

Memorandum of Understanding (MoU)
between
the Securities and Futures Commission of Hong Kong (SFC)
and
the Autoriteit Financiële Markten / Dutch Authority for the Financial Markets (AFM)
Concerning Mutual Recognition of Covered Funds and Management Companies and related Cooperation

Dated 15 May 2019

This MoU has been concluded between SFC and AFM in light of global financial market growth and increasing cross-border activity in asset management and the offering, marketing and distribution of shares or units of collective investment schemes. Its purpose is to enhance cooperation in relation to (i) collective investment schemes domiciled in either Hong Kong or the Netherlands and offered, marketed and distributed to the public in the Netherlands and/or Hong Kong on a cross-border basis and (ii) authorized management companies of collective investment schemes, based in either Hong Kong or the Netherlands.

Based on their common understanding of their regulatory and supervisory frameworks concerning their respective management companies and collective investment schemes, the SFC and the AFM have agreed to promote reciprocal market access for fund providers by facilitating cross-border offering, marketing and distribution of certain funds between their jurisdictions subject to the requirements set out in this MoU and its Appendices.

The SFC and the AFM 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.

Article 1 Definitions

For the purpose of this MoU:

- a) "AIFMD" means the Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010, as may be amended, supplemented or otherwise modified from time to time.
- b) "*Aangewezen staat*" means a state which is designated by the Dutch Minister of Finance as a state in which the supervision on managers of investment firms is exercised in such a way that it provides sufficient guarantees regarding the interests that the Dutch Wft seeks to protect.

- c) “Authority” or “Authorities” means the Securities and Futures Commission (SFC) and/or the Autoriteit Financiële Markten (AFM), including their possible successor(s).
- d) “*Besluit aangewezen staten Wft*” means the Dutch Decree on designated states under the Wft as may be amended or otherwise modified from time to time.
- e) “Bgfo” means the Dutch Decree on Conduct of Business Supervision of Financial Undertakings under the Wft (*Besluit Gedragstoezicht financiële ondernemingen Wft*) as may be amended or otherwise modified from time to time.
- f) “Covered Entities” means Covered Funds and/or Covered Management Companies including Persons employed by, or given the authority to act on behalf of, such entities who are licensed, registered or regulated by the Authorities.
- g) “Covered Fund” means Dutch UCITS or Hong Kong CIS authorized or seeking authorization on a cross-border basis in accordance with Article 3 of this MoU.
- h) “Covered Management Company” means a Dutch Management Company or a Hong Kong Management Company including Persons (employed by, or given the authority to act on behalf of, such entity) who are licensed or authorized by the relevant Authority to manage Covered Funds and meet the applicable conditions as set out in Appendix B to this MoU.
- i) “Cross-border On-site Visit” means any visit in the context of this MoU by one Authority to the premises of a Covered Entity located in the other Authority’s jurisdiction, for the purposes of ongoing supervision.
- j) “Data protection safeguards” means the Administrative Arrangements for the transfer of personal data between each of the EEA Authorities and each of the non-EEA Authorities.
- k) “Domestic laws and regulations” means any laws, ordinances and other regulations or requirements applicable to the Authorities and/or Covered Entities in each Authority’s jurisdiction.
- l) “Dutch UCITS” means UCITS (as defined under [dd] below) domiciled in the Netherlands.
- m) “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.
- n) “Enforcement Actions” or “Enforcement Purposes” means an action or purpose referred to in paragraph 10(a) of the IOSCO MMoU.
- o) “Home Jurisdiction” means the jurisdiction of Hong Kong, in the case of Hong Kong Covered Entities; or the Netherlands, in the case of Dutch Covered Entities.
- p) “Hong Kong” means the Hong Kong Special Administrative Region of the People’s Republic of China.
- q) “Hong Kong CIS” means collective investment schemes domiciled in Hong Kong (as defined in Section 1 of Part 1 of Schedule 1 to the SFO) which are authorized by the SFC under Section 104 of the SFO in accordance with the Overarching Principles Section and the UT Code.
- r) “Host Authority” means SFC, including its possible successor(s), in the case of Dutch Covered Entities; or AFM, including its possible successor(s), in the case of Hong Kong Covered Entities.
- s) “Host Jurisdiction” means the jurisdiction of the Host Authority, namely the Netherlands, in the case of Hong Kong Covered Entities; or Hong Kong, in the case of Dutch Covered Entities.
- t) “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 AFM and SFC are signatories.
- u) “Management Company” means:
 - a. “Dutch Management Company” which means a corporation authorized by AFM to manage Dutch UCITS assets in accordance with Article 2:69b Wft.

- b. "Hong Kong Management Company" which means a corporation which is licensed by or registered with the SFC for Type 9 regulated activity (asset management) in accordance with Part V of the SFO.
- v) "Nrgfo" means Further Regulation on Conduct of Business Supervision of Financial Undertakings (Nadere regeling gedragstoezicht financiële ondernemingen Wft) as may be amended or otherwise modified from time to time.
- w) "Overarching Principles Section" means the Overarching Principles Section 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.
- x) "Person" means a natural person or legal person, or an unincorporated entity or association, including partnerships and corporations.
- y) "Personal data" means any information relating to an identified or identifiable natural person ("data subject"); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
- z) "Recognised Jurisdiction Scheme" means a scheme authorized pursuant to overseas laws as listed in the list of recognised jurisdiction schemes which is published on the SFC's website as amended from time to time.
- aa) "Requested Authority" means the Authority to whom a request is made under this MoU.
- bb) "Requesting Authority" means the Authority making a request under this MoU.
- cc) "SFO" means the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) which governs the securities and futures market in Hong Kong, as may be amended, supplemented or otherwise modified from time to time.
- dd) "UCITS" means an undertaking for collective investment in transferable securities authorized in accordance with Article 5 of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities.
- ee) "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.
- ff) "Wft" means the Dutch Act on Financial Supervision (*Wet financieel Toezicht*) as may be amended or otherwise modified from time to time.

Article 2 General provisions

1. This MoU is a statement of intent by the AFM and the SFC to promote reciprocal market access for fund providers by facilitating cross-border offering, marketing and distribution of certain funds to retail investors in the Netherlands and to the public in Hong Kong, subject to the requirements set out in this MoU and its Appendices.
2. This MoU also includes arrangements by the AFM and the SFC to cooperate in relation to the supervision of Covered Entities that may engage in cross-border offering, marketing and distribution of shares or units of CIS to the public in both the Netherlands and in Hong Kong in a manner consistent with Domestic laws and regulations applicable in the Host Jurisdiction.
3. This MoU does not create any legally binding obligations, confer any rights, modify or supersede any Domestic laws and regulations.

4. This MoU complements, but does not alter, the terms and conditions of existing arrangements between the Authorities including without limitation, the MoU concerning consultation, cooperation and the exchange of information related to the supervision of AIFMD entities established by the European Securities and Markets Authority to which the AFM and the SFC are signatories and 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 shall prevail.
5. Within the framework of this MoU, the Authorities will remain responsible for regulating and supervising the Covered Entities under its jurisdiction. The Covered Entities should be operated and managed in accordance with Domestic laws and regulations in the Home Jurisdiction as well as with their constitutive documents.
6. Within the framework of this MoU, the Authorities 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 laws and regulations where and to the extent that such offering, marketing and distribution are carried out in its jurisdiction. The offering, marketing and distribution of the Covered Funds in the Host Jurisdiction shall comply with the applicable Domestic laws and regulations in the Host Jurisdiction. Subject to the provisions in this MoU, the Covered Entities should comply with additional rules provided in Appendix B to this MoU by the Host Authority governing the authorization, post-authorization and ongoing compliance in the context of the offering, marketing and distribution of the Covered Funds in the Host Jurisdiction.
7. Within the framework of this MoU, and subject to Article 11 of this MoU, the Authorities will provide each other with the fullest cooperation in relation to Covered Entities operating on a cross-border basis. Following consultation, cooperation may be denied:
 - a) where cooperation would require an Authority to act in a manner that would violate its Domestic laws and regulations;
 - b) where a request for information is not made in accordance with Article 9 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 should be governed by the terms and conditions of the IOSCO MMoU); or
 - d) on the grounds of public interest in the relevant jurisdiction.

Where a request for assistance is denied, or where assistance is not available under its Domestic laws and regulations, the Requested Authority will provide the reasons for not granting the assistance to the Requesting Authority.

8. In accordance with its Domestic laws and regulations, each Authority has discretion:
 - a) to regulate the offering, marketing and distribution of a Covered Fund within its jurisdiction, including the power to require Persons engaging in the offering, marketing and distribution of the Covered Fund in its jurisdiction to be licensed, registered, authorized or to have the relevant qualification;
 - b) to suspend or terminate the offering, marketing and distribution of a Covered Fund within its jurisdiction notwithstanding that the Covered Fund has been authorized for offering, marketing and distribution within the parameters of this MoU; and
 - c) to take such Enforcement Actions as appropriate against Covered Entities, including, to the extent permitted by its Domestic laws and regulations, against Covered Entities it has not licensed or authorized, should these Covered Entities be in breach of the Domestic laws and regulations of the Host Jurisdiction relating to the offering, marketing and distribution of Covered Funds.
9. To facilitate cooperation under this MoU, the Authorities have designated contact points as set out in Appendix A.

Article 3 Scope of mutual recognition

Recognition of Covered Funds

1. Pursuant to this MoU, the Authorities agree to authorize Covered Funds for offering to the public in Hong Kong and the Netherlands respectively through a streamlined process in accordance with Section 104 of the SFO and Article 2:73 paragraph 1 Wft, provided that the Covered Funds meet the applicable conditions as set out in Appendix B.
2. Appendix B may be amended from time to time and each Authority will publish the content of the latest version on its website.
3. Where appropriate and deemed necessary and subject to prior consultation with the other Authority, each Authority may require other reasonable disclosure requirements than the ones set out in Appendix B and/or impose specific conditions on a Covered Fund in light of the specific circumstances of the Dutch UCITS or Hong Kong CIS, whether upon or subsequent to the authorization of the relevant UCITS/CIS.

Article 4 Management companies and delegation

1. The AFM recognises the supervision of Hong Kong Management Companies as acceptable in accordance with Article 2(1)(b) of the Besluit aangewezen staten. Based on this recognition, Hong Kong Management Companies may be appointed as delegates of the investment management function for Dutch UCITS and other CIS (provided that the home authority of such CIS also recognizes Hong Kong Management Company as eligible), including but not limited to UCITS that are or may be authorized by the AFM under Article 2:69b Wft provided that the delegation arrangement complies with the requirements provided in Domestic laws and regulations in the Netherlands.
2. The SFC recognises the Dutch regulatory and supervisory framework for Dutch Management Companies as acceptable for the purposes of 5.1 of the UT Code. Based on this Recognition, Dutch Management Companies may be appointed as (i) Management Companies of Dutch and other European Union UCITS, provided that such other European Union UCITS are or may be authorized by SFC as Recognised Jurisdiction Schemes under Section 104 of the SFO and (ii) delegates of the investment management function for Hong Kong CIS, which includes Hong Kong Covered Funds, and Recognised Jurisdiction Schemes, including but not limited to UCITS (provided that the home authority of such Recognised Jurisdiction Scheme also recognises Dutch Management Companies as eligible) that are or may be authorized by SFC under Section 104 of the SFO provided that the delegation arrangement complies with the requirements provided in Domestic laws and regulations in Hong Kong.
3. If the investment management function is delegated in accordance with paragraphs 1 and 2 of this Article, the Hong Kong Management Company and Dutch Management Company in their respective capacity of delegate are deemed a Covered Entity for the purpose of this MoU.

Article 5 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 Enforcement Actions 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 Covered Entities from one jurisdiction for authorization, licensing, registration or exemption thereof by the Host Authority;
 - b) the ongoing supervision of Covered Entities; and

3. The Authorities may cooperate:
 - a) on an ongoing basis or ad hoc, upon request or without prior request (i.e. unsolicited assistance); and
 - b) orally or in writing.

Article 6 Provision of assistance for the implementation of this MoU

1. Upon request and in accordance with Article 9 below and apart from assistance on Enforcement Actions which should be provided in accordance with the provisions of the IOSCO MMoU, each Authority will use its reasonable endeavours to provide the Requesting Authority with assistance that would facilitate the Requesting Authority to assess whether or not a Covered Entity is in compliance with the requirements of mutual recognition arrangements set out in Appendix B to this MoU, at the time of application and on an ongoing basis, and to supervise the implementation of such requirements.

Article 7 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 have a significant adverse impact on Covered Entities, investors of Covered Funds or the proper functioning of the financial markets; and
 - b) Enforcement Actions taken by them, including the revocation of, suspension of or modifications (other than modification at the request of the Covered Entities, withdrawal of authorization or modification of authorization conditions at the request of a Covered Entity) to relevant licences, authorizations or registrations in respect of Covered Entities which may have, in their reasonable opinion, a material impact on these Covered Entities.
2. With respect to a Covered Fund, each Authority will inform the other on a timely basis of:
 - a) any decreed or, where appropriate, pending revocation of authorization of distribution in or from the Netherlands or Hong Kong taken by it;
 - b) relevant issues such as the revocation of, or any significant changes (other than modifications at the request of the Covered Entities, withdrawal of authorization or modification of authorization conditions at the request of a Covered Entity) to licences, registrations or authorizations of related Covered Entities; and
 - c) material complaints from third parties brought to its attention and associated with a Covered Fund after proper assessment of the relevant case, as and when considered necessary.
3. Each Authority will use its best endeavours to:
 - a) Inform in a reasonable time the other about any significant amendments to its Domestic laws and regulations which may have an impact on the mutual recognition of Covered Entities' and/or cooperation under this MoU; and
 - b) provide the other with a list of the Covered Funds domiciled in the other Authority's jurisdiction and authorized under this MoU on an annual basis.

Article 8 Exchange of information based on request

1. Upon request and in accordance with Article 9 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 laws and regulations that are 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 laws and regulations, include, but is not limited to:
- a) information which would enable the Requesting Authority to verify that the Covered Entities comply with the relevant obligations and requirements of the Domestic laws and regulations in the Requesting Authority's jurisdiction that are 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;
 - 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) where appropriate, 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;
 - g) Enforcement Actions against any Covered Management Company which have, had or may have significant impact on the operations of such Covered Management Company in the Requesting Authority's jurisdiction; and
 - h) information relating to a Covered Fund, including the status, additional terms and conditions, and any waiver granted in respect of the authorization of a Covered Fund.

Article 9 Execution of requests for information

- 1. A request for written information in accordance with Article 8 above should be made in writing and addressed to the relevant contact point set out in Appendix A.
- 2. A request should 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 laws and regulations applicable to the supervisory activity; and
 - c) the desired time period for responding and, where appropriate, the urgency thereof.
- 3. During Emergency Situations or to expedite the approval process in relation to a Covered Entity, requests for information may be made in any form, including orally, provided such a request is confirmed in writing as early as possible thereafter.

Article 10 Cross-border On-site Visits

- 1. An Authority should communicate with the other Authority prior to carrying out any Cross-border On-site Visits. Authorities should 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 each other with a view to reaching an understanding on 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 should decide whether the visiting officials, or Persons mandated, should 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 understanding 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 the purpose of the Cross-border On-site Visits.

Article 11 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 while this MoU is not intended to gather information for Enforcement Purposes they may want to use the information obtained not only for supervisory purposes, but also for enforcing Domestic laws and regulations in their respective jurisdictions. In such cases, the Authorities will inform each other of such intended use and this will be governed by the terms and conditions of the IOSCO MMoU.

Article 12 Confidentiality of information and disclosure

1. Subject to paragraphs 2 and 3 of this Article, the Authorities will keep confidential any non-public information communicated between them within the scope of cooperation of this MoU, except:
 - a) the fact that the Authorities have concluded this MoU or that it has been revised after its entry into force;
 - b) Appendix B of this MoU, including a possible revision of Appendix B after its entry into force; and
 - c) the termination of this MoU under Article 14 of this MoU.
2. The Requesting Authority should obtain prior 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 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 and will assert such appropriate legal exemptions or privileges with respect to such information as may be available. 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 received under this MoU.

Article 13 Amendment; suspension

1. The Authorities agree to review regularly the operation of this MoU, in particular in view of complaints from investors, and at least once a year, starting one year after entry into force.
2. The Authority wishing to review the MoU will notify the other Authority in writing, after which the Authorities will consult and use their reasonable endeavours to amend it as appropriate.
3. This MoU may be amended by written agreement.
4. In the event of an Emergency Situation, the Authorities may decide, by mutual agreement, to suspend market access for new funds until both Authorities agree that the MoU may resume running.

Article 14 Termination; succession

1. 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.
2. 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 Articles 11 and 12 above.
3. In the event of termination of this MoU, Covered Entities must cease further offering, marketing and distribution in the Host Jurisdiction as soon as practicable and in any event within such time as may be agreed between the Authorities.
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 paragraph 1 of this Article.

Article 15 Transfer of personal data

1. Personal data will be transferred from AFM to the SFC under this MoU, only in accordance with applicable data protection safeguards between the Authorities.
2. Where information provided by the SFC to AFM involves personal data, the SFC will comply with the applicable Domestic laws and regulations on personal data protection in accordance with the applicable data protection safeguards between the Authorities.

Article 16 Entry into force

This MoU enters into force upon signature of the Authorities.

Signed on 15 May 2019

SFC

AFM

Ashley ALDER
Chief Executive Officer

Gerben EVERTS
Board Member

Appendix A

Contact points

The contact points are:

Authority	Contact details
SFC (Hong Kong)	Securities and Futures Commission 35/F, Cheung Kong Center 2 Queens Road Central Hong Kong Email address: mrfnetherlands@sfc.hk
AFM (the Netherlands)	Autoriteit Financiële Markten Vijzelgracht 50 1017 HS Amsterdam The Netherlands

Appendix B – I – SFC Circular

15 May 2019

Mutual Recognition of Funds (MRF) between the Netherlands and Hong Kong

1. The Securities and Futures Commission (SFC) and the Autoriteit Financiële Markten (AFM) signed a Memorandum of Understanding concerning Mutual Recognition of Covered Funds and Management Companies and related cooperation (Memorandum) on 15 May 2019. The Memorandum provides a recognition of asset managers as well as a framework for mutual recognition of recognised funds to be offered to the public in both markets.
2. In this circular, the Dutch funds that are eligible for SFC authorization and/or have received SFC authorization under the MRF are denoted as “Recognised Dutch Funds”.

General principles

3. MRF operates on the principles that, in respect of a Recognised Dutch Fund that has been approved by the AFM and is seeking approval or has received approval for offering to the public in Hong Kong:
 - a. the Recognised Dutch 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 Recognised Dutch Fund shall remain approved by the AFM in the Netherlands and is allowed for public offering within the Netherlands;
 - c. the Recognised Dutch Fund shall operate and be managed in accordance with the relevant laws and regulations in the Netherlands and its constitutive documents;
 - d. the sale and distribution of units or shares of the Recognised Dutch Fund in Hong Kong shall comply with the applicable laws and regulations in Hong Kong;
 - e. the Recognised Dutch Fund and the management company of a Recognised Dutch Fund (Dutch Management Company) shall comply with the additional rules released by the SFC in Hong Kong governing the authorization or approval, post-authorization and ongoing compliance, and the sale and distribution of the Recognised Dutch Fund in Hong Kong;
 - f. the Dutch Management Company of the Recognised Dutch Fund shall ensure holders in both the Netherlands 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 and/or the Netherlands that would result in prejudice to investors in the other jurisdiction, and vice versa; and
 - g. the ongoing disclosure of information on the Recognised Dutch Fund shall

be made available to the investors in the Netherlands 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, the Recognised Dutch Funds that are seeking SFC authorization or have received SFC authorization for offering units or shares 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) have to 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 Hong Kong Laws and Regulations).

On the basis of the principles set out above, if an eligible Recognised Dutch Fund complies with the relevant Dutch laws and regulations and the conditions as set out in this Circular, it is generally deemed to have complied in substance with the relevant SFC requirements and will enjoy a streamlined process of authorization for offering units or shares to the public in Hong Kong.

5. In view of the differences between the Hong Kong and the Dutch regulatory regimes, and to ensure adequate investor protection and consistency with the existing Hong Kong regime for authorized retail funds, this Circular sets out the additional requirements with which an eligible Recognised Dutch Fund has to comply when applying for SFC authorization pursuant to Section 104 of the SFO for offering units or shares to the public in Hong Kong under the MRF, as well as other requirements which a Recognised Dutch Fund and a Dutch Management Company have to observe after obtaining SFC authorization. The AFM will issue separate rules regarding the approval of eligible Hong Kong funds for public offering in the Netherlands.

Eligibility requirements and types of eligible funds

6. The eligibility requirements (Eligibility Requirements) are set out in Annex B to this Circular.
7. Recognised Dutch Funds applying for SFC authorization must fall within one or more than one of the following eligible fund types¹:
 - a. general equity funds, bond funds and mixed funds; and
 - b. index funds (other than exchange-traded funds)

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

8. The Dutch Management Company of a Recognised Dutch Fund that is seeking SFC authorization must indicate to the SFC the fund type within which the Recognised Dutch Fund belongs pursuant to paragraph 7 above. All Recognised Dutch Funds must comply with the requirements set out under the "Requirements applicable to all

¹ Please note that these are not legally defined categories. They have no statutory legal meaning, but are merely indications. Recognised Dutch Funds shall need confirmation by the AFM that they fall within one or more than one of the eligible fund types during the application process.

Recognised Dutch Funds” section below, as well as the relevant requirements set out under the “Requirements applicable to each specific type of Recognised Dutch Funds” section below.

Requirements applicable to all Recognised Dutch Funds

9. To ensure adequate investor protection and consistency with the existing Hong Kong regime for authorized retail funds, Recognised Dutch Funds are required to comply with the requirements set out in paragraphs 10 - 37 below, as well as the relevant requirements as set out in Annex A to this Circular.

Representatives in Hong Kong

10. Each Recognised Dutch Fund must appoint a firm in Hong Kong as its representative, in compliance with Chapter 9 and 11.1(b) of the UT Code.

Operational and ongoing requirements

AFM supervision

11. The Recognised Dutch Fund must, on an ongoing basis, remain approved by AFM for offering to the public in the Netherlands. The Dutch Management Company must also remain authorized by AFM to manage UCITS pursuant to Dutch laws and regulations and in accordance with paragraph 2.2.7.1a (article 2:69b and onwards) of the Dutch Act on Financial Supervision (*Wet op het financieel toezicht*). Both the Recognised Dutch Fund and the Dutch Management Company must be subject to ongoing regulation and supervision by the AFM.

Jurisdiction

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

Changes to Recognised Dutch Funds

13. Changes to a Recognised Dutch Fund shall be made in accordance with the applicable Dutch and Hong Kong laws and regulations; the provisions of its constitutive documents and the requirements set out in this Circular.
14. Any proposed changes to a Recognised Dutch Fund that fall within 11.1 of the UT Code and revisions made to its offering documents relating to such changes shall be submitted for approval to the SFC by the relevant Recognised Dutch Fund (or its Management Company) in accordance with the relevant requirements set out in Annex A. These changes may only take effect upon approval by the SFC and compliance with any relevant notice requirement.
15. Any proposed changes to a Recognised Dutch Fund that do not require SFC’s prior approval pursuant to 11.1 of the UT Code and revisions made to its offering documents relating to such changes must be filed with the SFC and comply with the relevant requirements set out in Annex A.
16. Investors in the Netherlands 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 Recognised Dutch Fund by the Dutch

Management Company. Equal treatment should be given to investors in both jurisdictions in terms of the form which that notice takes².

17. For the avoidance of doubt, changes that render the Recognised Dutch Fund ineligible to be considered as a Recognised Dutch Fund under this Circular (for example – the fund changes strategy and this fund no longer meets the eligible recognised fund type definition) and revisions made to its offering documents relating to such changes must require SFC's prior approval.

Breach

18. In the event of a breach of Dutch laws and regulations or the requirements set out or referred to in this Circular, the Dutch Management Company shall endeavour to notify AFM and the SFC at the same time and rectify the breach promptly. The Dutch Management Company shall also notify the SFC once the breach has been rectified.
19. Following SFC authorization of a Recognised Dutch Fund under section 104 of the SFO, if a Recognised Dutch Fund ceases to meet the requirements as set out in this Circular, its Dutch Management Company shall notify the SFC as soon as reasonably practicable. In case of such breach, units or shares of the Recognised Dutch Fund shall not continue to be offered to the public in Hong Kong and shall not accept subscriptions from investors in Hong Kong, without SFC's prior approval.

Withdrawal of authorization

20. Following SFC authorization of a Recognised Dutch Fund, if its Dutch Management Company does not wish to maintain such authorization, it should apply for withdrawal of authorization from the SFC and provide notice to Hong Kong investors of its intention not to maintain such authorization in accordance with the relevant Hong Kong Laws and Regulations.
21. The SFC may at any time review its authorization and may modify, add to or withdraw any of the conditions of such authorization, or withdraw the authorization, as it considers appropriate.

Termination

22. Termination of a Recognised Dutch Fund shall require the approval of the AFM with immediate notice from the AFM to the SFC. A termination notice should be submitted to the SFC for approval.

Sale/distribution, offering documents, ongoing disclosure and advertisements

Sale/distribution

23. The sale and distribution of a Recognised Dutch Fund in Hong Kong must be conducted by intermediaries properly licensed by or registered with the SFC (which may include the Management Company so properly licensed) and shall comply with the relevant Hong Kong Laws and Regulations relating to the sale and distribution of funds.

Offering documents

24. The disclosure of information relating to a Recognised Dutch Fund shall be complete,

² To the extent there are requirements on minimum notice period and content of or template for the notice to Hong Kong investors under the relevant Hong Kong Laws and Regulations, the Recognised Dutch Fund shall comply with these requirements and ensure that investors in the Netherlands and Hong Kong receive equal treatment in terms of the notice period and information disclosure.

accurate, fair, clear, effective, and shall be capable of being easily understood by investors.

25. The offering documents of a Recognised Dutch 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.
26. A Recognised Dutch Fund may use the prospectus registered by AFM. Unless otherwise provided for in this Circular, matters such as the type of documents, content, format, frequency of update and the updating procedures shall comply with the applicable Dutch laws and regulations and the provisions of its constitutive documents. In addition, the AFM-registered prospectus must be supplemented by a Hong Kong covering document to comply with the disclosure requirements set out in Annex A³ and to disclose any other information which may have a material impact on the 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 authorized by the AFM and/or inaccurate/misleading regarding the Recognised Dutch Fund.
27. The Dutch Management Company shall take reasonable steps and measures to ensure that the offering documents of a Recognised Dutch Fund and their changes are made available to the investors in the Netherlands and Hong Kong at the same time (so far as is reasonably practicable given the different time zones and public holidays of the jurisdictions).

Ongoing disclosure

28. The Dutch Management Company shall take reasonable steps and measures to ensure that the ongoing disclosure of information of a Recognised Dutch Fund (including periodic financial reports, notices and announcements) is dispatched and made available to the investors in the Netherlands 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 Recognised Dutch Fund shall comply with the requirements set out in Annex A and, on an ongoing basis, disclose any other information which may have a material impact on the investors in Hong Kong.
29. Subject to paragraph 30, a Recognised Dutch Fund may use its Dutch 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.

Language

30. The offering documents and notices to investors in Hong Kong of a Recognised Dutch Fund must be provided in both English and Chinese.
31. The constitutive documents and financial reports of a Recognised Dutch Fund must be made available to investors in Hong Kong in either English or Chinese. The language in which these documents are made available to investors in Hong Kong should be clearly disclosed in the offering documents.

³ A disclosure requirement in Annex A would be considered met if the relevant disclosure is already included in the prospectus registered by AFM. The Recognised Dutch Fund does not need to duplicate the disclosure in the Hong Kong covering document.

Advertisement

32. All advertisements in relation to the Recognised Dutch Fund issued in Hong Kong shall comply with the relevant Hong Kong Laws and Regulations, in particular, the Advertising Guidelines Applicable to Collective Investment Schemes Authorized under the Product Codes.

Fees

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

Requirements applicable to each specific type of Recognised Dutch Funds

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

Application process

35. The SFC understands that this marks the first time Recognised Dutch Funds may seek authorization 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.
36. 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.
37. Applicants shall request the AFM 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 AFM. Further details of the MRF application process for a Recognised Dutch Fund seeking authorization from the SFC are set out in the Information Checklist, which is available at the SFC's website <http://www.sfc.hk/web/EN/forms/products/forms.html> starting from today.

**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 Recognised Dutch Funds⁴

	Relevant provisions in the Overarching Principles Section and UT Code (Transitional period to end on 31 December 2019⁵)	Relevant provisions in the Overarching Principles Section and UT Code (Effective on 1 January 2019⁵) (Revised UT Code)
1. General requirements		
Mention of SFC authorization	1.10 of the Overarching Principles Section	1.10 of the Overarching Principles Section
Naming of a Recognised Dutch Fund	5.1 and 5.2 of the Overarching Principles Section	5.1 and 5.2 of the Overarching Principles Section
Availability of constitutive documents	5.10(c) of the UT Code	5.10(c) of the Revised UT Code
Investment in other funds	7.11D of the UT Code	7.11D of the Revised UT Code
Jurisdiction	9.10 of the UT Code	9.10 of the Revised UT Code
Self-managed schemes	A self-managed scheme must appoint a Dutch management company that is authorized by the AFM to manage UCITS in accordance with article 4:58 of the Dutch Act on Financial Supervision (Wet op het financieel toezicht) as investment manager.	A self-managed scheme must appoint a Dutch management company that is authorized by the AFM to manage UCITS in accordance with article 4:58 of the Dutch Act on Financial Supervision (Wet op het financieel toezicht) as investment manager.
2. Operational requirements		
Scheme documentation, pricing, issue and redemption of units/shares, fees	Chapter 6 of the UT Code, except for 6.6 – 6.8, and 6.15	Chapter 6 of the Revised UT Code, except for 6.6 – 6.8, and 6.15
Valuation and pricing, pricing errors, suspension and deferral of dealings, transactions with connected persons	Chapter 10 of the UT Code	Chapter 10 of the Revised UT Code
3. Disclosure requirements in relation to offering documents		
Language	5.6 of the Overarching	5.6 of the Overarching

⁴ For the avoidance of doubt, Recognised Dutch Funds and their management companies should also comply with the FAQs on the Netherlands-Hong Kong Mutual Recognition of Funds and other relevant Frequently Asked Questions (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, FAQs on Post Authorization Compliance Issues of SFC-authorized Unit Trusts and Mutual Funds, FAQs on SFC Authorization of UCITS Funds.

⁵ The New Schemes with New Operators (as defined in the Revised UT Code) will be subject to the Revised UT Code with immediate effect. The Existing Operators (as defined in the Revised UT Code) will generally be subject to a 12-month transition period from 1 January 2019 to comply with the Revised UT Code. Please refer to the implementation schedule as set out in the Revised UT Code for further details on the implementation and transition arrangements.

	Principles Section	Principles Section
Product key facts statement	6.5 – 6.8 of the Overarching Principles Section and 6.2A of the UT Code	6.5 – 6.8 of the Overarching Principles Section and 6.2A of the Revised UT Code
Use of disclaimers	6.12 of the Overarching Principles Section	6.12 of the Overarching Principles Section
Enquiries and complaints handling	7.4 of the Overarching Principles Section	7.4 of the Overarching Principles Section
Multimanager schemes	Note to 5.5(b) of the UT Code	Note (2) to 5.5(b) of the Revised UT Code
Use of financial derivative instruments for investment purpose	8.9(j) of the UT Code	8.9(j) of the Revised UT Code
Information to be disclosed in the offering document	Appendix C to the UT Code, except for C2A	Appendix C to the Revised UT Code, except for C2 (regarding Securities Financing Transactions) and C2A
4. Disclosure and reporting requirements		
General obligation of trustee/custodian	4.5(f) of the UT Code	4.5(f) of the Revised UT Code ⁵
Scheme changes, notifications, ongoing disclosures, reporting, withdrawal of authorization, merger or termination	Chapter 11 of the Revised UT Code, except for 11.1(a) and 11.6A	
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	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
5. Disclosure requirements in relation to financial reports		
Notes to the accounts	Items 2 and 3 of the “Notes to the accounts” Section of Appendix E to the UT Code	Items 2 and 3(a) of the “Notes to the Financial Reports” Section of Appendix E to the Revised UT Code

Requirements in the UT Code to be complied with by each specific type of Recognised Dutch Funds

	Relevant provisions in the UT Code (Transitional period to end on 31 December 2019⁵)	Relevant provisions in the Revised UT Code⁵
Index funds	8.6, except for 8.6(a) to (c) and 8.6(g) to (i)	8.6, except for 8.6(a) to (a)(b), 8.6(b) to (c), 8.6(g) to (i) and 8.6(n) to (y)

Annex B

Eligibility Requirements

Recognised Dutch Fund

1. The Recognised Dutch Fund must be established, domiciled and managed in accordance with Dutch laws and regulations and its constitutive documents. It must be an undertaking for collective investment in transferable securities (UCITS) authorized in accordance with Article 5 of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities which is approved by the AFM for public offering in the Netherlands under paragraph 2.2.7.1a (article 2:69b and onwards) of the Dutch Act on Financial Supervision (*Wet op het financieel toezicht*) .
2. Recognised Dutch Funds applying for SFC authorization must fall within one or more than one of the following eligible fund types⁶:
 - a. general equity funds, bond funds and mixed funds; and
 - b. index funds (other than exchange-traded funds).
3. The Recognised Dutch Fund must not use leverage (arising from derivatives) exceeding 100% of the fund's net asset value as calculated under the commitment approach or as calculated under a calculation method deemed equivalent by both the AFM and the SFC as provided under article 42 of Directive 2010/43/EU.⁷
4. The Recognised Dutch Fund must not invest (i) in physical commodities including precious metals or commodity based investment or real estate, (ii) crypto-assets or crypto-currencies, or (iii) certificates representing the assets referred to under (i) or (ii).
5. The Recognised Dutch Fund must not have share classes with hedging arrangements other than currency hedging.
6. Should the Recognised Dutch Fund charge a performance fee, the fee must be clearly disclosed in the offering documents.

Dutch Management Company

7. The Recognised Dutch Fund must be managed by a Dutch Management Company that is approved by the AFM to manage UCITS pursuant to Dutch laws and regulations in accordance with paragraph 2.2.7.1a (article 2:69b and onwards) of the Dutch Act on Financial Supervision (*Wet op het financieel toezicht*).

⁶ Please note that these are not legally defined categories. They have no statutory legal meaning, but are merely indications. Recognised Dutch Funds shall need confirmation by the AFM that they fall within one or more than one of the eligible fund types during the application process.

⁷ European Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company.

8. The Dutch Management Company of a Recognised Dutch Fund must not have been the subject of any major regulatory or enforcement actions by the AFM in the past 3 years or, if it has been established for less than 3 years, since the date of its establishment.
9. The Dutch Management Company may delegate the investment management functions to any person, provided that such delegation is accepted under Dutch laws and regulations for Dutch-domiciled UCITS approved for public offering, the Dutch 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.

Recognised Dutch Fund's depositaries

10. The Recognised Dutch Fund must have a depositary that is qualified to act as a depositary of Dutch-domiciled UCITS.

Appendix B – II – AFM Circular

AFM Streamlining requirements and process for mutual recognition of Recognised Hong Kong Funds

15 May 2019

AFM-SFC Mutual Recognition of Funds (MRF) between the Netherlands and Hong Kong

1. The Autoriteit Financiële Markten (AFM) and the Securities and Futures Commission (SFC) signed a Memorandum of Understanding (MoU) concerning Mutual Recognition of Covered Funds and Management Companies and related cooperation on 15 May 2019. The MoU provides a framework for mutual recognition of units or shares of covered funds to be offered to the public in both markets.
2. For the purpose of this Circular, unless otherwise defined herein, the words beginning with a capital letter refer to the list of definitions set out in article 1 of the MoU.
3. Hereafter, the Hong Kong Funds that are eligible for AFM approval and/or have received AFM approval under the MRF are denoted as “Recognised Hong Kong Funds”.

General principles

4. MRF operates on the principles that, in respect of a Recognised Hong Kong Fund that has been authorized by the SFC and is seeking approval or has been approved for offering to the public in the Netherlands:
 - a. the Recognised Hong Kong 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 Recognised Hong Kong Fund shall remain authorized by the SFC in Hong Kong and is allowed for public offering to retail investors within Hong Kong;
 - c. the Recognised Hong Kong 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 or shares of the Recognised Hong Kong Fund in the Netherlands shall comply with the applicable laws and regulations in the Netherlands;
 - e. the Hong Kong Management Company and the Recognised Hong Kong Fund shall comply with the additional rules released by the AFM in the Netherlands governing the authorization or approval, post-authorization and ongoing compliance, and the sale and distribution of units or shares of the Recognised Hong Kong Fund in the Netherlands.
 - f. the Hong Kong Management Company of the Recognised Hong Kong Fund shall ensure investors in both Hong Kong and the Netherlands 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 and/or the Netherlands that would result in prejudice to the investors in the other jurisdiction, and vice versa; and

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

5. In general, the Recognised Hong Kong Funds that are seeking AFM approval or have received AFM approval for offering units or shares to the public in the Netherlands pursuant to article 2:66, paragraph 1, Wft and article 2:73 Wft have to comply with the relevant requirements set out in Annex A to this Circular and the applicable EU and Dutch Domestic laws and regulations (as may be amended or otherwise modified from time to time).

On the basis of the principles set out above, if an eligible Recognised Hong Kong Fund 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 AFM requirements and will enjoy a streamlined process of approval for offering units or shares to the public in the Netherlands.

6. In view of the differences between the Dutch and the Hong Kong regulatory regimes, and to ensure adequate investor protection and consistency with the existing Dutch regime for authorized retail funds, this Circular sets out the additional requirements with which an eligible Recognised Hong Kong Fund has to comply when applying for AFM approval pursuant to Dutch law for offering units or shares to the public in the Netherlands under the MRF (in accordance with article 2:73 Wft and article 2:66, paragraph 1, Wft), as well as other requirements which a Recognised Hong Kong Fund and a Hong Kong Management Company have to observe after obtaining AFM approval. The SFC will issue separate rules regarding the authorization of eligible Dutch UCITS for public offering in Hong Kong.

7. The AFM will approve with conditions an eligible Recognised Hong Kong Fund for offering, marketing and distribution of units or shares to retail investors in the Netherlands within 8 weeks,¹ provided that the eligible Recognised Hong Kong Fund meets all the eligibility requirements set out in this Circular and that the AFM has received a complete and satisfactory set of Application Documents as described in paragraph 41 below in relation to the application process.

Eligibility Requirements and types of Recognised Hong Kong Funds

8. The Hong Kong Management Company and/or Recognised Hong Kong Fund applying for AFM approval must meet the requirements that adequate protection is afforded to investors, that the arrangements for the Recognised Hong Kong Fund's constitution and for the Hong Kong Management Company must be adequate, and the powers and duties of the Hong Kong Management Company and of the trustee or depositary must be adequate.

9. The eligibility requirements (Eligibility Requirements) are set out in Annex B to this Circular.

10. Recognised Hong Kong Funds applying for AFM approval must fall within one or more than one of the following eligible fund types²:

- a. general equity funds, bond funds and mixed funds; and
- b. index funds (other than exchange-traded funds).

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

¹ Such period may be extended by 4 weeks should additional information be required by the AFM.

² Please note that these are not legally defined categories. They have no statutory legal meaning, but are merely indications. Recognised Hong Kong Funds shall need confirmation by the SFC that they fall within one or more than one of the eligible fund types during the application process.

11. The Hong Kong Management Company of a Recognised Hong Kong Fund that is seeking AFM approval must indicate to the AFM the fund type within which the Recognised Hong Kong Fund belongs pursuant to paragraph 10 above.

12. All Recognised Hong Kong Funds must comply with the requirements set out under the “Requirements applicable to all Recognised Hong Kong Funds” section below.

Requirements applicable to all Recognised Hong Kong Funds

13. To ensure adequate investor protection and consistency with the existing Dutch regime for approved retail funds, Recognised Hong Kong Funds are required to comply with the requirements set out in paragraphs 14 – 47 below, as well as the relevant requirements as set out in Annex A to this Circular.

Representatives in the Netherlands

14. Each Recognised Hong Kong Fund must appoint a firm in the Netherlands as its representative. Each Recognised Hong Kong Fund must confirm to the AFM the address of the place of business in the Netherlands for service on the Recognised Hong Kong Fund of notices and/or other documents and must keep the AFM updated should these details change.

Operational and ongoing requirements

Home Jurisdiction supervision

15. The Recognised Hong Kong Fund must, on an ongoing basis, remain authorized by the SFC for offering to the public in Hong Kong. The Hong Kong Management Company must also remain appropriately licensed by or registered with the SFC for Type 9 regulated activity. Both the Recognised Hong Kong Fund and the Hong Kong Management Company must be subject to ongoing regulation and supervision by the SFC.

Reporting obligation

16. Hong Kong Management Companies marketing Hong Kong Recognised Funds in the Netherlands are required to comply with the reporting requirements under article 24(1), (2) and (4) of Directive 2011/61/EU. The reporting frequency and the reporting periods are those set out in the ESMA Reporting Guidelines (ESMA/2014/869).

17. In a configuration where a Hong Kong Management Company is marketing Recognised Hong Kong Funds in the Netherlands and in other Member States of the EU, the reporting to the AFM under the requirements of article 24(1), (2) and (4) of Directive 2011/61/EU should only cover the data for those Hong Kong funds that are marketed in the Netherlands.

Jurisdiction

18. The Hong Kong Management Company shall ensure and procure its distributors to ensure that Dutch investors are able to bring actions concerning the Recognised Hong Kong Fund and the Hong Kong Management Company in the courts of the Netherlands.

Changes to Recognised Hong Kong Funds

19. Changes to a Recognised Hong Kong Fund shall be made in accordance with the applicable Hong Kong and Dutch laws and regulations, the provisions of its constitutive documents and the requirements set out in this Circular.³ These changes shall be effective upon approval by the SFC or compliance with the appropriate procedures.

³ For the avoidance of doubt, change in delegate(s) is subject to SFC's prior approval.

20. The SFC shall notify the AFM of any change approved by the SFC in respect of a Recognised Hong Kong Fund approved by the AFM in the Netherlands as soon as possible and in any event within one week from the date of approval.

The SFC will confirm to the AFM that the Recognised Hong Kong Fund effecting such changes continues to meet the Eligibility Requirements as set out in Annex B.

21. Investors in Hong Kong and the Netherlands 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 Recognised Hong Kong Fund by the Hong Kong Management Company. Equal treatment should be given to investors in both jurisdictions in terms of the form which that notice takes.⁴

22. For the avoidance of doubt, when changes render the Recognised Hong Kong Fund ineligible to be considered as a Recognised Hong Kong Fund under this Circular (for example – the fund changes strategy and this fund can no longer meet the requirements of a Recognized Hong Kong Fund), the Recognised Hong Kong Fund is no longer permitted to offer units or shares to investors in the Netherlands. If the SFC is aware of such changes, it shall notify the AFM as soon as possible.

Breach

23. In the event of a breach of Hong Kong laws and regulations or the requirements set out or referred to in this Circular, the Hong Kong Management Company shall endeavor to notify the AFM and the SFC at the same time and rectify the breach promptly. The Hong Kong Management Company shall also notify the AFM once the breach has been rectified.

24. Following AFM approval of a Recognised Hong Kong Fund under article 2:66, paragraph 1, Wft and article 2:73 Wft, if a Recognised Hong Kong Fund ceases to meet the requirements as set out in this Circular, its Hong Kong Management Company shall notify the AFM as soon as reasonably practicable. In case of such breach, units or shares of the Recognised Hong Kong Fund may not continue to be offered to the public in the Netherlands and the Hong Kong Management Company and/or the Recognised Hong Kong Fund may not accept subscriptions from investors in the Netherlands.

Withdrawal of authorization

25. Following AFM approval of a Recognised Hong Kong Fund, if its Hong Kong Management Company does not wish to maintain such approval, it should apply for withdrawal of approval from the AFM and provide notice to Dutch investors of its intention not to maintain such approval in accordance with the relevant Dutch Laws and Regulations.

26. The AFM may at any time review its approval and may modify, add to or withdraw any of the conditions of such authorisation, or withdraw the authorization, as it considers appropriate.

Termination

27. Termination of a Recognised Hong Kong Fund shall require the approval of the SFC with immediate notice from the SFC to the AFM. A termination notice should be sent to investors in the Netherlands, be published on the website of the Hong Kong Management Company and/or Recognised Hong Kong Fund and submitted to the AFM.

Sale/distribution, offering documents, ongoing disclosure and advertisements

Sale/distribution

⁴ To the extent there are requirements on minimum notice period and content of or template for the notice to Dutch investors under the relevant Dutch Laws and Regulations, the Recognised Hong Kong Fund shall comply with these requirements and ensure that investors in Hong Kong and the Netherlands receive equal treatment in terms of the notice period and information disclosure.

28. The sale and distribution of a Recognised Hong Kong Fund in the Netherlands must be conducted by intermediaries properly licensed by or registered with the AFM (which may include the management company so properly licensed) and shall comply with the relevant Dutch Laws and Regulations relating to the sale and distribution of funds.

Offering documents

29. The disclosure of information relating to a Recognised Hong Kong Fund shall be complete, accurate, fair, clear, effective, and shall be capable of being easily understood by investors.

30. The offering documents of a Recognised Hong Kong 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.

31. A Recognised Hong Kong Fund may use the offering documents authorized by the SFC. Unless otherwise provided for in this Circular, matters such as the type of documents, content, format, frequency of update and the updating procedures shall comply with the applicable Hong Kong laws and regulations and the provisions of its constitutive documents. In addition, the SFC-authorized offering documents must be supplemented by a Dutch covering document to comply with the disclosure requirements set out in Annex A to this Circular⁵ and to disclose any other information which may have a material impact on the investors in the Netherlands. The offering documents and the Dutch covering document shall not contain any information that would be inconsistent with the offering documents authorized by the SFC and/or inaccurate/misleading regarding the Recognised Hong Kong Fund.

32. The Hong Kong Management Company shall take reasonable steps and measures to ensure that the offering documents of a Recognised Hong Kong Fund and their changes are made available to the investors in Hong Kong and the Netherlands at the same time (so far as is reasonably practicable given the different time zones and public holidays of the jurisdictions).

Ongoing disclosure and filing

33. The Hong Kong Management Company shall take reasonable steps and measures to ensure that the ongoing disclosure of information of a Recognised Hong Kong Fund (including periodic financial reports, notices and announcements) is dispatched and made available to the investors in Hong Kong and the Netherlands 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 AFM. A Recognised Hong Kong Fund shall comply with the requirements set out in Annex A and, on an ongoing basis, disclose any other information which may have a material impact on the investors in the Netherlands.

34. As soon as reasonably possible, a Recognised Hong Kong Fund must file with the AFM any revised instrument constituting the fund, any revised offering documents, any annual and subsequent half yearly financial reports and any updated UCITS Key Investor Information Document (KIID).⁶

35. Subject to paragraph 36, a Recognised Hong Kong Fund may use its Hong Kong financial reports as the basis for distribution in the Netherlands, provided that the reports are supplemented by the additional information and meet the other requirements set out in Annex A to this Circular. The provided information shall include a statement that no other funds than Recognised Hong Kong Funds are open to investments by Dutch investors.

Language

⁵ A disclosure requirement in Annex A would be considered met if the relevant disclosure is already included in the prospectus approved by SFC. The Hong Kong Recognised Fund does not need to duplicate the disclosure in the Dutch covering document.

⁶ As required by European Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website.

36. The offering documents and notices to investors in the Netherlands of a Recognised Hong Kong Fund must be provided in Dutch. The Dutch translation of the offering documents must be certified by a duly authorized or acknowledged translator.

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

Advertisements

38. All advertisements in relation to the Recognised Hong Kong Fund issued in the Netherlands shall comply with the relevant Dutch Laws and Regulations as set out in Annex A to this Circular.

Fees

39. For offering to the public in the Netherlands, the Recognized Hong Kong Fund/Hong Kong Management Company will be subject to the applicable (i) application, (ii) authorization and (iii) annual fees. The Recognised Hong Kong Fund/Hong Kong Management Company must ensure that any AFM invoiced fees in respect of the Recognised Hong Kong Fund are paid.

Application process

40. The AFM will approve the Recognised Hong Kong Funds for offering, marketing and distribution of units or shares to investors in the Netherlands provided that it has received from the Hong Kong Management Company or the Recognised Hong Kong Fund a complete set of Application Documents.

41. The following Application Documents shall be provided to the AFM by the applicant directly (except for item b below which shall be provided by the SFC directly to the AFM):

- a. a duly signed and completed application form available on the AFM website;
- b. a certificate from the SFC confirming that the Eligibility Requirements listed in Annex B to this Circular are met;
- d. the offering documents in Dutch;
- e. a Key Investor Information Document (KIID) as required by Regulation (EU) No 583/2010 in Dutch⁷ 44. Upon receipt of the Application Documents, the AFM will have 10 (ten) working days to assess that all Application Documents have been duly and properly submitted.

42. Provided that the Recognised Hong Kong Fund meets all the applicable requirements set out in this Circular and if no request for information, as described in paragraph 43 below, is issued by the AFM, the AFM will approve with conditions a Recognised Hong Kong Fund within the 8 (eight) week period. The eight-week period will start from the date the AFM confirms that it has received, to its satisfaction, the Application Documents listed in paragraph 41 above. Should a request for information be issued by the AFM, **such period may be extended by 4 weeks** and the AFM will approve a Recognised Hong Kong Fund within the **additional 4** (four) weeks (the four-week period) provided that all outstanding issues have been addressed to the satisfaction of the AFM.

⁷ European Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website.

43. A request for information may be sent by the AFM for any clarifications relating to paragraphs 14 to 42 and relating to matters in Annex A to this Circular that it considers necessary.

44. The AFM may refuse the application if outstanding issues are not addressed to the satisfaction of the AFM within the **additional** four-week period.

45. Once the AFM approves the Recognised Hong Kong Fund, it will notify the SFC.

46. The application process shall be made through the AFM Digital Portal: <http://www.digitaal.loket.afm.nl/en-US/Pages/default.aspx>

47. The AFM 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 AFM's website.

Strategy, Policy and International Affairs Division

Asset Management Division

Legal Affairs Division

Autoriteit Financiële Markten

Annex A

Requirements to be complied with by all Recognised Hong Kong Funds

Dutch statutory and regulatory measures applicable to the marketing of shares or units of Recognised Hong Kong Funds in the Netherlands

Recognised Hong Kong Funds must comply with statutory and regulatory measures applicable to the marketing of units or shares of collective investment schemes⁸ in the Netherlands. Hereafter are quoted the main financial law provisions in the Netherlands stemming from the Dutch Act on Financial Supervision (Wet op het financieel Toezicht (**Wft**)), the Dutch Decree on Conduct of Business Supervision of Financial Undertakings under the Wft (Besluit Gedragstoezicht financiële ondernemingen Wft (**Bgfo**)) and the Further Regulation on Conduct of Business Supervision of Financial Undertakings (Nadere regeling gedragstoezicht financiële ondernemingen Wft (**Nrgfo**)) applicable to the marketing in the Netherlands of share or units of Recognised Hong Kong Funds. For the purposes of Annex A, references to UCITS shall be construed as references to Recognised Hong Kong Funds.

Provision of information (KIID and Prospectus)

Relevant Dutch law: Articles 4:19 Wft, 65(2) Bgfo, 66a Bgfo, and 4:49 Wft

Article 4:19 Wft

1. A financial enterprise shall ensure that the information provided or made available by or on behalf of it in respect of a financial product, financial service or ancillary service, including advertising, does not prejudice information to be provided or made available pursuant to the Dutch Act on Financial Supervision (**Wft**)

2. The information - including advertising, in respect of a financial product, financial service or ancillary service - provided or made available to clients by a financial enterprise must be correct, clear and not misleading.

3. The financial enterprise must ensure that the commercial purpose of the information provided or made available is recognizable as such.

Article 65(2) Bgfo

A provider of units in a UCITS shall provide a key investor information document for each UCITS in which it offers its units.

Article 66a Bgfo

1. Key investor information shall provide information on the following essential elements in respect of the UCITS concerned:

- a. the identification of the UCITS and the relevant supervisory authority;
- b. a short description of the investment objectives and investment policy;
- c. the historical return or, if relevant, future performance scenarios;
- d. the costs;

⁸ Under Dutch law, a Recognised Hong Kong Fund would be considered, for the purpose of the following circular, as an alternative investment fund (AIF). Therefore, the marketing rules applicable to the AIF shall apply, except provided otherwise, to their full extent to Recognised Hong Kong Funds.

e. the risk/reward profile of the unit, including appropriate guidance and warnings in relation to the risks associated with the unit in the relevant UCITS;

2. The essential investment information clearly states:

a. where and how additional information about the offered units and the prospectus can be obtained;

b. that the annual financial accounts and half-yearly figures are available on the website of the manager and that these documents can be obtained from the manager free of charge on request at any time; and

c. in which language the information referred to in subsections a and b is available to the participants.

3. The key investor information is drawn up in such a way that clients can understand the nature and risks associated with the units in a UCITS without any reference to other documents.

4. A translation of the key investor information contains no other changes or additions with respect to the translated document, than necessary because of the translation.

5. With regard to key investor information, further rules have been laid down in European Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website.

Article 4:49 Wft

1. A management company shall have a prospectus available on its website with regard to each collective investment scheme under its management.

2. The prospectus shall contain at least the following information:

b. a statement from the management company to the effect that the management company itself, the collective investment scheme and any depositary associated with it comply with the additional requirements laid down in this Annex of the MRF.

d. the management company's registration document⁹ and

6. On application, the Dutch Authority for the Financial Markets may, whether or not for a fixed period, grant a full or partial dispensation from Subsection (1), as well as from the provisions arising from Subsection (2), if the applicant demonstrates that it cannot reasonably comply with that subsection and that the objectives which Subsection (1) seeks to achieve are achieved in other ways.

Provision of information in Dutch

Relevant Dutch law: Article 49(2) Bgfo

Article 49(2) Bgfo

The financial enterprise provides the relevant information in the Dutch language. The information can be provided in another language:

a. if the consumer or client so requests and the financial enterprise has agreed to this;

⁹ Article 4:48(1) Wft prescribes that a management company shall have a registration document available on its website that contains information about the management company, the collective investment schemes it manages or intends to manage and any depositaries associated with those schemes.

- b. if the parties have made the choice to apply the law of another state to the agreement concerning a financial product; or
- c. if it concerns key investor information and the use of the relevant language has been approved by the Dutch Authority for the Financial Markets.¹⁰

Notification of changes

Relevant Dutch law: Article 4:20(3) Wft

During the term of a contract regarding a financial product, financial service or ancillary service, an investment firm or financial service provider shall inform the consumer or, where it concerns a financial instrument or insurance, the client in time with regard to material changes.

Such changes include:

(a) changes to constitutive documents;

(b) changes of the depositary, management company, investment delegates and Hong Kong Representative, and their regulatory status;

(c) (i) material changes in investment objectives, policies and restrictions of the scheme (including expansion in the purpose or extent of use of financial derivatives instruments for investment purposes);
(ii) introduction of new fees and charges, or increase in fees and charges payable out of the property of the scheme or by the investors;
(iii) material changes in dealing arrangements, pricing arrangements or distribution policy of the scheme;
and

(d) any other changes that may have a material adverse impact on holders' rights or interests (including changes that may limit holders' ability in exercising their rights).

Consumers or clients must be given a minimum period of one month to step out under the old conditions. This means that the changes may only enter into force after the one month's notice.

Advertisements

Relevant Dutch law: Articles 52(1), 52(4), 55 Bgfo

Article 52(1) Bgfo

If a financial enterprise provides information in an advertisement, other than via television or radio, on a third pillar pension product and complex product insofar as it is an insurance with an investment component or packaged retail investment product, it shall provide information on the most important financial risks of that product, which are made clear inter alia by a risk indicator and, if it concerns an investment object, the most important other risks associated with that product.

Article 52(4) Bgfo

If a financial enterprise prior to the formation of a third pillar pension product contract provides information on that product, it shall refer to the key information document for pension products or, if it concerns units in a UCITS, to the key investor information.

Article 55 Bgfo

1. An advertisement about a manager of a collective investment scheme, collective investment scheme, manager of a UCITS, or UCITS, mentions at least the following:

¹⁰ Please note that the AFM does not accept any other language than Dutch.

a. the name of the manager of a collective investment scheme, collective investment scheme, manager of a UCITS, or UCITS;

b. the fact that it concerns a manager of a collective investment scheme, collective investment scheme, manager of a UCITS, or UCITS;

c. that the manager of a collective investment scheme, collective investment scheme, manager of a UCITS, or UCITS is included in the register held by the Dutch Authority for the Financial Markets; and

d. if it concerns a UCITS: where the prospectus, referred to in Section 4:49(1) of the Wft,¹¹ is available.

2. Subsections c and d of the first paragraph do not apply to advertising on radio and television.

3. Without prejudice to Article 52, in an advertisement other than via the television or radio regarding a UCITS, where appropriate, attention shall be clearly drawn to the fact that:

a. the UCITS primarily invests in financial derivatives;

b. the UCITS follows a stock or bond index;

c. the value of the assets of the UCITS may fluctuate strongly as a result of the investment policy; or

d. an exemption as referred to in Article 136, paragraph 2,¹² has been granted to the UCITS, mentioning the State, the public body or the international organization that issues or guarantees the financial instruments referred to in Article 136, paragraph 2, in which the UCITS invests more than thirty-five percent of its assets under management.

¹¹ A management company shall have a prospectus available on its website with regard to each collective investment scheme under its management.

¹² **Article 136(2) Bgfo:** Upon request, the Dutch Authority for the Financial Markets may grant an undertaking for collective investment in transferable securities dispensation from paragraph (1) if:

- a. its portfolio includes securities and money market instruments from at least six different issues by an issuing state, public body or international organisation referred to in paragraph (1);
- b. the financial instruments of one and the same issue do not exceed 30 percent of the managed assets of the undertaking for collective investment in transferable securities;
- c. the issuing state, the public body or the international organisation is specified in the articles or fund regulations of the undertaking for collective investment in transferable securities; and
- d. the unit holders in the undertaking for collective investment in transferable securities enjoy protection that is equivalent to the protection resulting from paragraph (1) and Sections 134, 135 and 137.

Article 136(1) Bgfo: In derogation from Section 134(1), no more than 35 percent of the managed assets of an undertaking for collective investment in transferable securities may be invested in securities and money market instruments issued or guaranteed by a Member State, a public body with regulatory power in a Member State, a non-Member State or an international organisation to which one or more Member States belong.

Article 134(1) Bgfo: Of the managed assets of an undertaking for collective investment in transferable securities, no more than 10 percent shall be invested in securities and money market instruments issued by the same undertaking. An undertaking for collective investment in transferable securities shall invest no more than 20 percent of the managed assets in deposits held with one bank.

Annex B

Eligibility Requirements

Recognised Hong Kong Fund

1. The Recognised Hong Kong Fund must be established, domiciled and managed in accordance with Hong Kong laws and regulations and its constitutive documents and authorized by the SFC for public offering in Hong Kong under section 104 of the SFO.
2. Recognised Hong Kong Funds applying for AFM approval must fall within one or more than one of the following eligible fund types¹³:
 - a. general equity funds, bond funds and mixed funds; and
 - b. index funds (other than exchange-traded funds).
2. The Recognised Hong Kong Fund's net derivative exposure¹⁴ (as defined in 7.26 of the Code on Unit Trusts and Mutual Funds (UT Code)) must not exceed 100% of the fund's net asset value.
3. The Recognised Hong Kong Fund must not invest (i) in physical commodities including precious metals or commodity based investment or real estate, (ii) crypto-assets or crypto-currencies, or (iii) certificates representing the assets referred to under (i) or (ii).
4. The Recognised Hong Kong Fund must not have share classes with hedging arrangements other than currency hedging.
5. Should the Recognised Hong Kong Fund charge a performance fee, the fee must be clearly disclosed in the offering documents.

Hong Kong Management Company

6. The Recognised Hong Kong Fund must be managed by a Hong Kong 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.
7. The Hong Kong Management Company of a Recognized Hong Kong Fund must not have been the subject of any major regulatory or enforcement actions by the SFC in the past 3 years or, if it has been established for less than 3 years, since the date of its establishment.
8. The Hong Kong Management Company may delegate the investment management functions to any person, provided that such delegation is accepted under Hong Kong laws and regulations for Hong Kong funds authorised for public offering, the Hong Kong Management Company remains responsible for any action of its delegate(s).

Recognised Hong Kong Fund's depositaries

9. The Recognised Hong Kong Fund must have a trustee/depositary that is qualified to act as a trustee/depositary of publicly offered funds. The trustee/depositary shall be subject to prudential supervision (either at an entity level or on a consolidated group basis) of the Hong Kong Monetary Authority (HKMA) (in the case of licensed banks or its subsidiaries), the Mandatory Provident Fund Schemes Authority (MPFA) (in the case of a non-bank trustee) or an acceptable overseas jurisdiction (in

¹³ Please note that these are not legally defined categories. They have no statutory legal meaning, but are merely indications. Recognised Hong Kong Funds shall need confirmation by the SFC that they fall within one or more than one of the eligible fund types during the application process.

¹⁴ Before 1 January 2020, the Recognised Hong Kong Fund must not use leverage as calculated under the commitment approach or have net derivative exposure exceeding 100% of the fund's net asset value (as the case may be).

the case of an overseas bank or its subsidiary). These trustees also have to meet the eligibility requirements (including capital and internal control report and auditor's report by independent auditors) under the UT Code.