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2 December 2016

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

1. The Securities and Futures Commission (SFC) and the Swiss Financial Market Supervisory Authority (FINMA) signed a Memorandum of Understanding on Switzerland-Hong Kong Mutual Recognition of Funds and Asset Managers (Memorandum) on 2 December 2016. The Memorandum provides a recognition of asset managers as well as a framework for mutual recognition of publicly offered funds in both markets. “Public Offering” or “publicly offered” means
  - a. in Switzerland any marketing, offering, sale and distribution of CIS to investors who are not qualified as defined in Article 10 paras. 3, 3<sup>bis</sup> or 3<sup>ter</sup> Swiss Federal Act on Collective Investment Schemes (CISA) and/or
  - b. in Hong Kong any offer (including marketing, sales and distribution) of CIS to the public which requires authorization under the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) (SFO).

### **General principles**

2. MRF operates on the principles that, in respect of a fund that has been authorized or approved by the relevant authority in one jurisdiction (Home Jurisdiction) and is seeking or has received authorization or approval for Public Offering in the other jurisdiction (Host Jurisdiction):
  - a. the fund should meet the eligibility requirements in accordance with this Circular;
  - b. the fund should remain authorized or approved by the relevant authority in the Home Jurisdiction and is allowed for Public Offering within the Home Jurisdiction;
  - c. the fund should generally operate and be managed in accordance with the relevant laws and regulations in the Home Jurisdiction and its constitutive documents;
  - d. the sale and distribution of the fund in the Host Jurisdiction shall comply with the applicable laws and regulations in the Host Jurisdiction;
  - e. the fund will comply with the additional rules released by the relevant authority in the Host Jurisdiction governing the authorization or approval, post-authorization and ongoing compliance, and the sale and distribution of the fund in the Host Jurisdiction;
  - f. the management company of the fund shall ensure holders of both the Home Jurisdiction and Host Jurisdiction receive fair and the same treatment,



including in respect of investor protection, exercise of rights, compensation and disclosure of information; and

- g. ongoing disclosure of information on the fund shall be made available to the investors in the Home Jurisdiction and the Host Jurisdiction at the same time.
3. All direct information sharing by FINMA supervised entities including Swiss Asset Managers<sup>1</sup> with SFC is subject to Article 42c of the Swiss Financial Market Supervision Act (FINMASA). It is the responsibility of each entity concerned to analyse on a case-by-case basis whether the requirements for such direct information sharing with SFC are met. In some instances, supervised entities in Switzerland may be obliged to transmit the relevant information (indirectly) through FINMA to SFC by means of administrative assistance.
4. In general, funds that are seeking SFC authorization or have received SFC authorization for Public Offering in Hong Kong pursuant to Section 104 of the 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 Swiss fund complies with the relevant Swiss laws and regulations, it is generally deemed to have complied in substance with the relevant SFC requirements and will enjoy a streamlined process of authorization for Public Offering in Hong Kong.
5. In view of the differences between the Hong Kong and the Swiss regulatory regimes, to ensure proper investor protection and consistency with existing Hong Kong SFC-authorized funds, this Circular sets out the additional requirements with which an eligible Swiss fund has to comply when applying for SFC authorization for Public Offering in Hong Kong under the MRF, as well as other requirements which a Recognised Swiss Fund (see definition in paragraph 6 below) has to observe after obtaining SFC authorization. FINMA will issue separate rules regarding the approval of eligible Hong Kong funds for Public Offering in Switzerland.
6. Hereafter, Swiss funds that are eligible for SFC authorization or have received SFC authorization under the MRF are denoted as Recognised Swiss Funds.

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

7. Recognised Swiss Funds applying for SFC authorization must be established, domiciled and managed in accordance with Swiss laws and regulations and its constitutive documents. They must be Swiss funds defined and approved by FINMA as securities funds (Swiss Securities Funds) in accordance with Articles 25 and 53 of CISA for Public Offering.

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<sup>1</sup> "Swiss Asset Managers", meaning (i) asset managers of collective investment schemes in accordance with Art. 13 para. 2 let f. and Art. 18 ff. CISA; (ii) fund management companies in accordance with Art. 13 para. 2 let. a and Art. 28 ff. CISA (herein after also referred to as Swiss Fund Management Companies); (iii) banks pursuant to the Federal Act on Banks and Savings Institutions; (iv) securities traders pursuant to the Stock Exchange Act; and (v) insurance institutions pursuant to the Federal Act on the Supervision of Insurance Companies.



8. Recognised Swiss Funds applying for SFC authorization must fall within one or more than one of the following eligible fund types:
- a. general equity funds, bond funds and mixed funds, which refer to funds whose investment objectives and limitations generally meet the requirements set out in Chapter 7 of the SFC Code on Unit Trusts and Mutual Funds (UT Code), and include funds applying Commitment Approach I<sup>2</sup> in accordance with Article 34 of the Ordinance of the Swiss Financial Market Supervisory Authority on Collective Investment Schemes (CISO-FINMA);
  - b. feeder funds, which refer to funds whose investment objectives and limitations generally meet the requirements set out in Chapter 7.12 of the UT Code, provided that the corresponding master funds meet all the eligibility requirements on a Recognised Swiss Fund as set out in this Circular;
  - c. funds of funds or unit portfolio management funds, which refer to funds whose investment objectives and limitations generally meet the requirements set out in Chapter 8.1 of the UT Code;
  - d. money market / cash management funds (MMFs), which refer to funds whose investment objectives and limitations generally meet the requirements set out in Chapter 8.2 of the UT Code. In addition, eligible Swiss MMFs must be MMFs with variable net asset values;
  - e. index funds, which refer to funds whose investment objectives and limitations generally meet the requirements set out in Chapter 8.6 of the UT Code;
  - f. structured funds, which refer to funds whose investment objectives and limitations generally meet the requirements set out in Chapter 8.8 of the UT Code;
  - g. funds that invest in financial derivative instruments (FDIs), which refer to funds whose investment objectives and limitations generally meet the requirements set out in Chapter 8.9 of the UT Code, and include funds applying Commitment Approach II<sup>3</sup> in accordance with Articles 35 and 36 CISO-FINMA; or
  - h. index tracking exchange traded funds (ETFs), which refer to funds whose investment objectives and limitations generally meet the requirements set out in Chapter 8.6 and Appendix I of the UT Code, with the exception of actively managed ETFs, and leveraged or inverse products. Eligible ETFs include futures-based ETFs that meet the requirements set out in Chapter 8.4A of the UT Code.

The SFC will consider authorizing other types of Swiss Securities Funds on a case-by-case basis.

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<sup>2</sup> For a Swiss fund applying Commitment Approach I, only basic derivative types are permitted. The use of derivatives shall not result in a leverage effect on the fund's assets, and shall not involve short-selling.

<sup>3</sup> For a Swiss fund applying Commitment Approach II, the overall exposure of the fund associated with derivatives may not exceed 100% of its net assets, and the overall exposure may not exceed a total of 200% of its net assets.



9. The Swiss Fund Management Company of a Recognised Swiss Fund that is seeking SFC authorization must indicate to the SFC the fund type within which the Recognised Swiss Fund falls under paragraph 8 above. A Recognised Swiss Fund must comply with the requirements set out under the “Requirements applicable to all Recognised Swiss Funds” section below, as well as the relevant requirements set out under the “Requirements applicable to each specific type of Recognised Swiss Funds” section below.

### **Requirements applicable to all Recognised Swiss Funds**

10. To ensure proper investor protection and consistency with existing Hong Kong authorized schemes, Recognised Swiss Funds are required to comply with the requirements set out in paragraphs 11 – 32 below, as well as the relevant provisions in the Overarching Principles Section (OPS) of the SFC Handbook and the UT Code as set out in Annex A.

#### *Requirements on management companies*

11. The Recognised Swiss Fund must be managed by a Swiss Fund Management Company that is authorised by FINMA to manage publicly offered securities funds pursuant to Swiss laws and regulations and in accordance with Article 28 CISA.
12. The Swiss Fund Management Company of a Recognised Swiss Fund must not have been the subject of any major regulatory or supervisory actions by FINMA in the past 3 years or, if it has been established for less than 3 years, since the date of its establishment.
13. The Swiss Fund Management Company of a Recognised Swiss Fund may, provided that the provisions of Article 31 CISA are met, delegate the investment management decisions to Swiss Asset Managers or any person authorized to manage collective investment schemes operating in one of the acceptable inspection regimes recognized under 5.1 of the UT Code.

#### *Requirements on custodians*

14. The Recognised Swiss Fund must have a custodian that qualifies to act as custodian for Swiss Securities Funds.

#### *Representatives in Hong Kong*

15. Each Recognised Swiss Fund must appoint a firm in Hong Kong which is licensed or registered under the SFO to be its representative, in compliance with Chapter 9 and 11.1(b) of the UT Code.

#### *Operational and ongoing requirements*

##### Home Jurisdiction supervision

16. The Recognised Swiss Fund must, on an ongoing basis, remain approved by FINMA for Public Offering in Switzerland, and be subject to the ongoing regulation and supervision of FINMA.



#### Changes to Recognised Swiss Funds

17. Changes to a Recognised Swiss Fund shall be made in accordance with the applicable Swiss laws and regulations and the provisions of its constitutive documents, subject to paragraph 19 below. These changes shall be effective upon approval by FINMA or compliance with the appropriate procedures. Thereafter, the Swiss Fund Management Company shall submit such changes to the SFC for filing.
18. Changes to a Recognised Swiss Fund shall not contravene the applicable Swiss laws and regulations and the requirements set out in this Circular. Holders in Hong Kong shall be notified about the changes to the Recognised Swiss Fund by the Swiss Fund Management Company of the relevant Recognised Swiss Fund.
19. Changes that concern the eligibility of a Recognised Swiss Fund under the MRF and revisions made to its offering documents relating to such changes shall require SFC's written approval. In addition, changes that affect Hong Kong investors only and revisions made to the offering documents of a Recognised Swiss Fund relating to such changes should be made in accordance with the requirements under the relevant Hong Kong Laws and Regulations.

#### Breach

20. In the event of a breach of Swiss laws and regulations or the requirements set out or referred to in this Circular, the Swiss Fund Management Company shall endeavour to notify FINMA and the SFC at the same time and rectify the breach promptly.
21. Following SFC authorization, if a Recognised Swiss Fund ceases to meet the requirements as set out in this Circular, its Swiss Fund Management Company shall notify the SFC immediately. The Recognised Swiss Fund shall not continue to be offered to the public in Hong Kong and shall not accept subscriptions from new investors in Hong Kong.

#### Withdrawal of authorization

22. Following the authorization of a Recognised Swiss Fund, if its Swiss Fund Management Company does not wish to maintain such authorization, it shall apply for withdrawal of authorization from the SFC in accordance with the applicable Hong Kong Laws and Regulations.
23. The SFC may at any time pursuant to the SFO 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.

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

##### Sale/distribution

24. The sale and distribution of a Recognised Swiss Fund in Hong Kong must be conducted by intermediaries properly licensed by or registered with the SFC. The sale and distribution of a Recognised Swiss Fund in Hong Kong shall comply with the applicable Hong Kong Laws and Regulations relating to distribution of funds.

##### Offering documents



25. The disclosure of information relating to a Recognised Swiss Fund shall be complete, accurate, fair, clear, effective, and shall be capable of being easily understood by investors.
26. The offering documents of a Recognised Swiss 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.
27. A Recognised Swiss Fund may utilize the prospectus approved by FINMA. Unless otherwise provided in this Circular, matters such as the type of documents, content, format, frequency of update and the update procedures shall comply with the applicable Swiss laws and regulations and the provisions of its constitutive documents. In addition, the FINMA-approved prospectus must be supplemented by a Hong Kong covering document to comply with the disclosure requirements set out in Annex A<sup>4</sup> and to disclose any other information which may have a material impact on the investors in Hong Kong.
28. The Swiss Fund Management Company shall take reasonable steps and measures to ensure that the offering documents of a Recognised Swiss Fund and their changes are made available to the investors in Switzerland and Hong Kong at the same time. Subject to paragraph 19 above, the revised offering documents of a Recognised Swiss Fund shall be filed with SFC as soon as possible after the revised offering documents have received FINMA's approval or are filed with FINMA.

#### Ongoing disclosure

29. The Swiss Fund Management Company shall take reasonable steps and measures to ensure that the ongoing disclosure of information of a Recognised Swiss Fund (including periodic financial reports, notices and announcements) is despatched and made available to the investors in Switzerland and Hong Kong at the same time. The ongoing disclosure should be filed with the SFC as soon as possible after it has received FINMA's approval or is filed with FINMA. Unless otherwise provided in this Circular, matters such as the type of ongoing disclosure documents, format, content, timing and frequency of disclosure, matters to be disclosed shall comply with the applicable Swiss laws and regulations and the provisions of its constitutive documents. In addition, a Recognised Swiss 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.
30. A Recognised Swiss Fund may use its Swiss financial reports as the basis for distribution in Hong Kong, provided that it is supplemented by the additional information and meet the other requirements set out in Annex A.

#### Advertisement

31. All advertisements in relation to the Recognised Swiss Fund issued in Hong Kong shall comply with the applicable Hong Kong Laws and Regulations, in particular, the

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<sup>4</sup> A disclosure requirement in Annex A would be considered met if the relevant disclosure is already included in the prospectus approved by FINMA. The Recognised Swiss Fund does not need to duplicate the disclosure in the Hong Kong covering document.



Advertising Guidelines Applicable to Collective Investment Schemes Authorized under the Product Codes.

### **Requirements applicable to each specific type of Recognised Swiss Funds**

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

### **Application process**

33. The SFC understands that this marks the first time Recognised Swiss 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.
34. 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.
35. Further details of the MRF application process for a Recognised Swiss 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 OPS of the SFC Handbook and UT Code to be complied with by all Recognised Swiss Funds***

| <b>1. General requirements</b>   |  |
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| Mention of SFC authorization   | 1.10 of OPS of the SFC Handbook  |
| Naming of a Recognised Swiss Fund  | 5.1 and 5.2 of the OPS of the SFC Handbook   |
| Availability of constitutive documents   | 5.10(c) of the UT Code   |
| Accompaniment to offering documents  | 6.3 and 6.4 of the UT Code   |
| Dealing  | 6.14 of the UT Code  |
| Performance fee  | 6.17 of the UT Code  |
| Jurisdiction   | 9.10 of the UT Code  |
| <b>2. Disclosure requirements in relation to offering documents</b>                    |  |
| Language   | 5.6 of the OPS of the SFC Handbook   |
| Product key facts statement  | 6.5 – 6.8 of the OPS of the SFC Handbook and 6.2A of the UT Code   |
| Enquiries and complaints handling  | 7.4 of the OPS of the SFC Handbook   |
| Information to be disclosed in the offering document                                   | Appendix C of the UT Code (paragraphs 2A, 3(c), 3(d), 3(e), 3(g), 8, 10, 11, 12, 16, 18, 18A, 19, 19A, 20 and 23)  |
| Disclosure on stock lending  | FAQ 21 in the Frequently Asked Questions on the Code on Unit Trusts and Mutual Funds (in respect of unlisted funds) and FAQ 7 in the Frequently Asked Questions on the Exchange Traded Funds and Listed Funds (in respect of physical index-tracking ETFs) |
| Disclosure on information to investors regarding US Foreign Account Tax Compliance Act | FAQ 35 in the Frequently Asked Questions on the Code on Unit Trusts and Mutual Funds and the Circular to issuers of SFC-authorized investment products concerning the US Foreign Account Tax Compliance Act  |
| <b>3. Disclosure requirements in relation to ongoing disclosure</b>                    |  |
| Notices to holders   | 11.2 (bilingual notice and notice period for unitholder meetings), 11.2A and 11.2B of the UT Code  |
| Disclosure of withdrawal of authorization  | 11.4 of the UT Code  |





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| Disclosure on merger or termination  | 11.5 of the UT Code  |
| Reporting to holders   | 11.6 of the UT Code (notification of availability of financial reports)  |
| Disclosure on stock lending  | FAQ 7 in the Frequently Asked Questions on the Exchange Traded Funds and Listed Funds (in respect of physical index-tracking ETFs)   |
| Constitutive documents   | All constitutive documents of a Recognised Swiss Fund shall be made available to Hong Kong investors in either English or Chinese  |
| 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>4. Disclosure requirements in relation to financial reports</b>   |  |
| Language   | Financial reports of a Recognised Swiss Fund shall be made available to Hong Kong investors in either English or Chinese   |
| Revenue statement  | Items 3 and 4(d) of the “Revenue statement” Section of the Appendix E of the UT Code   |
| Notes to the accounts  | Items 1(b), 1(f), 2 and 6 of the “Notes to the accounts” Section of the Appendix E of the UT Code and any changes to the principal accounting policies   |
| Investment portfolio   | Items 2 and 4 of the “Investment portfolio” Section of the Appendix E of the UT Code   |
| Holdings of collateral   | Items 1(b) and 1(d) of the “Holdings of collateral” Section of the Appendix E of the UT Code   |
| Performance table  | Item 2 of the “Performance table” Section of the Appendix E of the UT Code   |
| Inclusion of the investment portfolio of the underlying fund for feeder fund   | 7.12(b)(iii) of the UT Code  |
| Mention of any unauthorized schemes in the financial reports must be indicated as “Not authorized in Hong Kong and not available to Hong Kong Residents” | Appendix E of the UT Code  |



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

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|---------------------------|---|
| Feeder funds              | 7.12(a) – 7.12(d) of the UT Code  |
| MMFs                      | 8.2 of the UT Code  |
| Index funds               | 8.6(e), 8.6(j), 8.6(l) and 8.6(m) of the UT Code  |
| Structured funds          | 8.8(a), 8.8(b) and 8.8(h) of the UT Code  |
| Funds that invest in FDIs | 8.9(a) and 8.9(f) of the UT Code  |
| Index tracking ETFs       | Requirements applicable to index funds as set out above<br>Appendix I of the UT Code (paragraphs 12, 13, 14, 17, 17A, 18, 21 and 22)<br>8.4A of the UT Code (if the ETF is a futures-based ETF) |