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8 October 2018

Mutual Recognition of Funds (MRF) between the United Kingdom (UK) and Hong Kong

1. The Securities and Futures Commission (SFC) and the Financial Conduct Authority (FCA) signed a Memorandum of Understanding concerning Mutual Recognition of Covered Funds and Covered Management Companies and related cooperation (Memorandum) on 8 October 2018.
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 Memorandum.

General principles

3. The Memorandum operates on the principles that, in respect of a Covered Fund that has been authorised by the relevant Authority in one jurisdiction (home jurisdiction) and is seeking or has received authorisation or recognition for public offering in the other jurisdiction (host jurisdiction):
 - a. The Covered Fund must 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 Covered Fund must remain authorised by the relevant Authority in the home jurisdiction and be allowed for public offering within the home jurisdiction;
 - c. The Covered Fund must 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 Covered Fund in the host jurisdiction must comply with the applicable laws and regulations in the host jurisdiction;
 - e. Where relevant, the Covered Fund and its Covered Management Company must comply with the additional rules required by the relevant Authority in the host jurisdiction governing the authorisation or recognition of the Covered Fund, including post-authorisation or recognition requirements, and the sale and distribution of the Covered Fund in the host jurisdiction;
 - f. Investors of the Covered Fund must be treated fairly; there must be no arrangements which provide an advantage for investors in the home jurisdiction that would result in prejudice to the investors in the host jurisdiction, and vice versa; and



- g. Post sale ongoing disclosure of information on the Covered Fund must be made available to investors in the home jurisdiction and host jurisdiction at the same time (so far as is reasonably practicable given the different time zones of the jurisdictions).
4. Funds that are seeking SFC authorisation or have received SFC authorisation for offering to the public in Hong Kong pursuant to Section 104 of the SFO must comply with the SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products and the circulars, guidelines and other requirements as may be issued by the SFC from time to time (together with the SFO, the relevant Hong Kong laws and regulations). On the basis of the principles set out above, if an eligible UK fund complies with the relevant UK laws and regulations and the conditions as set out in this circular, it will enjoy a streamlined process of authorisation for offering to the public in Hong Kong.
5. In view of the differences between Hong Kong's and the UK's regulatory regimes, and to ensure that there is adequate investor protection and consistency with the existing Hong Kong regime for authorised retail funds, this circular sets out the additional requirements with which a UK Covered Fund must comply when applying for SFC authorisation pursuant to Section 104 of the SFO for offering to the public in Hong Kong under the Memorandum, as well as other requirements which a Covered Entity must observe after a UK Covered Fund has obtained SFC authorisation. The FCA will issue a separate circular which sets out the eligibility and ongoing requirements, as well as FCA rules, which a Hong Kong Covered Fund must satisfy if its Hong Kong Covered Management Company intends to seek recognition for the Hong Kong Covered Fund from the FCA under Section 272 of FSMA and in line with the terms of the Memorandum. It also sets out the requirements and FCA rules with which a Hong Kong Covered Fund must comply on an ongoing basis if it wishes to remain recognised under Section 272 of FSMA so that it can be marketed to the public in the UK.

Eligibility requirements and types of eligible funds

6. The eligibility requirements (Eligibility Requirements) are set out in Annex B to this circular.
7. UK Covered Funds applying for SFC authorisation must fall within one or more than one of the following fund types under the UT Code:
 - a. General equity funds, bond funds and mixed funds;
 - b. Feeder funds, where underlying fund falls within one of the fund types in paragraphs 7(a), (c), (d) and (e), and complies with the requirements in this circular;
 - c. Fund of funds;
 - d. Index funds; or
 - e. Passively managed index tracking exchange traded funds (ETFs).



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

8. The UK Covered Management Company that is seeking SFC authorisation must indicate to the SFC the fund type(s) in paragraph 7 above the UK Covered Fund falls within.
9. All UK Covered Funds must comply with the requirements set out under the “Requirements applicable to all UK Covered Funds” section below, as well as the relevant requirements set out under the “Requirements applicable to each specific type of UK Covered Funds” section below.

Requirements applicable to all UK Covered Funds

10. To ensure that there is adequate investor protection and consistency with the existing Hong Kong regime for authorised retail funds, all UK Covered Funds are required to comply with requirements set out in paragraphs 11 – 36 below, as well as the relevant requirements as set out in Annex A. The following paragraphs are without prejudice to the requirements of UK Domestic Law which may also apply to UK Covered Funds and UK Covered Management Companies.

Representatives in Hong Kong

11. Each UK Covered 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

Home jurisdiction supervision

12. The UK Covered Fund must, on an ongoing basis, remain authorised by the FCA for offering to the public in the UK. The UK Covered Management Company of the UK Covered Fund must also remain authorised by the FCA and it must have permission under Part 4A of FSMA to carry on the regulated activity specified in article 51ZA (Managing a UCITS) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (as amended). Both the UK Covered Fund and its UK Covered Management Company must be subject to ongoing regulation and supervision by the FCA.

Changes to UK Covered Funds

13. Changes to a UK Covered Fund must be made in accordance with the applicable UK and Hong Kong laws and regulations and the provisions of its constitutive documents.
14. Any proposed changes to a UK Covered Fund that fall within 11.1 of the UT Code and revisions made to its offering documents relating to such changes must be submitted by its UK Covered Management Company for approval by the SFC 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 UK Covered 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 UK and Hong Kong must be notified at the same time (so far as is reasonably practicable given the different time zones of the jurisdictions) about any changes to the UK Covered Fund by the UK Covered Management Company. Equal treatment should be given to investors in both jurisdictions in terms of the form which that notice takes¹.
17. If a proposed change is received by the SFC which renders the UK Covered Fund ineligible to be considered as a Covered Fund under this MRF (for example – the fund changes strategy and this fund no longer meets the eligible covered fund type definition), the expectation is that the application submitted will be for withdrawal of authorisation of the fund in Hong Kong. If the fund still wishes to be offered to the public in Hong Kong, we would expect a new application for authorisation for the fund under Section 104 of the SFO to be completed, but this application will not be subject to the streamlined application process accessible by UK Covered Funds.

Breach

18. In the event of a breach of UK Domestic Laws, the constitutive documents or the requirements set out or referred to in this circular, which is notifiable to the FCA and which could affect Hong Kong investors in a UK Covered Fund, the UK Covered Management Company must endeavour to notify the FCA and the SFC at the same time and rectify the breach promptly. The UK Covered Management Company will notify the SFC once the breach has been rectified.
19. Following SFC authorisation of a UK Covered Fund under Section 104 of the SFO, if a UK Covered Fund ceases to meet the requirements as set out in this circular, its UK Covered Management Company must notify the SFC immediately. The UK Covered Fund must not continue to be offered to the public in Hong Kong and must not accept subscriptions from new investors in Hong Kong.

Withdrawal of authorisation

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

Sale/distribution, offering documents, ongoing disclosure and advertisements

¹ To the extent there are requirements on minimum notice period and content of or template for notice to Hong Kong investors under relevant Hong Kong laws and regulations, the UK Covered Fund should comply with these requirements and ensure that investors in the UK and Hong Kong receive equal treatment in terms of the notice period and information disclosed.



Sale/distribution

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

Offering documents

23. The disclosure of information relating to a UK Covered Fund must be complete, accurate, fair, clear, and effective. It must be capable of being easily understood by investors.
24. The offering documents of a UK Covered Fund must be up-to-date and contain information necessary for investors to be able to make an informed judgement of the investment proposed to them.
25. A UK Covered Fund may use the prospectus approved by the FCA. Unless otherwise provided for in this circular, matters such as the type of documents, content, format, frequency of update and the updating procedures must comply with the applicable UK laws and regulations and the provisions of its constitutive documents. The FCA-approved prospectus may be supplemented by a Hong Kong covering document to comply with the disclosure requirements set out in Annex A. The prospectus should also disclose any other information which may have a material impact on investors in Hong Kong.
26. The UK Covered Management Company of a UK Covered Fund must take reasonable steps and measures to ensure that any updated offering documents are made available to investors in the UK and Hong Kong at the same time (so far as is reasonably practicable given the different time zones of the jurisdictions).

Ongoing disclosure

27. The UK Covered Management Company of a UK Covered Fund must take reasonable steps and measures to ensure that the ongoing disclosure of information of the UK Covered Fund (including periodic financial reports, notices and announcements) is despatched and made available to investors in the UK and Hong Kong at the same time (so far as is reasonably practicable given the different time zones of the jurisdictions). A UK Covered Fund must 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 investors in Hong Kong.
28. Subject to paragraph 30, a UK Covered Fund may use its UK 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

29. The offering documents and notices to Hong Kong investors of a UK Covered Fund must be provided in English and Chinese.
30. The constitutive documents and financial reports of a UK Covered Fund must be made available to Hong Kong investors in either English or Chinese. The language in



which these documents are made available to Hong Kong investors should be clearly disclosed in the offering documents.

Advertising

31. All advertisements in relation to a UK Covered Fund offered in Hong Kong must comply with the relevant Hong Kong laws and regulations, in particular, the Advertising Guidelines Applicable to Collective Investment Schemes Authorised under the Product Codes.

Fees

32. The UK Covered Management Company must ensure that any SFC invoiced periodic fees in respect of the UK Covered Fund are paid.

Requirements applicable to each specific type of UK Covered Funds

33. There are requirements which each specific type of UK Covered Funds must comply with. Please refer to Annex A for details.

Application process

34. The SFC encourages applicants to consult the Investment Products Division early for any clarification as to how the relevant requirements may apply and be complied with in light of their specific circumstances.
35. 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.
36. Applicants shall request the FCA 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 take up the application if no such certificate is received from the FCA. Further details of the MRF application process for a UK Covered Fund seeking authorisation from the SFC are available from the SFC's website.

Investment Products Division Securities and Futures Commission



Annex A

Requirements in the Overarching Principles Section and UT Code to be complied with by all UK Covered Funds².

1. General requirements	
Mention of SFC authorisation	1.10 of Overarching Principles Section
Naming of a UK Covered Fund	5.1 and 5.2 of the Overarching Principles Section
Availability of constitutive documents	5.10(c) of the UT Code
Accompaniment to offering documents	6.3 and 6.4 of the UT Code
Inclusion of performance data	6.5 of the UT Code
Pricing, issue and redemption of units/ shares	6.10 – 6.14 of the UT Code
Performance fee	6.17 of the UT Code
Fees, costs and charges which must not be paid from the fund's property	6.18(a) – (c) of the UT Code
Investment in other funds	7.11D of the UT Code
Jurisdiction	9.10 of the UT Code
Valuation and pricing, pricing errors, suspension and deferral of dealings and transactions with connected persons	Chapter 10 of the UT Code
2. Disclosure requirements in relation to offering documents	
Language	5.6 of the Overarching Principles Section
Product key facts statement	6.5 – 6.8 of the Overarching Principles Section and 6.2A of the UT Code
Use of disclaimers	6.12 of the Overarching Principles Section
Enquiries and complaints handling	7.4 of the Overarching Principles Section
Level/ basis of calculation of fees	6.16 of the UT Code
Use of financial derivative instruments for investment purpose	8.9(j) of the UT Code
Information to be disclosed in the offering document	Appendix C to the UT Code (except for C2A)

² For the avoidance of doubt, UK Covered Funds and the UK Covered Management Companies should also comply with the 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 Exchange Traded Funds and Listed Funds, FAQs on Post Authorization Compliance Issues of SFC-authorized Unit Trusts and Mutual Funds, FAQs on SFC Authorization of UCITS III Funds and FAQs on the United Kingdom-Hong Kong Mutual Recognition of Funds.



3. Disclosure and reporting requirements	
Scheme changes, notifications, ongoing disclosures, reporting, withdrawal of authorisation, merger or termination	Chapter 11 of the UT Code
Other documents to be made available to Hong Kong investors as specified in the offering documents	Upon request by investors, specific information regarding these documents should be made available to Hong Kong investors in English or Chinese. Information regarding how investors can make such information requests should also be clearly disclosed in the Hong Kong offering documents
4. Disclosure requirements in relation to financial reports	
Notes to the accounts	Items 2 and 3 of the "Notes to the accounts" Section of the Appendix E to the UT Code



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

Feeder funds	7.12 of the UT Code
Funds of funds	8.1(b), 8.1(h) and 8.1(i) of the UT Code
Index funds	8.6(d), 8.6(e), 8.6(f), 8.6(j), 8.6(k), 8.6(l) and 8.6(m) of the UT Code
Index tracking ETFs	Requirements applicable to index funds as set out above Appendix I to the UT Code (paragraphs 7A, 9, 12, 13, 14, 19, 20, 21 and 22) 8.4A of the UT Code (if the ETF is a futures-based ETF)



Annex B

Eligibility Requirements

UK Covered Fund

1. The UK Covered Fund must be established, domiciled and managed in accordance with UK laws and regulations and its constitutive documents. It must be a UCITS scheme which is authorised as such by the FCA under Part 17 of FSMA or under the Financial Services and Markets Act 2000 (Open Ended Investment Company) Regulations 2001 (SI 2001/1228) (as amended).
2. The UK Covered Fund must not use leverage exceeding 100% of the fund's net asset value as calculated under the commitment approach provided under COLL5.3.8R.
3. The UK Covered Fund must not invest in real estate.
4. The UK Covered Fund must not have share classes with hedging arrangements other than currency hedging.

UK Covered Management Company

5. The UK Covered Fund must be managed by a UK Covered Management Company that is authorised by the FCA and has permission under Part 4A of FSMA to carry on the regulated activity specified in article 51ZA (Managing a UCITS) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (as amended).
6. The UK Covered Management Company of a UK Covered Fund must not have been the subject of any major regulatory or enforcement actions by FCA in the past three years or, if it has been established for less than three years, since the date of its establishment.
7. The UK Covered Management Company of a UK Covered Fund may delegate the investment management functions to any person, provided that such delegation is accepted under UK laws and regulations for UK UCITS authorised for public offering, the UK Covered Management Company remains responsible for any action of its delegate(s) and such delegate operates in one of the acceptable inspection regimes recognized under 5.1 of the UT Code.

UK Covered Fund's trustee and depositary

8. The UK Covered Fund must have a trustee or depositary that qualifies to act as a trustee or depositary for UK UCITS.