

22 May 2009

Circular to SFC-licensed fund managers of Exchange Traded Funds (“ETFs”) on the mutual recognition of ETFs between Hong Kong and Taiwan

The SFC and the Taiwan Financial Supervisory Commission (“FSC”) have signed and exchanged on 22 May 2009 a Side Letter to a bilateral Memorandum of Understanding (the “Side Letter”) to provide the framework for the mutual recognition by the SFC and FSC of ETFs offered and cross-listed in the other jurisdiction. The Memorandum of Understanding was entered into by the 2 financial regulators in 1996.

SFC’s recognition of Taiwan ETFs

Under the Side Letter, the SFC will recognise ETFs that are approved by the FSC under Article 10 of Taiwan Securities Investment Trust and Consulting Act and managed by Taiwan managers permitted and licensed under Article 63 of the Securities Investment Trust and Consulting Act (“Taiwan ETF”) under the Code on Unit Trusts and Mutual Funds (“Unit Trust Code”) for the purpose of authorization pursuant to section 104 of the Securities and Futures Ordinance (“SFO”).

In principle, Taiwan ETF will be deemed to have complied with the relevant provisions in the Unit Trust Code and generally will not be required to strictly observe the specific requirements therein, except for the following areas:

- (a) appointment of a Hong Kong representative;
- (b) dissemination of trading information by ETF;
- (c) disclosure in offering documents;
- (d) advertising; and
- (e) post-authorisation requirements including those on connected party transactions, pricing error, financial reporting and notification requirements to holders.

FSC’s recognition of Hong Kong ETFs

On the basis of mutuality, FSC will recognise ETFs that are authorized by the SFC under section 104 of the SFO and managed by SFC-licensed managers to carry out Type 9 regulated activity (asset management) (“Hong Kong ETF”). FSC will recognise a Hong Kong ETF under Article 26 of Taiwan Regulations Governing Offshore Funds (the “Taiwan Regulations”).

Hong Kong ETF will be deemed to have complied with the relevant provisions of the Taiwan Regulations and generally will not be required to strictly observe the specific requirements therein, except for the following specific areas:

- (a) appointment of a Qualified Master Agent in Taiwan ;
- (b) obtaining the relevant approvals in accordance with Article 29;
- (c) information disclosure, reporting and provision of relevant information to investors; and
- (d) advertising and promotions.



For details of the above requirements, ETF issuers are encouraged to seek guidance from SFC or FSC, where applicable.

**Investment Products Department
Securities and Futures Commission**