as may be issued by the SEC from time to time (together with the SEA, the relevant Thai laws and regulations). On the basis of the principles set out above, if a Hong Kong Covered Entity complies with the relevant Hong Kong laws and regulations and the conditions as set out in this circular, it is generally deemed to have complied in substance with the relevant Thai laws and regulations and will enjoy a streamlined process of authorisation for offering units/shares of a Hong Kong Covered Fund to the public in Thailand.
5. In view of the differences between the Thai and the Hong Kong regulatory regimes, and to ensure proper investor protection and consistency with the existing Thai regime for approved retail funds, this circular sets out the eligibility and ongoing requirements, as well as SEC rules, which a Hong Kong Covered Entity must satisfy if it intends to seek approval for public offering of units/shares of the Hong Kong Covered Fund in Thailand from the SEC under Sections 57, 65, 69, and 72 of the SEA. The SFC will issue a separate circular which sets out additional requirements with which a Thai Covered Fund and/or a Thai Covered Management Company must comply when applying for SFC authorisation pursuant to Section 104 of the Securities and Futures Ordinance (SFO) for offering units of a Thai Covered Fund to the public in Hong Kong, as well as other requirements which a Thai Covered Management Company and a Thai Covered Fund must observe after obtaining SFC authorisation.

#### **Eligibility requirements and types of eligible funds**

6. The eligibility requirements (Eligibility Requirements) are set out in Annex B to this circular.
7. Hong Kong Covered Funds applying for SEC approval must fall within one or more than one of the following eligible fund types<sup>2</sup>:
  - (a) general equity funds, bond funds and mixed funds;

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<sup>2</sup> Please note that these are not legally defined categories. They have no statutory legal meaning but are merely indications.



- (b) feeder funds, where underlying fund is not itself a feeder fund and falls within one of the fund types in paragraphs 7(a), 7(c) and 7(d), and complies with the requirements in this circular;
- (c) unlisted index funds; and
- (d) passively managed index tracking exchange-traded funds (ETFs) including physical gold ETFs<sup>3</sup>.

The SEC and SFC may consider extending the MRF to include other types of funds in future in accordance with the Memorandum.

8. The Hong Kong Covered Entity that is seeking SEC approval must indicate to the SEC the fund type within which the Hong Kong Covered Fund belongs pursuant to paragraph 7 above. All Hong Kong Covered Entities must comply with the requirements set out under the “Requirements applicable to all Hong Kong Covered Entities” section below, as well as the relevant requirements set out under the “Requirements applicable to each specific type of Hong Kong Covered Funds” section below.

#### **Requirements applicable to all Hong Kong Covered Entities**

9. To ensure proper investor protection and consistency with the existing Thai regime for approved retail funds, all Hong Kong Covered Entities are required to comply with requirements set out in paragraphs 10 – 42 below, as well as the relevant requirements as set out in Annex A to this circular. The following paragraphs are without prejudice to the requirements of Hong Kong domestic laws which may also apply to Hong Kong Covered Entities.

#### *Representatives in Thailand*

10. A firm in Thailand must be appointed for each Hong Kong Covered Fund as its representative in compliance with the relevant Thai laws and regulations relating to the Provisions relating to Offering for Sale of Units of Foreign Collective Investment Scheme<sup>4</sup> by the Hong Kong Covered Entity.

#### *Operational and ongoing requirements*

##### Home jurisdiction supervision

11. The Hong Kong Covered Fund must, on an ongoing basis, remain authorised by the SFC for offering its units/shares to the public in Hong Kong. The Hong Kong Covered Management Company of the Hong Kong Covered Fund must also remain licensed by or registered with the SFC for Type 9 regulated activity (asset management). Both the Hong Kong Covered Fund and its Hong Kong Covered Management Company must be subject to ongoing regulation and supervision by the SFC.

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<sup>3</sup> Physical gold invested by such gold ETFs must possess a standard and fineness recognized by the London Bullion Market Association.

<sup>4</sup> Notification of the Capital Market Supervisory Board No. Tor Jor. 4/2561 Re: Provisions relating to Offering for Sale of Units of Foreign Collective Investment Scheme

#### Jurisdiction

12. The Hong Kong Covered Entity shall ensure and procure its distributors to ensure that Thai investors are able to bring actions concerning the Hong Kong Covered Fund and the Hong Kong Covered Management Company in the courts of Thailand.

#### Changes to Hong Kong Covered Funds

13. No change shall be made to a Hong Kong Covered Fund resulting in non-compliance with the Eligibility Requirements set out in Annex B to this circular. If the SFC is aware of such change, it will notify the SEC as soon as possible.
14. Changes to a Hong Kong Covered Fund must be made in accordance with the applicable Hong Kong laws and regulations and the provisions of its constitutive documents<sup>5</sup>. Changes to a Hong Kong Covered Fund shall not contravene the applicable Hong Kong laws and regulations and the requirements set out in this circular.
15. These changes shall be effective upon authorisation by the SFC or compliance with the appropriate procedures.
16. However, changes that affect Thai investors only and revisions made to the offering documents of a Hong Kong Covered Fund relating to such changes should be made in accordance with the requirements under the relevant Thai laws and regulations. Prior consultation with the SEC concerning such changes is encouraged.
17. The Hong Kong Covered Entity shall ensure that the SEC is informed of any change filed with or approved by the SFC in respect of a Hong Kong Covered Fund approved by the SEC in Thailand as soon as possible and in any event within one week (so far as is reasonably practicable given the different time zones and public holidays of the jurisdictions) from the date of filing with or approval by the SFC.
18. The SFC will confirm to the SEC that the Hong Kong Covered Fund effecting (i) changes by way of holders' approval; (ii) change of trustee/custodian; and (iii) change of investment delegate continues to meet the Eligibility Requirements set out in Annex B to this circular.
19. Investors in Hong Kong and Thailand must be notified at the same time (so far as is reasonably practicable given the different time zones and public holidays of the jurisdictions) about any changes to the Hong Kong Covered Fund by the Hong Kong Covered Entity. Equal treatment should be given to investors in both jurisdictions in terms of the form which that notice takes<sup>6</sup>.
20. For avoidance of doubt, changes that render the Hong Kong Covered Fund ineligible under this MRF (for example – the fund changes strategy and this fund no longer meets the eligible fund type definition) must be notified to the SEC and SFC as soon

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<sup>5</sup> For the avoidance of doubt, change in entity to which the Hong Kong Covered Management Company delegates the investment management function of the Hong Kong Covered Fund under its management is subject to SFC's prior approval.

<sup>6</sup> To the extent there are requirements on minimum notice period to Thai investors under relevant Thai laws and regulations, the Hong Kong Covered Entity should comply with these requirements and ensure that investors in Hong Kong and Thailand receive equal treatment in terms of the notice period and information disclosed.



as possible, and subject to paragraph 22, the Hong Kong Covered Entity is automatically ineligible to publicly offer the units/shares of the Hong Kong Covered Fund in Thailand under Thai laws and regulations.

#### Breach

21. In the event of a material breach of Hong Kong domestic laws and regulations or the requirements set out or referred to in this circular, the Hong Kong Covered Entity must endeavour to notify the SFC and SEC at the same time and rectify the breach promptly. The Hong Kong Covered Entity shall notify the SEC once the breach has been rectified.
22. Following SEC approval of a Hong Kong Covered Fund under Sections 57, 65, 69, and 72 of the SEA, if a Hong Kong Covered Entity ceases to meet the requirements as set out in this circular, it must notify the SEC immediately. The units/shares of the Hong Kong Covered Fund must not continue to be offered, marketed and distributed to the public in Thailand and the Hong Kong Covered Entity must not accept subscriptions from investors in Thailand, without SEC's prior approval.

#### Cessation of offerings

23. Following SEC approval of a Hong Kong Covered Fund, if the Hong Kong Covered Entity no longer wishes to offer for sale of the units/shares of the Hong Kong Covered Fund to the public in Thailand, it should provide notice to the SEC and Thai investors of its intention to cease such offering in accordance with the relevant Thai laws and regulations.

#### Withdrawal of approval

24. The SEC may at any time review a Hong Kong Covered Fund's approval and may modify, add to or withdraw any of the conditions of such approval, or withdraw the approval, as it considers appropriate.

#### *Sale/distribution, offering documents, ongoing disclosure and advertisements*

##### Sale/distribution

25. The sale and distribution of units/shares of a Hong Kong Covered Fund in Thailand must be conducted by intermediaries properly licensed by or registered with the SEC and must comply with the relevant Thai laws and regulations relating to the sale and distribution of units of funds.

##### Offering documents

26. The disclosure of information relating to a Hong Kong Covered Fund must be complete, accurate, fair, clear, and effective. It must be capable of being easily understood by investors.
27. The offering documents of a Hong Kong Covered Fund must be up-to-date and contain information necessary for investors to be able to make an informed judgement of the investment proposed to them.

28. The prospectus authorised by the SFC may be used. Unless otherwise provided in this circular, matters such as the type of documents, content, format, frequency of update and the updating procedures must comply with the applicable Hong Kong laws and regulations and the provisions of its constitutive documents. The SFC- authorised prospectus may be supplemented by a Thai covering document to comply with the disclosure requirements set out in Annex A to this circular<sup>7</sup>. The prospectus shall also disclose any other information which may have a material impact on investors in Thailand. The offering documents and the Thai covering document shall not contain any information that would be inconsistent with the offering documents authorised by the SFC and/or inaccurate/misleading regarding the Hong Kong Covered Fund.
29. The Hong Kong Covered Entity must take reasonable steps and measures to ensure that any updated offering documents and their changes are made available to investors in Hong Kong and Thailand at the same time (so far as is reasonably practicable given the different time zones and public holidays of the jurisdictions). The revised offering documents of a Hong Kong Covered Fund shall be filed with the SEC as soon as possible and in any event within one week after the revised offering documents have received SFC's authorisation or are filed with the SFC<sup>8</sup>.

#### Ongoing disclosure

30. The Hong Kong Covered Entity must take reasonable steps and measures to ensure that the ongoing disclosure of information of the Hong Kong Covered Fund (including periodic financial reports, notices and announcements) is despatched and made available to investors in Hong Kong and Thailand at the same time (so far as is reasonably practicable given the different time zones and public holidays of the jurisdictions) and, in the case of suspension of dealings, immediately notify the SEC. A Hong Kong Covered Entity must comply with the requirements set out in Annex A to this circular and, on an ongoing basis, disclose any other information which may have a material impact on investors in Thailand. The ongoing disclosure should be filed with the SEC as soon as possible and in any event within one week after it has received SFC's authorisation or is filed with the SFC.
31. Subject to paragraph 33, Hong Kong financial reports and reports of auditors of financial reports of the Hong Kong Covered Fund prepared in compliance with the applicable financial reporting standards and submitted to the SFC may be used for distribution in Thailand.

#### Language

32. The submission of information or document to the SEC and offering documents and notices to Thai investors of a Hong Kong Covered Fund must be provided in English or Thai.

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<sup>7</sup> A disclosure requirement in Annex A to this circular would be considered met if the relevant disclosure is already included in the prospectus authorised by the SFC. The Hong Kong Covered Entity does not need to duplicate the disclosure in the Thai covering document.

<sup>8</sup> For avoidance of doubt, revisions made to the offering documents of a Hong Kong Covered Fund relating to changes that affect Thai investors only shall be filed with the SEC as soon as possible and in any event within one week from the date of issuance.

33. The constitutive documents and financial reports of a Hong Kong Covered Fund must be made available to Thai investors in either English or Thai. The language in which these documents are made available to Thai investors should be clearly disclosed in the offering documents.

#### Advertising

34. All advertisements in relation to a Hong Kong Covered Fund of which the units/shares are offered for sale in Thailand must comply with the relevant Thai laws and regulations, in particular, the Rules in Detail on Advertising and Sales Promotion for Securities Companies<sup>9</sup>.

#### Fees

35. For offering to the public in Thailand, the Hong Kong Covered Entity must ensure that any SEC invoiced fees<sup>10</sup> in respect of the Hong Kong Covered Fund are paid.

### **Requirements applicable to each specific type of Hong Kong Covered Funds**

36. In general, the SEC will deem a Hong Kong Covered Fund to have complied substantially with the requirements of Thai laws and regulations. There are, however, requirements which each specific type of Hong Kong Covered Funds must comply with. Please refer to Annex A to this circular for details.

### **Application process**

37. The SEC understands that this marks the first time Hong Kong Covered Funds may seek approval from the SEC. The SEC therefore encourages applicants to consult the SEC early for any clarification or guidance as to how the relevant requirements may apply and be complied with in light of their specific circumstances.
38. The SEC may issue other circulars, frequently asked questions and other documents from time to time to provide practical guidance to the industry. Please refer to the SEC's website.
39. Applicants shall request the SFC to provide directly to the SEC a certificate confirming that the Eligibility Requirements listed in Annex B to this circular are met. The SEC will not be able to take up an application if no such certificate is received from the SFC. Further details of the MRF application process for a Hong Kong Covered Fund seeking approval from the SEC are set out in the Information Checklist<sup>11</sup>, which will be available at the SEC's website upon implementation of the MRF arrangement.

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<sup>9</sup> Equivalent to Clauses 45-48 of Notification of the Capital Market Supervisory Board No. Tor Thor. 35/2556 Re: Standard Conduct of Business, Management Arrangement, Operating System, and Providing Services to Clients of Securities Companies and Derivatives Intermediaries and Notification of the Office of the Securities and Exchange Commission No. Sor Thor. 10/2558 Re: Rules in Detail on Advertising and Sales Promotion for Securities Companies and Derivatives Intermediaries

<sup>10</sup> Notification of the Office of the Securities and Exchange Commission No. Sor Thor. 4/2561 Re: Additional Provisions relating to Offering for Sale of Units of Foreign Collective Investment Scheme

<sup>11</sup> For avoidance of doubt, please refer to the Checklist for Mutual Recognition of Funds between Hong Kong Special Administrative Region of the People's Republic of China and Thailand (HK-TH MRF) Application Form under Form 35 – HK-TH MRF on the SEC website.



40. Upon receipt of the application documents, the SEC will inform the applicant at once in case the submitted application or the supporting documents or evidences have any defect or do not fulfill applicable requirements.
41. The SEC will thereafter notify the result of the application assessment to a Hong Kong Covered Entity for offering, marketing and distributing units/shares of a Hong Kong Covered Fund to the public in Thailand within twenty-one calendar days from the receipt of a duly completed application provided that the Hong Kong Covered Fund meets all the applicable requirements set out in this circular.
42. The SEC may refuse the application if outstanding issues are not addressed to the satisfaction of the SEC within twenty-one calendar days from the receipt of a duly completed application.

### **Implementation**

43. The SEC and SFC will endeavour to take all actions necessary to implement the MRF arrangement within 6 to 12 months following the signing of the Memorandum and will publish separate announcements informing the industry of the effective implementation of the arrangement.

**Investment Management Policy Department  
Securities and Exchange Commission, Thailand**

## Annex A

### ***Requirements to be complied with by all Hong Kong Covered Entities***

	<b>Equivalent Thai rules and regulations</b>
<b>1. General requirements</b>	
Withdrawal of approval	Clause 11 of Notification of the Capital Market Supervisory Board No. Tor Nor. 89/2558
The operation of the mutual fund	Clause 12 of Notification of the Capital Market Supervisory Board No. Tor Nor. 89/2558

<b>2. Cross-border offering requirements</b>	
<u>Provisions relating to offering for sale of units of foreign CIS</u> Part 1 - general provisions Part 2 - application for approval, approval of offer for sale of units of foreign CIS and conditions after approval Part 3 - submission of registration statement and draft prospectus Part 4 - disclosure of information concerning financial position and performance of foreign CIS	Notification of the Capital Market Supervisory Board No. Tor Jor. 4/2561
<u>Additional provisions relating to offering for sale of units of foreign CIS</u> Chapter 1 - application form for sale of units of foreign CIS and submission of evidentiary documentation Chapter 2 - provision relating to Draft Prospectus Chapter 3 - reporting of the sale of units of foreign CIS to investors in Thailand	The Office of the Securities and Exchange Commission No. Sor Jor. 4/2561
<u>Checklist for MRF Application Form</u> Form 35 - MRF	The website of the SEC
<u>Registration Statement</u> Form 69 - CIS full Form 69 - CIS annually update Form 69 - CIS material update	<ul style="list-style-type: none"> <li>• The website of the SEC</li> <li>• The attachments of Notification of the Capital Market Supervisory Board No. Tor Jor. 4/2561</li> </ul>
<u>Template of Fund Factsheet</u>	The website of the SEC
<u>Sales Report Form</u>	The website of the SEC
<u>Cessation of Offerings</u>	(1) At least one month's notice or such longer period as required under applicable laws and regulations or the provisions as set out in the

	<p>offering or constitutive document (in the case of cessation of offerings in connection with a merger or termination of Hong Kong Covered Fund)<sup>12</sup> or (2) at least three months' notice (in the case of cessation of offerings other than in connection with a merger or termination of a Hong Kong Covered Fund)<sup>13</sup> should be provided to the SEC and investors of the proposed merger or termination or any intention to cease offering of units/shares of a Hong Kong Covered Fund to the public in Thailand. The notice shall at least contain the following information:</p> <ul style="list-style-type: none"> <li>• reasons for the merger or termination and/or the cessation of offerings (as the case may be);</li> <li>• for cessation of offerings in connection with a merger or termination, relevant provisions under the constitutive documents that enable such merger or termination;</li> <li>• consequences of the merger or termination and/or the cessation of offerings (as the case may be) and their effects on existing investors;</li> <li>• for cessation of offerings in cases other than in connection with a merger or termination, any proposed changes in the operation of the Hong Kong Covered Fund and their effects on existing investors;</li> <li>• alternatives available to investors (including, if possible, a right to switch without charge into another Hong Kong Covered Fund); and</li> <li>• estimated costs or expenses of the merger or termination and/or cessation of offerings (as the case may be) and who is expected to bear them.</li> </ul>
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<b>3. Disclosure requirements in relation to offering documents</b>	<b>Equivalent Thai rules and regulations</b>
Information to be disclosed in the offering document	<ul style="list-style-type: none"> <li>• Section 123 of the SEA</li> <li>• Notification of the Capital Market Supervisory Board No. Tor Nor. 3/2556</li> </ul>

<sup>12</sup> Subject to the Hong Kong Covered Entity having served notice as required under (1) and other requirement specified in applicable laws, regulations, and the constitutive documents, the Hong Kong Covered Entity may cease offering of units/shares of the Hong Kong Covered Fund with immediate effect following the completion of the merger or termination (as the case may be).

<sup>13</sup> For cessation of offerings in cases other than in connection with a merger or termination of a Hong Kong Covered Fund, the Hong Kong Covered Entity shall demonstrate to the satisfaction of the SEC that proper measures have been put in place to ensure that interests of Thai investors who may remain to be invested in the Hong Kong CIS will be safeguarded (e.g. the Hong Kong CIS will continue to be regulated or supervised by the SFC).

	<ul style="list-style-type: none"> <li>Notification of the Office of the Securities and Exchange Commission No. Sor Nor. 88/2558</li> </ul>
Information concerning financial position and performance of foreign CIS	Clauses 33-35 of Notification of the Capital Market Supervisory Board No. Tor Jor. 4/2561
Performance fee	Notification of the Office of the Securities and Exchange Commission No. Sor Nor. 88/2558 <sup>14</sup>

4. Ongoing disclosure and reporting requirements	Equivalent Thai rules and regulations
Notice period to unitholders and/or SEC	<p><u>Changes to the scheme</u></p> <ul style="list-style-type: none"> <li>Section 129 of the SEA</li> </ul> <p><u>Deferral of dealings</u></p> <ul style="list-style-type: none"> <li>Clause 25(2) of Notification of the Office of the Securities and Exchange Commission No. Sor Nor. 87/2558</li> </ul> <p><u>Suspension of subscription/redemption</u></p> <ul style="list-style-type: none"> <li>Clause 29 of Notification of the Office of the Securities and Exchange Commission No. Sor Nor. 87/2558</li> </ul> <p><u>Amalgamation and Merger</u></p> <ul style="list-style-type: none"> <li>Clauses 73(1), 73(2), 76-78 of Notification of the Office of the Securities and Exchange Commission No. Sor Nor. 87/2558</li> </ul> <p><u>Fees</u></p> <ul style="list-style-type: none"> <li>Clauses 97, 98(2), 99 of Notification of the Office of the Securities and Exchange Commission No. Sor Nor. 87/2558</li> </ul>
Advertising	<ul style="list-style-type: none"> <li>Clauses 45-48 of Notification of the Capital Market Supervisory Board No. Tor Thor. 35/2556</li> <li>Notification of the Office of the Securities and Exchange Commission No. Sor Thor. 10/2558</li> <li>Clause 19 of Notification of the Capital Market Supervisory Board No. Tor Jor. 4/2561</li> </ul>
Monthly disclosure on the website of management company	Clauses 33(2), 34(2), 44 of Notification of the Office of the Securities and Exchange Commission No. Sor Nor. 87/2558

<sup>14</sup> Where a Hong Kong Covered Entity charges performance fee, it is only required to disclose information concerning the detail of calculation and the disbursement of the fee together with an example of calculation to enable the investors to understand the fee calculation method of the fund which may be used for making an appropriate investment decision.

Annually update / material change	Clauses 25-28 of Notification of the Capital Market Supervisory Board No. Tor Jor. 4/2561
Semi-annually update of fund factsheet	Clause 6 of Notification of the Capital Market Supervisory Board No. Tor Nor. 3/2556
Other documents to be made available to Thai investors as specified in the offering documents	Upon request by investors, specific information regarding these documents should be made available to Thai investors in English or Thai. Information regarding how investors can make such information requests should also be clearly disclosed in the Thai offering documents.

<b>5. Disclosure requirements in relation to financial reports</b>	
Financial reports	Clause 29 of Notification of the Capital Market Supervisory Board No. Tor Jor. 4/2561 <sup>15</sup>

***Requirements to be complied with by each specific type of Hong Kong Covered Funds***

	<b>Equivalent Thai rules and regulations</b>
Passively managed index tracking ETFs	<p><u>Definition of ETFs</u></p> <ul style="list-style-type: none"> <li>2.9 of Part 2, Appendix 2 of Notification of Capital Market Supervisory Board No. Tor Nor. 87/2558</li> </ul> <p><u>Specific features of ETFs</u></p> <ul style="list-style-type: none"> <li>Clause 11 of Notification of Capital Market Supervisory Board No. Tor Nor. 88/2558</li> </ul> <p><u>Additional Rules for ETFs</u></p> <ul style="list-style-type: none"> <li>Clauses 137, 138, 140 and 141 of Notification of the Office of the Securities and Exchange Commission No. Sor Nor. 87/2558</li> </ul>

*Note:* The Thai rules and regulations specified in this Annex represent the equivalent requirements to be complied with by Hong Kong Covered Entities.

<sup>15</sup> Financial reports must be prepared in compliance with internationally recognized accounting standards, including Hong Kong Financial Reporting Standards or International Financial Reporting Standards or such other accounting standards acceptable to the SFC.

## **Annex B Eligibility Requirements**

### Hong Kong Covered Fund

1. The Hong Kong Covered Fund must be established, domiciled and managed in accordance with Hong Kong laws and regulations and its constitutive documents. It must be a CIS which is authorised by the SFC in accordance with Section 104 of the SFO for offering to the public in Hong Kong.
2. The Hong Kong Covered Fund applying for SEC approval must fall within one or more than one of the following eligible fund types<sup>16</sup>:
  - (a) general equity funds, bond funds and mixed funds;
  - (b) feeder funds, where underlying fund is not itself a feeder fund and falls within one of the fund types in paragraphs 2(a), 2(c) and 2(d) of this Annex and complies with the requirements in paragraph 5(a) of this Annex;
  - (c) unlisted index funds; or
  - (d) passively managed index tracking ETFs including physical gold ETFs<sup>17</sup>.
3. The Hong Kong Covered Fund must not be money market funds, hedge funds, fund of hedge funds, structured funds, listed open-ended funds (also known as active ETFs) and closed-ended funds, in accordance with 8.2, 8.7, 8.8, 8.10 and 8.11 of the Code of Unit Trusts and Mutual Funds (UT Code).
4. The Hong Kong Covered Fund's net derivative exposure (as defined in 7.26 of the UT Code) must not exceed 100% of the fund's net asset value (NAV).
5. The Hong Kong Covered Fund is subject to the following investment restrictions in respect of its investment in funds:
  - (a) the underlying funds may be Hong Kong-domiciled funds (including ETFs) that are authorised by the SFC and comply with the requirements in this circular;
  - (b) the underlying funds may be UCITS schemes (including ETFs) domiciled in Luxembourg and Ireland, and CIS domiciled in the UK authorised as UK UCITS;
  - (c) the Hong Kong Covered Fund may invest up to 10% of its NAV in unlisted funds<sup>18</sup> not falling within paragraphs 5(a) and 5(b) above;

<sup>16</sup> Please note that these are not legally defined categories. They have no statutory legal meaning but are merely indications.

<sup>17</sup> Physical gold invested by such gold ETFs must possess a standard and fineness recognized by the London Bullion Market Association.

<sup>18</sup> Such unlisted funds must be under supervision of a regulator who is a member of the International Organization of Securities Commission (IOSCO) and a signatory to the IOSCO Multilateral Memorandum of Understanding.



- (d) the Hong Kong Covered Fund may have indirect exposure to restricted assets<sup>19</sup> via its investment in underlying funds falling within paragraphs 5(a), 5(b) and 5(c) above not exceeding 20% of the Hong Kong Covered Fund's NAV;
  - (e) investment in any single listed real estate investment trusts must not exceed 10% of the Hong Kong Covered Fund's NAV; and
  - (f) investment in any single ETF other than those set out in paragraphs 5(a) and 5(b) above must not exceed 10% of the Hong Kong Covered Fund's NAV.
6. The Hong Kong Covered Fund must not directly invest in virtual assets<sup>20</sup> in any form, save for any indirect exposure via underlying funds as permitted in paragraph 5 above.
  7. The Hong Kong Covered Fund must not engage in a physical short sale transaction.
  8. The Hong Kong Covered Fund is subject to an aggregate limit of 10% of its NAV in respect of borrowings or engaging in repurchase transactions (including direct and indirect exposure via investment in underlying funds falling within paragraphs 5(a), 5(b) and 5(c) above), on a temporary basis for the purpose of liquidity management.

#### Hong Kong Covered Management Company

9. The Hong Kong Covered Fund must be managed by a Hong Kong Covered Management Company that is licensed by or registered with the SFC for Type 9 regulated activity (asset management) in accordance with Part V of the SFO that satisfies the requirements in Chapter 5 of the UT Code on an ongoing basis.
10. The Hong Kong Covered Management Company of a Hong Kong Covered Fund must not have been the subject of any major regulatory or enforcement actions (i.e. the revocation or suspension of the Hong Kong Covered Management Company's licence by the SFC pursuant to Section 194 of the SFO) by the SFC in the past three years or, if it has been established for less than three years, since the date of its establishment.
11. The Hong Kong Covered Management Company of a Hong Kong Covered Fund may delegate the investment management functions to any entity, provided that such delegation is accepted under the Hong Kong laws and regulations for Hong Kong CIS authorised for public offering, and the Hong Kong Covered Management Company remains responsible for any action of its delegate(s), and such delegate operates in one of the jurisdictions recognized under Notification of Guidelines No. Nor Por.

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<sup>19</sup> Restricted assets include loan participation, loan assignment, virtual assets, writing of credit default swap protection and writing of credit derivative. The list of restricted assets is available at: <https://www.sec.or.th/TH/Pages/LawandRegulations/MutualRecognitionFunds.aspx>. Additions or removals of restricted assets set out therein are subject to prior consultation of the SFC. For avoidance of doubt, Thai Covered fund may not have direct exposure to the aforementioned restricted assets. Therefore, the SEC expects the Hong Kong Covered Fund not to have direct exposure to the aforementioned restricted assets as well.

<sup>20</sup> These include digital tokens (such as digital currencies, utility tokens or security or asset-backed tokens) and any other virtual commodities, crypto assets and other assets of essentially the same nature. Please refer to the SFC weblink for the definition of virtual assets at <https://www.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=18EC77>.



4/2561 Re: Countries Recognized by the SEC Office concerning Supervisory Measures on Investment Management<sup>21</sup>.

Hong Kong Covered Fund's trustee/custodian

12. The Hong Kong Covered Fund must have a trustee/custodian that qualifies to act as a trustee/custodian for Hong Kong CIS authorised for public offering.

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<sup>21</sup> The list of recognized jurisdictions are available at: <http://capital.sec.or.th/webapp/nrs/data/7904ae0.pdf>