

### Frequently Asked Questions on the Code on Unit Trusts and Mutual Funds

This FAQ is prepared by the Investment Products Division and aims to provide basic information to market practitioners concerning the Code on Unit Trusts and Mutual Funds (“UT Code”). Applicants are encouraged to contact the relevant case team in the Investment Products Division of the Securities and Futures Commission (the “SFC”) if in doubt on any specific issues arising from the application/interpretation of the UT Code. Please note that each application for authorization is considered on a case-by-case basis.

The information set out below is not meant to be exhaustive. This FAQ may be updated and revised from time to time. This FAQ is only for general reference. Compliance with all the requirements in this FAQ does not necessarily mean an application will be accepted or authorization will be granted. The SFC reserves the rights to exercise all powers conferred under the law.

*Note: For ease of reference, collective investment schemes that are generally known as unit trusts or mutual funds are referred to as “funds” in the following FAQ.*

	Question	Answer
<b>Basic Requirements for Fund Authorization</b>		
1.	Why should a fund require SFC authorization?	<p>It is the SFC’s policy intention that funds that are offered to the public in Hong Kong are subject to the prior authorization of the SFC, unless one of the exemptions under section 103 of the Securities and Futures Ordinance (“SFO”) applies. For example, funds that exclusively target “professional investors”<sup>1</sup> do not require SFC authorization. The SFC derives its fund authorization powers from section 104 of the SFO.</p> <p>The UT Code sets out the basic requirements that an SFC-authorized fund must comply with. A copy of the UT Code is available in the <a href="http://en-">http://en-</a></p>

<sup>1</sup> The term “professional investors” is defined in section 1 of Part 1 of Schedule 1 to the SFO and in the Securities and Futures (Professional Investor) Rules.

	Question	Answer
		<a href="http://rules.sfc.hk/en/display/display.html?rbid=3527&amp;element_id=3039">rules.sfc.hk/en/display/display.html?rbid=3527&amp;element_id=3039</a> page at the SFC website.
2.	What does SFC authorization involve?	<p>In order to authorize a fund which intends to offer its products to the public, we first consider the acceptability of:</p> <ul style="list-style-type: none"> <li>▪ the fund’s legal form and structure</li> <li>▪ the fund’s key operating parties, including the fund manager and the trustee/custodian</li> <li>▪ the fund’s operational features, e.g. dealing frequency, valuation, etc.</li> <li>▪ the fund’s investment nature and compliance with the relevant requirements of the UT Code</li> <li>▪ the disclosure quality of the fund’s offering document</li> <li>▪ the fund’s compliance with the UT Code’s post-authorization obligations, e.g. notice period for fee increases, pricing errors, etc.</li> </ul> <p>Depending on the structure of the fund and the level of compliance with the UT Code, we may also consider other factors that are relevant to a specific fund application.</p>
3.	What types of funds would be considered for authorization?	<p>There are two broad categories of funds in the UT Code:</p> <ul style="list-style-type: none"> <li>▪ <u>Chapter 7 Funds</u>: generally referred to as straightforward Equity/Bond Funds</li> <li>▪ <u>Chapter 8: Specialized Schemes</u>, including:             <ol style="list-style-type: none"> <li>i. Unit Portfolio Management Funds (Fund of Funds)</li> <li>ii. Money Market/Cash Management Funds</li> <li>iii. Warrant Funds</li> <li>iv. Futures and Options Funds</li> <li>v. Guaranteed Funds</li> </ol> </li> </ul>

	Question	Answer
		<ul style="list-style-type: none"> <li>vi. Index Funds</li> <li>vii. Hedge Funds</li> <li>viii. Index Tracking Exchange Traded Funds (“ETF”)</li> <li>ix. Structured Funds</li> <li>x. Funds that invest in financial derivative instruments</li> </ul>
<b>Fund’s Structure and Domicile</b>		
4.	What should I look out for when setting up umbrella fund structures?	<p>An umbrella fund structure is allowed under the UT Code. However, you should be careful about the types of sub-funds established under the umbrella fund.</p> <p>In general, we expect sub-funds in the same umbrella should share similar investment objectives and risk profiles. For example, a hedge fund or a guaranteed fund should not be established as a sub-fund under an existing umbrella that contains plain-vanilla equity/bond funds.</p>
5.	Can I domicile my fund in an overseas jurisdiction?	<p>Yes. The SFC, in general, adopts an open architecture towards admitting and authorizing overseas funds that wish to offer their products to the retail public in Hong Kong, bearing in mind investors’ interests.</p> <p>The guiding principle is that the legal and regulatory framework for these funds and the enforcement of investors’ rights in a particular overseas jurisdiction should provide a level of investor protection comparable to that offered in Hong Kong.</p> <p>For funds that are domiciled in one of the “Recognized Jurisdictions” as set out in the <a href="http://www.sfc.hk/web/EN/regulatory-functions/products/product-authorization/list-of-recognised-jurisdiction-schemes-and-inspection-regimes.html">http://www.sfc.hk/web/EN/regulatory-functions/products/product-authorization/list-of-recognised-jurisdiction-schemes-and-inspection-regimes.html</a> page at the SFC website, the authorization process can be streamlined in certain areas. Please also read Q.6 below.</p>
6.	How does the “Recognized Jurisdiction Schemes” (“RJS”) concept work?	The RJS concept only applies to Chapter 7 Funds (see Q.3 for details). It does not apply to Specialized Schemes under Chapter 8.

	Question	Answer
		<p>Funds that are established in one of the RJS jurisdictions and are in compliance with similar regulatory requirements as those contemplated in Chapter 7 of the UT Code are deemed to have complied in substance with the core investment restrictions, operational and structural requirements (e.g. meeting procedures for investors) imposed under the UT Code. That said, the funds must still satisfy the SFC as to the eligibility of the fund manager, trustee/custodian, and that the disclosure and post-authorization obligations under the UT Code have been fulfilled.</p> <p>A list of the overseas jurisdictions for RJS is set out at the SFC website (see Q.5 above).</p>
7.	<p>If my fund is a Specialized Scheme but domiciled in one of the RJS, presumably this fund will have to fully comply with the UT Code requirements. Is this correct?</p>	<p>Yes. If there are any legal or regulatory difficulties that would make it unduly burdensome for your fund structure to comply with the UT Code in full, you should consult us as soon as practicable before proceeding any further with your application.</p>
<b>Fund Manager’s Eligibility – Some Practical Issues</b>		
8.	<p>As a fund manager, how would I know if I am eligible to manage an SFC-authorized fund?</p>	<p>The key requirements of a fund manager for an SFC-authorized fund are:</p> <ul style="list-style-type: none"> <li>▪ Having sufficient financial, technical, and human resources</li> <li>▪ Experience</li> <li>▪ Integrity and honesty</li> <li>▪ Proper internal controls</li> <li>▪ Proper regulatory oversight of the fund’s activities by a securities regulator</li> </ul> <p>One of the key criteria for an overseas fund manager is that the fund manager must be licensed or registered with and properly supervised by a securities regulator in an Acceptable Inspection Regime (“AIR”). The list of AIR is available in the <a href="http://www.sfc.hk/webEN/regulatory-functions/products/product-authorization/list-of-recognised-jurisdiction-schemes-and-inspection-regimes.html">http://www.sfc.hk/webEN/regulatory-functions/products/product-authorization/list-of-recognised-jurisdiction-schemes-and-inspection-regimes.html</a> page at the SFC website.</p>

	Question	Answer
		<p>For Hedge Funds which fall under Chapter 8.7 of the UT Code, there are specific requirements on the eligibility of a hedge fund manager. You should therefore ensure that you comply fully with the general requirements as well as other specific obligations under the UT Code.</p> <p>Funds that are self-managed should look closely at the requirements set out in Chapter 5.7 to 5.9 and the rules regarding the eligibility of individual directors to become fund managers under the UT Code. Please consult us if you are in doubt about the relevant UT Code requirements for self-managed schemes.</p>
8A.	<p>What are the factors that the SFC may take into account when assessing the acceptability of the management company of futures and options funds?</p>	<p>The management company of futures and options funds must meet the specialist expertise requirement under 8.4A(i) of the UT Code (Specialist Requirement), which provides that the management company (and, if applicable, the investment adviser) must satisfy the Commission that it has specific experience in the field of futures and options. 8.4A(i) of the UT Code further sets out in more detail the kind of information to be submitted to the SFC for consideration in complying with this provision.</p> <p>In determining whether or not a management company meets the Specialist Requirement, the SFC may also consider the qualifications and experience of the persons employed by the management company or the investment adviser where the latter has been delegated the investment management function (Delegate). It is expected that the management company or the Delegate has to employ staff that has substantive and satisfactory experience (for example, over two to three years' recent experience) in managing either:</p> <ul style="list-style-type: none"> <li>• futures and options funds that are offered to the public; or</li> <li>• public funds that use futures and options extensively for investments purposes.</li> </ul> <p>Where a Delegate is appointed, it is also expected that:</p> <ul style="list-style-type: none"> <li>• the delegation arrangement should have a minimum duration of two years; and</li> </ul>

	Question	Answer
		<ul style="list-style-type: none"> <li>the management company has to put in a place a detailed plan in acquiring specialist expertise in managing futures and options funds for the two-year period during which the investment management functions are delegated to the SFC's satisfaction.</li> </ul> <p>For the avoidance of doubt, where the management company engages an investment adviser purely for advisory purposes without delegating the investment management functions, the management company would be required to meet the Specialist Requirement.</p>
9.	How does the concept of "Acceptable Inspection Regime" ("AIR") work?	<p>AIR is a concept that helps the SFC maintain regulatory oversight over overseas fund managers. In general, there should be a Memorandum of Understanding entered into by the SFC with the securities regulator in each of the AIR jurisdictions to co-operate and provide mutual assistance and exchange of information regarding the activities of fund managers licensed/registered in the relevant overseas jurisdiction. In determining whether an overseas jurisdiction could be an AIR, the SFC expects the relevant overseas regulatory authority to share common and comparable supervisory principles over activities of investment managers with the SFC and to carry out inspections of the investment managers within its jurisdiction in a manner generally consistent with the inspections conducted by the SFC.</p> <p>Fund managers of an SFC-authorized fund are required to be regulated by the relevant securities regulator in an AIR. In general, this requirement applies to the investment management operations of the fund management company and/or those of its delegates who carry out investment management functions. Upon receipt of an application by an overseas fund manager for SFC authorization to manage an SFC-authorized fund, we normally conduct a regulatory check on the fund manager with the relevant overseas securities regulator(s).</p> <p>The SFC regularly reviews the list of AIR jurisdictions. If and when we consider it appropriate, the list may be expanded to include new jurisdictions.</p>

	Question	Answer
10.	As a fund manager, can I delegate my investment management functions to a third party?	<p>Yes, the UT Code allows a fund manager to delegate its investment management functions. However, the fund manager is not allowed to delegate its responsibilities. Please see Chapter 5.5(e) of the UT Code.</p> <p>Both the principal and the delegate are expected to meet the eligibility criteria for a fund manager as described in Q.8 and Q.9 above.</p>
11.	Could I, a fund manager, be able to delegate my management functions to someone licensed/registered in a non-AIR?	<p>In general, an SFC-authorized fund should adhere to the requirement under Chapter 5.1 of the UT Code that its fund manager and its delegate(s) for the investment management functions are regulated by the relevant regulator in an AIR, save as permitted below.</p> <p>In view of the market development and business needs, the SFC has issued guidelines to facilitate managers of SFC-authorized funds which are licensed by the SFC or subject to regulatory supervision in an AIR and who wish to delegate their investment management functions to their affiliates in a non-AIR jurisdiction (“Non-AIR Delegation”). The Circular that contains guidelines for accepting Non-AIR Delegation is available at the SFC website under <a href="http://www.sfc.hk/edistributionWeb/gateway/EN/circular/openFile?refNo=H475">http://www.sfc.hk/edistributionWeb/gateway/EN/circular/openFile?refNo=H475</a>.</p> <p>We have already authorized various funds with Non-AIR Delegation in jurisdictions such as Belgium, Japan, Netherlands and Singapore. We welcome fund houses to approach us to discuss any plan of Non-AIR Delegation.</p> <p>To facilitate the industry in preparing their applications, the SFC has posted a checklist regarding the information/documents to be submitted to the SFC at the SFC website under <a href="http://www.sfc.hk/edistributionWeb/gateway/EN/circular/openFile?refNo=H588">http://www.sfc.hk/edistributionWeb/gateway/EN/circular/openFile?refNo=H588</a>.</p>
<b>General obligations of trustee/custodian</b>		
11A.	What are the standards expected of a trustee/custodian for the purpose of Chapter 4.5(a)(iii) of the UT Code?	Chapter 4.5(a)(iii) of the UT Code provides for a trustee’s/custodian’s obligation in respect of its nominees and agents in relation to assets forming part of the property of the scheme.

	Question	Answer
		<p>The SFC wishes to clarify that for the purpose of satisfying the obligations in Chapter 4.5(a)(iii) of the UT Code, the trustee/custodian shall (i) exercise reasonable care and diligence in the selection, appointment and ongoing monitoring of its nominees, agents and delegates; and (ii) be satisfied that the nominees, agents and delegates retained remain suitably qualified and competent to provide the relevant service.</p> <p>Insofar as UCITS schemes are concerned, they are deemed to have complied with Chapter 4.5(a)(iii) of the UT Code provided that their constitutive documents comply with all applicable home jurisdiction's laws and regulations and home regulator's requirements and the manager confirms to the SFC in writing that this is the case.</p>
11B.	<p>What should custodians of SFC-authorized funds structured in corporate form note in complying with 4.5(b) of the UT Code?</p>	<p>SFC-authorized funds constituted in the form of a mutual fund corporation may be subject to an authorized share capital. Allotment of shares in excess of the corporation's authorized share capital is generally invalid.</p> <p>Trustees/custodians of all SFC-authorized funds are expected to perform an important independent function and have specific duties on the matters set out in 4.5 of the UT Code. As such, in complying with 4.5(b) of the UT Code, custodians of SFC-authorized mutual fund corporations are particularly reminded that they should have in place adequate internal controls and systems to ensure, among other things, that no shares will be issued in excess of the number of authorized shares and that all issuance of shares will comply the applicable legal and regulatory requirements. For the avoidance of doubt, as a custodian of an SFC-authorized fund, the custodian of any such SFC-authorized mutual fund corporation is expected to duly discharge this obligation under the UT Code notwithstanding the board of directors of the mutual fund corporation may be legally responsible for issuance of shares under the constitutive documents or the laws of the place of incorporation of the mutual fund corporation.</p>
<b>Waiver from the UT Code Requirements</b>		
12.	<p>If I wish to obtain a waiver from the UT Code requirements, what should I do?</p>	<p>If you wish to apply for a waiver from any of the UT Code requirements, you should prepare a submission that addresses, at the minimum, the following key aspects:</p>



	Question	Answer
		<ul style="list-style-type: none"> <li>▪ clear and distinctive reasons in support of the waiver</li> <li>▪ the impact on the fund, its investors or any other parties if the waiver is granted</li> </ul> <p>You should note that the issue of costs alone is not sufficient justification for any waiver from compliance with the UT Code.</p> <p>Please note that authorization conditions may be imposed in certain circumstances.</p>
<b>Authorization of Index Funds</b>		
13.	Will the SFC consider an index on commodities futures as an acceptable index for the purpose of Chapter 8.6(a) of the UT Code?	The SFC is prepared to accept a commodities futures index provided that it satisfies the index acceptability requirements in Chapter 8.6(e) of the UT Code. In view of the specific nature and risk profile of indices on commodities futures, an index fund that tracks a commodities futures index is required to make additional risk warnings and disclosures (e.g. in relation to the risks inherent in commodities and futures contracts) in its offering documents. Where an index fund seeks to track, replicate, or correspond to a commodities futures index by direct investment in constituent futures contracts, the relevant investment restrictions in Chapter 8.4A of the UT Code in relation to futures and options funds will then be applicable.
<b>Authorization of ETFs/Listed Funds</b>		
14.	This FAQ has been moved to FAQ 1 on Exchange Traded Funds and Listed Funds	
15.	This FAQ has been moved to FAQ 2 on Exchange Traded Funds and Listed Funds	
15A.	This FAQ has been moved to FAQ 3 on Exchange Traded Funds and Listed Funds	
15B.	This FAQ has been moved to FAQ 4 on Exchange Traded Funds and Listed Funds	

	Question	Answer
15C.	This FAQ has been moved to FAQ 5 on Exchange Traded Funds and Listed Funds	
16.	This FAQ has been moved to FAQ 6 on Exchange Traded Funds and Listed Funds	
<b>Authorization of structured funds</b>		
16A.	Where a structured fund adopts an unfunded swap arrangement to achieve its investment objective, does Chapter 8.8(e) of the UT Code apply to the invested assets under the unfunded swap structure?	<p>The UT Code is principles-based. In applying the UT Code, the SFC will have regard to both the spirit as well as the letter of the relevant provisions in order to achieve their intended purposes.</p> <p>A structured fund may seek to achieve its investment objective primarily through the use of a funded swap or an unfunded swap. Despite the technical difference between a funded swap and an unfunded swap, the invested assets under an unfunded swap structure essentially serve the same purpose as that of the collateral under a funded swap structure, i.e. to limit a fund's risk exposure to an individual counterparty.</p> <p>As a matter of policy, the invested assets under an unfunded swap structure are expected to comply with the collateral requirements in Chapter 8.8(e) of the UT Code with necessary changes as if they were applicable to invested assets.</p> <p>For this purpose, we generally envisage the collateral or invested assets to be bonds, listed stocks, cash or cash equivalent subject to compliance with the requirements in Chapter 8.8(e) of the UT Code.</p> <p>We generally do not expect an SFC-authorized structured fund to accept unlisted collective investment schemes as collateral or invested assets. However, we are prepared to accept, on a case by case basis, an SFC-authorized structured fund to invest in unlisted collective investment scheme(s) as invested assets under an unfunded swap structure provided that (i) the performance of the structured fund directly relates to that of the unlisted collective investment scheme(s); and (ii) the unlisted collective investment scheme(s) is/are SFC-authorized scheme(s).</p>

	Question	Answer
		<p>In line with the requirement in the note to Chapter 8.8(e) of the UT Code, we also do not expect an SFC-authorized structured fund to accept synthetic ETFs as collateral or invested assets.</p> <p>For the avoidance of doubt, the above also applies to collateral held by SFC-authorized funds that fall within Chapter 8.9 of the UT Code.</p>
<b>Authorization of structured funds/funds that invest in financial derivative instruments</b>		
16B.	<p>Structured funds and funds that invest in financial derivative instruments are subject to, among other things, the requirements in Chapter 8.9(f)(ii) of the UT Code that the counterparties to over-the-counter derivative transactions or their guarantors shall be “substantial financial institutions”. What kind of institution would be considered as a “substantial financial institution” for the purpose of Chapter 8.9(f)(ii) of the UT Code?</p>	<p>An entity will be considered as a “substantial financial institution” for the purpose of Chapter 8.9(f)(ii) of the UT Code if it falls within the definition in Chapter 3.13 of the UT Code. The term “substantial financial institution” is defined in Chapter 3.13 of the UT Code to mean an authorized institution as defined in section 2(1) of the Banking Ordinance or financial institution with a minimum paid-up capital of HK\$150,000,000 or its equivalent in foreign currency. For the purpose of Chapter 8.9(f)(ii) of the UT Code, “financial institution” is generally expected to be an overseas banking entity which is, on an ongoing basis, subject to prudential and regulatory supervision acceptable to the SFC.</p> <p>Where an entity does not fall within such definition but still wishes to act as a counterparty to over-the-counter derivative transactions or its guarantor, the SFC may consider such entity to be a “substantial financial institution” for purpose of satisfying the requirements in Chapter 8.9(f)(ii) of the UT Code on a case-by-case basis taking into account factors such as the regulatory status of the entity or the group to which it belongs and the net asset value of the entity.</p>
<b>Investment in real estate investment trusts (“REITs”) by SFC-authorized funds</b>		
17.	<p>Are SFC-authorized funds allowed to invest in the initial public offering of a REIT seeking to list on a stock exchange?</p>	<p>SFC-authorized funds are currently allowed to subscribe for securities offered in initial public offerings seeking to list on a stock exchange. These subscriptions are normally conditional on the securities being successfully listed on a stock exchange. This flexibility applies equally to REITs seeking a stock exchange listing.</p>
18.	<p>Does Chapter 7.11 of the UT Code still apply to REITs? Should REITs be considered as</p>	<p>Under the revised Chapter 7.14 of the UT Code, where investments are made in listed REITs, Chapters 7.1 and 7.2 of the UT Code apply. However, where</p>

	Question	Answer
	“collective investment schemes” or “securities” for the purpose of complying with Chapter 7 requirements?	investments are made in unlisted REITs, which are either companies or collective investment schemes, then Chapters 7.3 and 7.11 apply respectively.
19.	Are SFC-authorized schemes required to obtain approval from their shareholders/unitholders and serve them advance notices if they now commence investments in listed REITs as a result of the SFC’s decision to allow such investments?	The offering document or prospectus of SFC-authorized schemes should clearly state their investment objectives, policies and investment restrictions. Therefore, where fund managers make use of the flexibility to invest in listed REITs as a result of the revision in the UT Code, they should determine and, where appropriate, seek legal advice, as to whether they have to seek approval from investors or provide them with prior notice, in accordance with the terms of the constitutive documents and offering documents of their funds.
<b>Investment in ETFs by SFC-authorized funds</b>		
20.	Does the SFC consider ETFs as listed securities or Collective Investment Schemes (CIS) for the purpose of Chapter 7 of the UT Code?	<p>Whilst ETFs are technically CIS, the SFC would in principle consider and treat the following ETFs as listed securities for the purposes of 7.1 and 7.2 of the UT Code:</p> <ol style="list-style-type: none"> <li>1. all SFC-authorized ETFs; and</li> <li>2. ETFs that are listed and regularly traded on internationally recognized stock exchanges open to the public (nominal listing not accepted) and the principal objective of which is to track, replicate or correspond to a financial index or benchmark, which complies with the applicable requirements under 8.6 of the UT Code</li> </ol> <p>(collectively the “ETF Schemes”).</p> <p>Unless otherwise specifically approved by the SFC, ETF Schemes will not fall within 7.11, 7.11A and 7.11B of the UT Code.</p>
<b>Disclosure of information to investors regarding stock lending, repo and similar over-the-counter transactions</b>		
21.	What information is required to be disclosed to the investor regarding stock lending, repo and similar over-the-counter transactions of a fund?	Funds should only engage in stock lending, repo or similar over-the-counter transactions provided that it is in the best interests of holders and the associated risks have been properly mitigated and addressed. In addition, managers are expected to put in place and adhere to prudent collateral and risk management

	Question	Answer
		<p>policy in order to mitigate the risks inherent to these transactions. These activities should also be effected in accordance with best market and industry standards and practices.</p> <p>If a fund may enter into any of these transactions, details of such arrangements should be disclosed in the fund's offering documents. At a minimum, the following information should be provided to the investors:</p> <ol style="list-style-type: none"> <li>a. a statement spelling out whether all incremental incomes generated from such transactions will be accrued to the fund (if the incomes are to be shared between the fund and any operating party, details of the sharing basis should be disclosed);</li> <li>b. criteria for selecting the counterparties for such transactions in terms of financial standing, etc.;</li> <li>c. form and nature of the collateral received by the fund in respect of such transactions (e.g. cash or liquid securities with value greater than or equal to the value of the securities lent);</li> <li>d. maximum level of the fund's assets available for such transactions (e.g. as a percentage of the fund's NAV); and</li> <li>e. where the securities lending agent is an affiliate of the management company's group of companies, details of such connected party transactions (please note that the securities lending fee should also be disclosed in the connected party transaction section of the fund's annual reports).</li> </ol>
21A	This FAQ has been moved to FAQ 7 on Exchange Traded Funds and Listed Funds	
<b>Waivers from compliance with certain provisions of the UT Code granted since 1 April 2005</b>		
22.	This FAQ has been moved to FAQ 8 on Exchange Traded Funds and Listed Funds	

	Question	Answer
23.	<p>Pursuant to Chapter 8.6(a) of the UT Code, the principal objective of an index fund is to track, replicate or correspond to an index on equities, debts or other securities, with an aim of providing or achieving investment results or returns that closely match or correspond to the performance of the index. Is a SFC-authorized index fund allowed to track or replicate a commodity futures index?</p>	<p>Chapter 8.6(a) of the UT Code provides a general description of indices commonly used by index funds for the purpose of tracking performance. Other indices may emerge as the market develops and the SFC is prepared to consider such indices on a case-by-case basis. The SFC has therefore granted a waiver from compliance with Chapter 8.6(a) of the UT Code and allow an index fund to track a commodity futures index, taking into account the following relevant factors:</p> <ul style="list-style-type: none"> <li>a. acceptability of the commodity futures index in accordance with the criteria set out in Chapter 8.6(e) of the UT Code;</li> <li>b. the investment strategy of the fund and compliance with the UT Code requirements applicable to the types of investments that the fund would invest in; and</li> <li>c. additional disclosures (e.g. risks relating to the commodity futures index, information relating to the investment strategy adopted by the fund to track the index performance and the risks associated with the investments of the fund).</li> </ul>
24.	<p>Chapter 10.8 of the UT Code provides that where redemption requests on any one dealing day exceed 10% of the total number of units/shares in issue, redemption requests in excess of 10% may be deferred to the next dealing day. Can a SFC-authorized fund impose a lower threshold for deferral of redemptions?</p>	<p>The SFC will consider other thresholds for deferral of redemptions on a case-by-case basis, having regard to the overall measures that a fund will put in place to safeguard investors' interests.</p> <p>The SFC has granted a waiver from strict compliance with Chapter 10.8 of the UT Code to a fund, whereby the fund might defer redemptions if the total number of redeeming shares in any period of four consecutive dealing days exceeded 10% of the total number of shares in issue. In granting that waiver, the SFC has considered that:</p> <ul style="list-style-type: none"> <li>a. the fund was a daily-dealing fund and its offering document has provided that redemptions might not in any event be deferred for more than five consecutive dealing days upon receipt of a redemption request, i.e. the fund would continue to satisfy the requirements under Chapters 6.13 and 6.14 of the UT Code regarding dealing frequency and payment of redemption proceeds respectively;</li> </ul>

	Question	Answer
		<p>b. the power to defer redemptions would only be exercised under exceptional market conditions taking into account interests of the fund and its investors;</p> <p>c. should the fund proceed with a deferral of redemptions, affected investors would be given the right to cancel their redemption requests deferred. Also, priority of execution would be given to them over redemption applications received subsequently in order to ensure fair allocation to investors; and</p> <p>d. the deferral mechanism was clearly disclosed in the fund's offering document.</p>
<b>Appendix C</b>		
25.	What are the transitional arrangements for the production of the Product KFS?	<p>i. The transitional arrangements for the production of KFS are:</p> <ol style="list-style-type: none"> <li>a. New Schemes are required to produce a KFS.</li> <li>b. Subject to (ii) below, Existing Schemes that continue to be marketed to the public in Hong Kong must produce KFS commencing 25 June 2011.</li> <li>c. Existing Schemes that are no longer marketed to the public in Hong Kong are not required to produce KFS.</li> </ol> <p>ii. In light of the nature of the following products, we would generally require the following types of Specialised Schemes to produce KFS before the funds are authorised by the Commission. This is so irrespective the fact that the application for authorization was submitted to the Commission before 25 June 2010:</p> <ul style="list-style-type: none"> <li>• index funds (including exchange-traded funds)</li> <li>• structured funds;</li> <li>• hedge funds;</li> <li>• Renminbi denominated funds; and</li> <li>• futures and options fund (together, the "Specialised Funds").</li> </ul> <p>For the purposes of this FAQ, 'New Schemes' means collective investment schemes for which applications for authorization are submitted to the Commission on or after 25 June 2010. 'Existing Schemes' means: (a) collective investment schemes which have been authorized by the Commission prior to 25 June 2010 and remain authorized on that date; and (b) collective investment schemes for which</p>

	Question	Answer
		<p>applications for authorization were submitted to the Commission before 25 June 2010, but which are authorized on or after 25 June 2010.</p>
26.	<p>What are the transitional arrangements in respect of the implementation of the responsibility statement set out in paragraph 22 of Appendix C of the UT Code?</p>	<p>The new responsibility statement is now set out in paragraph 22 of Appendix C to the UT Code (“New Responsibility Statement”).</p> <p>The Commission will adopt the following implementation measures without compromising investors’ interest:</p> <p>a. For Existing Schemes (which include those funds authorized on or after 25 June 2010 but whose applications were submitted prior to 25 June 2010), they may continue to adopt the requirements set out in the previous version of the UT Code, i.e.:</p> <p>“A statement that the directors of the scheme or the management company accept responsibility for the information contained in the offering document as being accurate at the date of publication.”</p> <p>For the avoidance of doubt, Existing Schemes shall include not only single fund structure but also umbrella structure where the umbrella fund was authorized by the Commission prior to 25 June 2010 such that any new subfunds submitted for authorization after that day will also be subject to the previous UT Code requirement.</p> <p>b. New Schemes will be required to comply with the New Responsibility Statement requirement.</p> <p>c. For those schemes which are domiciled in one of the ‘Recognised Jurisdictions’ and the home regulator of such scheme has approved a responsibility statement set out in the offering document of such scheme, the scheme is deemed to have complied with paragraph 22 of Appendix C to the UT Code.</p> <p>For the purposes of this FAQ, ‘Recognised Jurisdictions’ means those jurisdictions set out in the <a href="http://www.sfc.hk/web/EN/regulatory-functions/products/product-">http://www.sfc.hk/web/EN/regulatory-functions/products/product-</a></p>



	Question	Answer
		<p><a href="#">authorization/list-of-recognised-jurisdiction-schemes-and-inspection-regimes.html</a> available on the Commission's website.</p>
27.	<p>If a fund has a master offering document prepared overseas, may I submit a Hong Kong Offering Document instead of the full version of the master offering document?</p>	<p>The basic disclosure requirements for a fund's offering document are set out in Appendix C of the UT Code. The Hong Kong Offering Document must satisfy the UT Code requirements. If the Hong Kong Offering Document relies on references or information in the master offering document to form a complete disclosure document, the SFC may require that the master offering document also be authorized.</p> <p>An overseas fund should not circulate its master offering document to the Hong Kong public if the document has not been authorized by the SFC.</p>
27A.	<p>C2 of Appendix C of the UT Code has been amended to require the offering document to disclose where appropriate, the risk management policy ("RMP") in place.</p> <p>Would the SFC please clarify whether the disclosure of the RMP employed by the schemes in the offering document is a new requirement?</p>	<p>Pursuant to 5.5(d) of the UT Code, a management company should have in place, amongst others, adequate internal controls and written procedures for managing risks for funds under management.</p> <p>The obligation to make specific disclosures of RMP by the schemes in the offering document was mentioned in our circular for Interim Measures on the Disclosure and Submission Requirements for the authorization of UCITS III Funds domiciled in Luxembourg, Ireland and the United Kingdom by the SFC dated 31 March 2005 (the "Circular"). The Circular provides that UCITS III schemes with expanded investment powers are required to disclose a summary of the RMP employed by the schemes in the offering document. Moreover, the disclosure of the RMP policy is also required for hedge funds under 8.7(s) of the UT Code.</p> <p>With a view to codifying the above standard and achieving a level playing field with those non-UCITS funds that apply financial derivative instruments ("FDIs") for investment purposes, C2 of Appendix C of the UT Code (as revised on 25 June 2010) laid down the requirement, among others, that schemes which may extensively use FDIs for investment purposes are required to disclose the RMP in place in their offering documents. These schemes would include UCITS schemes with expanded investment powers as well as schemes falling within 8.3, 8.4A, 8.7, 8.8 and 8.9 of the UT Code.</p>

	Question	Answer
27B	<p>Does a fund manager need to approach the SFC before it offers a new share class which is denominated in a restricted currency (such as Renminbi) or with some special features in respect of an SFC-authorized fund?</p>	<p>Pursuant to C5 of Appendix C of the UT Code, the offering document of an SFC-authorized fund should contain a description of the different types of units/shares, including their currency of denomination. As such, the types of share classes that are offered to the public in Hong Kong for subscription should be clearly disclosed in the offering document.</p> <p>If a fund manager would like to offer a new share class in relation to an SFC-authorized fund (a) which is denominated in a restricted currency (such as Renminbi (“RMB”)) or (b) with some special features that may be prejudicial to the interests of investors, it should consult the SFC in advance before adding the disclosure of such share class in the offering document and offering it to the public in Hong Kong, as this may affect the basis of the SFC’s authorization of the fund.</p> <p>With regard to (a) above, where a manager of an SFC-authorized UCITS fund would like to offer RMB share class(es) to the public in Hong Kong, we would expect substantive management of the RMB related operations (e.g. RMB foreign exchange transactions and related currency hedging) to be carried out by an SFC-licensed manager in Hong Kong in order to provide the SFC with an appropriate regulatory handle. In this connection, managers are expected to make such offering either through:</p> <ul style="list-style-type: none"> <li>(i) an SFC-authorized Hong Kong domiciled feeder fund (managed by an SFC-licensed manager) investing into the SFC-authorized UCITS fund as its underlying scheme; or</li> <li>(ii) an SFC-authorized UCITS fund provided that it has appointed an SFC-licensed manager as its investment manager with discretionary investment management power to manage the RMB foreign exchange transactions and the related currency hedging (where applicable).</li> </ul> <p>An example which falls within (b) above is where a new share class of a fund to be offered pursues a specific investment strategy which is not generally applicable to the fund as a whole, this may be prejudicial to investors in other existing share</p>

	Question	Answer
		<p>classes of the fund. This is because the investment strategy of the new share class will offer new investment features which are not available to investors of existing share classes and this may affect the investment returns and risk profile of the fund as a whole. Fund managers are reminded that the SFC has, and reserves, the right to amend or impose new conditions on, or withdraw its authorization of SFC-authorized funds as it considers appropriate pursuant to sections 104 and 106 of the SFO.</p> <p>In any event, if a fund manager would like to offer a new share class in relation to an SFC-authorized fund which is not denominated in a restricted currency or does not contain any special features that may be prejudicial to the interests of investors, the fund manager must update the offering document and file it with the SFC within one week from the date of issuance pursuant to Chapter 11.1B of the UT Code.</p>
<b>Miscellaneous</b>		
28.	<p>Since the Product KFS has already included the main features of a fund, including its key risks, do I need to include an Enhanced Disclosure Box in the fund's offering document to highlight the key risks of the fund? Do I have to include the Enhanced Disclosure Box in advertisements?</p>	<p>Since the Product KFS forms part of the offering document of a fund and provides for clear and prominent disclosure of the key risks of investing in a fund, the Enhanced Disclosure Box in the offering document of a fund is no longer required provided the relevant Product KFS of the fund is available for distribution.</p> <p>Meanwhile, an Enhanced Disclosure Box should still be included in the advertisements and marketing materials of a fund to highlight the salient features of the fund.</p> <p>However, in light of the enhanced conduct requirements set out in the Consultation Conclusions on Proposals to Enhance Protection for the Investing Public ("Consultation Conclusions") and the related amendments to the Code of Conduct for Persons Licensed by or Registered with the SFC which took effect on 4 June 2010, the Enhanced Disclosure Box is no longer required to include the "suitability statement".</p>
29.	<p>Can I use gifts in promoting my fund?</p>	<p>Part II, Section 3 of the Consultation Conclusions states that gifts other than a discount of fees and charges should not be offered in promoting a specific</p>

	Question	Answer
		<p>investment product. This will become effective on 4 September 2010. The SFC has maintained such view in the Consultation Conclusions in order to help protect investors from being distracted by the gifts without paying sufficient attention to the features and risks of the specific investment product. In line with the above principles and policy, as from 4 September 2010, all marketing materials of investment products authorized by the SFC should not contain an offer of gift, other than a discount of fees and charges, in promoting a specific investment product.</p>
30.	<p>Existing Schemes that continue to be marketed to the public in Hong Kong on or after 25 June 2011 are required to produce a KFS and a revised offering document to comply with the other disclosure requirements set out in the Overarching Principles Section and the revised UT Code in the Handbook (“Other Disclosure Requirements”). What are the Other Disclosure Requirements?</p>	<p>The Other Disclosure Requirements are:</p> <p><i>The “Overarching Principles Section” of the Handbook</i></p> <ul style="list-style-type: none"> <li>• New information regarding “Enquiries and complaints handling” as set out in paragraph 7.4;</li> <li>• The prominent note about a product described as having been authorized by the Commission as updated and set out in the Note to paragraph 1.10; and</li> <li>• Where conflicts of interest cannot be avoided, the measures and safeguards to manage and minimize the conflicts shall be properly disclosed to investors as set out in paragraph 4.2.</li> </ul> <p><i>Chapter 8 of the UT Code</i></p> <ul style="list-style-type: none"> <li>• The additional information regarding structured funds as set out in 8.8 (h); and</li> <li>• The additional information regarding funds (including both UCITS and non-UCITS schemes) that invest in financial derivative instruments as set out in 8.9(j).</li> </ul> <p><i>Appendix C of the UT Code</i></p> <ul style="list-style-type: none"> <li>• The description of the risk management policy in place, where appropriate, as set out in paragraph C2;</li> <li>• The description of collateral policy and criteria as set out in paragraph C2A. Please refer to Q.7 of Frequently Asked Questions on SFC Authorization of UCITS Funds for the applicability of this requirement to UCITS funds that may engage in activities such as securities lending that involve the collection of</li> </ul>

	Question	Answer
		<p>collateral;</p> <ul style="list-style-type: none"> <li>• The statement whether the annual and interim reports would be published in English and/or Chinese as set out in paragraph C18A and the Note to paragraph 11.6; and</li> <li>• If available, website address of the scheme as set out in paragraph C22A.</li> </ul>
31.	<p>Is the SFC’s prior approval required for adopting (in the offering documents of an Existing Scheme) the revised provisions in the revised UT Code as set out in the “Miscellaneous” section of the table right after the Implementation Schedule in the revised UT Code?</p>	<p>All proposed changes to a scheme which fall under 11.1 of the UT Code must be submitted to the SFC for prior approval. As such, where changes are made to adopt the revised provisions in the revised UT Code relating to performance fees (6.17 of the revised UT Code), maximum interval for payment of redemption amounts (6.14 of the revised UT Code) and/or sub-managers of multimanager schemes (Note to 5.5(b) of the revised UT Code), these changes will require SFC’s prior approval pursuant to 11.1 of the UT Code.</p> <p>For the avoidance of doubt, in the absence of amendments to the constitutive documents of a scheme, where changes are made to adopt the revised provisions in the revised UT Code relating to connected party transactions (10.13 of the revised UT Code), criteria for the appointment of a Hong Kong representative (9.4 of the revised UT Code) and/or distribution of financial reports (11.6 of the revised UT Code), SFC’s prior approval will not be required, but investors should be provided with at least one month’s (or such longer period as required under the constitutive documents of the scheme or by the SFC) prior notice of any such changes.</p>
32.	<p>Can a fund manager specify in the KFS and/or another part of the offering document of an SFC-authorized fund that the fund is not a “derivative product” or is a product that does not require investors to have knowledge or understanding of derivatives for the purposes of 5.1A of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (“Code of Conduct”)?</p>	<p>The revised Code of Conduct requires that an intermediary should, as part of the know your client procedures, assess a client’s knowledge of derivatives and characterize the client based on his knowledge of derivatives. Further conduct requirements are introduced in the case where a client without knowledge of derivatives wishes to purchase a derivative product.</p> <p>It is therefore incumbent upon the intermediaries to ensure that they conduct their activities in compliance with the requirements in the Code of Conduct. Fund managers of SFC-authorized funds should not confuse their obligations with the</p>

	Question	Answer
		<p>obligations of the fund distributing intermediaries. While information disclosed in the offering documents and/or KFS may be considered by an intermediary in its analysis of the product features, risks and rewards, it is nonetheless the obligation of the intermediary to ensure that it is able to satisfy the requirement on assessment and the relevant conduct requirements under the Code of Conduct. Fund managers therefore cannot substitute the judgement/assessment of the intermediary simply by labelling an SFC-authorized fund as a “non-derivative product” or a product that does not require investors to have knowledge or understanding of derivatives for the purposes of 5.1A of the Code of Conduct.</p> <p>For the avoidance of doubt, the offering document (including KFS) of an SFC-authorized fund may include disclosure regarding the extent, function, purpose and strategy of the use of derivatives as statements of facts or intention in order to enable investors to make an informed investment decision.</p>
33.	When can the time frame for payment of redemption money exceed the one-calendar month requirement under Chapter 6.14 of the UT Code?	<p>Redemption is a fundamental right of holders of a scheme. It is therefore important that the requirement of the payment of redemption money to the holder within one calendar month from the receipt of the redemption request under Chapter 6.14 of the UT Code is strictly adhered to and redemption money is paid to holders on a timely basis.</p> <p>It is only in exceptional circumstances where the market(s) in which a substantial portion of investments is made is subject to legal or regulatory requirements (such as foreign currency controls) thus making the payment of the redemption money within one calendar month not practicable, the scheme could have a longer redemption payment period exceeding one calendar month. In such a case, proper records must be kept by the management company to demonstrate and justify this (e.g. the scheme is directly subject to or adversely affected by the restrictions which are beyond the reasonable control of the management company) and holders and the Commission must be properly and promptly informed. In any event, the redemption money must be paid to holders as soon as possible after the receipt of the proceeds by the scheme.</p>

	Question	Answer
<b>Disclosure of information to investors regarding the fund's distribution policy</b>		
34.	What information is required to be disclosed to the investors if a fund may pay dividend out of its capital?	<p>The offering documents of SFC-authorized funds should clearly state their distribution policy.</p> <p>For an SFC-authorized fund which may pay dividend out of capital, its offering documents should include a prominent risk warning that the fund may pay dividend out of capital and disclose the associated risks and impact on investors.</p> <p>Where an SFC-authorized fund pays dividends out of gross income <u>and</u> charges / pays all or part of the fund's fees and expenses to / out of capital, resulting in an increase in distributable income for the payment of dividends, its offering document should also include a prominent risk warning that the fund charges all or part of its fees and expenses to capital which means that the fund may effectively pay dividend out of capital and disclose the associated risks and impact on investors.</p> <p><b>For the avoidance of doubt, the disclosure and other requirements mentioned in FAQs 34, 34(A), 34(B) and 34(C) shall not be applicable to a fund or a share class of a fund which does not pay dividend or make any distribution at all according to its distribution policy (for example, any accumulation share class of a fund.)</b></p> <p>Subject to the transitional period for existing SFC-authorized funds set out in FAQ 34(C) in respect of the Dividend Composition Information (as defined in (d) below), at a minimum, prominent disclosure to the following effect should be made in the fund's offering documents (including KFS):</p> <p>a. (i) the fund / the investment manager may at its discretion pay dividend out of the capital of the fund; or</p> <p>(ii) the fund / the investment manager may at its discretion pay dividend out of gross income while charging/ paying all or part of the fund's fees and expenses to/ out of the capital of the fund, resulting in an increase in distributable income for the payment of dividends by the fund and therefore, the fund may effectively</p>

	Question	Answer
		<p>pay dividend out of capital.</p> <p>b. Payment of dividends out of capital amounts to a return or withdrawal of part of an investor's original investment or from any capital gains attributable to that original investment.</p> <p>c. Any distributions involving payment of dividends out of the fund's capital or payment of dividends effectively out of the fund's capital (as the case may be) may result in an immediate reduction of the net asset value per share/unit;</p> <p>d. the compositions of the dividends (i.e. the relative amounts paid out of (i) net distributable income and (ii) capital) for the last 12 months ("Dividend Composition Information") are available by the investment manager / Hong Kong representative on request and also on the fund's website (if any); and</p> <p>e. the fund / the investment manager may amend the policy with respect to the matters mentioned in (a)(i) and/or (a)(ii) above subject to the SFC's prior approval and by giving not less than one month's prior notice to investors.</p> <p>The information referred to in (a), (b) and (c) should also be disclosed in all marketing materials of the fund in a prominent and upfront manner (e.g. in the risk disclosure box of the relevant marketing materials).</p>
34(A)	Does the SFC require the Dividend Composition Information to be disclosed in a particular manner?	<p>Subject to the transitional period for existing SFC-authorized funds set out in FAQ 34(C) in respect of the Dividend Composition Information, Dividend Composition Information should be clearly presented with the minimum information below in respect of each of the relevant distributing share class of the fund and made available by the investment manager / Hong Kong representative on request and on the fund's website (if any).</p> <p>An illustrative example showing the <b>minimum information</b> (inclusive of the warning statement in italic below) expected to be disclosed is set out below.</p>



	Question	Answer																
		<p>.....</p> <p><b>[Fund name – share class [Y]]: Composition of the dividend payments:</b></p> <table border="1" data-bbox="972 427 2018 759"> <thead> <tr> <th>For the month of</th> <th>Dividend per share</th> <th>Dividend paid out of net distributable income for the month</th> <th>Dividend paid out of capital</th> </tr> </thead> <tbody> <tr> <td>Jan 201[X]</td> <td>HK\$10</td> <td>100%</td> <td>0%</td> </tr> <tr> <td>Feb 201[X]</td> <td>HK\$10</td> <td>90%</td> <td>10%</td> </tr> <tr> <td>Mar 201[X]</td> <td>HK\$10</td> <td>80%</td> <td>20%</td> </tr> </tbody> </table> <p><b><i>Warning: Please note that a positive distribution yield does not imply a positive return. Investors should not make any investment decision solely based on information contained in the table above. You should read the relevant offering document (including the key facts statement) of the fund for further details including the risk factors.</i></b></p> <p>.....</p> <p>For the avoidance of doubt, the fund / the investment manager should take note of the following in preparing and presenting the composition of the dividend payments:</p> <ol style="list-style-type: none"> <li>Compositions of dividends payments shall be disclosed in respect of the relevant share class for each distribution (i.e. dividends for monthly distribution share class should disclose the compositions of dividend for each month; dividends for quarterly distribution share class should disclose the composition of dividends for each quarter, etc.)</li> <li>The compositions of dividend payments may be presented by way of dollar amount and/or in percentage terms.</li> </ol>	For the month of	Dividend per share	Dividend paid out of net distributable income for the month	Dividend paid out of capital	Jan 201[X]	HK\$10	100%	0%	Feb 201[X]	HK\$10	90%	10%	Mar 201[X]	HK\$10	80%	20%
For the month of	Dividend per share	Dividend paid out of net distributable income for the month	Dividend paid out of capital															
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Feb 201[X]	HK\$10	90%	10%															
Mar 201[X]	HK\$10	80%	20%															

	Question	Answer
		<p>c. For the purpose of calculating the composition of dividend to be presented in the Dividend Composition Information, the accounts must be prepared using the same accounting principles / methodologies adopted in preparing the fund's annual financial statements on a consistent basis, save for the following:</p> <ul style="list-style-type: none"> <li>i. "Net distributable income" means the net investment income (i.e. dividend income and interest income net of fees and expenses) attributable to the relevant share class and may also include net realised gains (if any) based on unaudited management accounts. However, "net distributable income" <b>cannot include</b> net unrealised gains.</li> <li>ii. "Net distributable income" which is not declared and paid as dividends in a period of a financial year can be carried forward as net distributable income for the next period(s) within the same financial year. "Net distributable income" that has been accrued as at the end of a financial year and is declared and paid as dividends at the next distribution date immediately after that financial year end could be treated as "net distributable income" in respect of that financial year. However, "net distributable income" which has been accrued as at the end of a financial year but is not declared and paid as dividends at the next distribution date immediately after that financial year end should be included as "capital" for the next financial year.</li> <li>iii. Where the fund may pay dividend out of gross income while charging/ paying all or part of the fund's fees and expenses to / out of capital, the amount of fees and expenses that has been paid out of capital has to be deducted from the gross investment income in order to come up with the "net distributable income".</li> </ul> <p>d. The basis of calculating "net distributable income" shall be clearly disclosed with the composition table.</p> <p>e. The warning statement referred to in the illustrative example above should be made as part of the disclosure for the Dividend Composition Information.</p>

	Question	Answer
		<p>f. Should the fund / the investment manager wishes to disclose information in addition to the minimum information as required in the illustrative example above (e.g. NAV, dividend yields, total return, other additional ways of presentation of dividend composition by way of annualized, cumulative or 12-month rolling basis based on unaudited management accounts, etc), please ensure that the additional information provided is fair, accurate and not misleading.</p> <p>g. Dividend Composition Information should be disclosed and/or presented in a manner which is fair, accurate and not misleading. Income equalisation adjustments are sometimes made by fund managers to, among other things, smooth out the impact of large subscriptions/redemptions and/or cater for individual investor's tax reporting purposes in overseas jurisdiction(s). We understand that not all SFC-authorized funds adopt income equalisation adjustments. Hence, in order to provide for a common basis of comparison by investors, income equalisation adjustments should not be adopted for the purposes of disclosure of Dividend Composition Information as required by this FAQ. Thus, "net distributable income" at the fund level for the purpose of the Dividend Composition Information should be calculated in accordance with the requirements stated in (c) above <u>without</u> making any income equalisation adjustments. In case of doubt, early consultation with the Commission is encouraged.</p> <p>For the avoidance of doubt, fund managers may continue to adopt income equalisation adjustments in the financial reports of their authorized funds provided that the disclosure is true, accurate and not misleading.</p>
34(B)	As stated in FAQ 34 above, the compositions of the dividends for the last 12 months ("12-month Period" ) shall be made available by the investment manager / Hong Kong representative on request and also on the fund's website (if any). Does it mean the fund have to prepare the compositions of dividends made by the fund in	<p>The 12-month Period is intended to be a rolling 12-month period starting from the date on which payment of dividends is being made by an SFC-authorized fund out of or effectively out of capital after the Effective Date.</p> <p>As an illustration, if a fund pays dividends pursuant to (a)(i) and/or (a)(ii) in FAQ 34 above, in respect of one of its distributing share class on a quarterly basis (i.e. March, June, September and December in each calendar year), it is expected to</p>

	Question	Answer												
	<p>the past 12 months preceding the publication date of this FAQ i.e. 8 November 2012 (the “Effective Date”)</p> <p>Also, do I need to make available to investors all of the historical information on compositions of dividends that has been previously disclosed?</p>	<p>make available / disclose, at minimum, the Dividend Composition Information in respect of the following distributions during the following periods once distribution is made:</p> <table border="1" data-bbox="958 416 2047 948"> <thead> <tr> <th data-bbox="958 416 1503 533">Illustrated Period</th> <th data-bbox="1503 416 2047 533">Information on composition of dividends in respect of the following distributions is to be made available / disclosed</th> </tr> </thead> <tbody> <tr> <td data-bbox="958 533 1503 616">After the Effective Date and until and after the Dec 2012 distribution</td> <td data-bbox="1503 533 2047 616">Dec 2012</td> </tr> <tr> <td data-bbox="958 616 1503 699">After the Mar 2013 distribution and prior to the Jun 2013 distribution</td> <td data-bbox="1503 616 2047 699">Dec 2012, Mar 2013</td> </tr> <tr> <td data-bbox="958 699 1503 782">After the Jun 2013 distribution and prior to the Sept 2013 distribution,</td> <td data-bbox="1503 699 2047 782">Dec 2012, Mar 2013, Jun 2013</td> </tr> <tr> <td data-bbox="958 782 1503 865">After the Sept 2013 distribution and prior to Dec 2013 distribution</td> <td data-bbox="1503 782 2047 865">Dec 2012, Mar 2013, Jun 2013, Sept 2013</td> </tr> <tr> <td data-bbox="958 865 1503 948">After the Dec 2013 distribution and prior to Mar 2014 distribution</td> <td data-bbox="1503 865 2047 948">Mar 2013, Jun 2013, Sept 2013, Dec 2013</td> </tr> </tbody> </table> <p>The disclosure mentioned above only represents the minimum requirement. As such, the fund manager may continue to make available to investors any historical information regarding the compositions of dividends that had been previously disclosed from time to time in such manner as the fund manager considers necessary and/or appropriate to enhance the transparency of the fund’s distribution policy.</p>	Illustrated Period	Information on composition of dividends in respect of the following distributions is to be made available / disclosed	After the Effective Date and until and after the Dec 2012 distribution	Dec 2012	After the Mar 2013 distribution and prior to the Jun 2013 distribution	Dec 2012, Mar 2013	After the Jun 2013 distribution and prior to the Sept 2013 distribution,	Dec 2012, Mar 2013, Jun 2013	After the Sept 2013 distribution and prior to Dec 2013 distribution	Dec 2012, Mar 2013, Jun 2013, Sept 2013	After the Dec 2013 distribution and prior to Mar 2014 distribution	Mar 2013, Jun 2013, Sept 2013, Dec 2013
Illustrated Period	Information on composition of dividends in respect of the following distributions is to be made available / disclosed													
After the Effective Date and until and after the Dec 2012 distribution	Dec 2012													
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After the Sept 2013 distribution and prior to Dec 2013 distribution	Dec 2012, Mar 2013, Jun 2013, Sept 2013													
After the Dec 2013 distribution and prior to Mar 2014 distribution	Mar 2013, Jun 2013, Sept 2013, Dec 2013													
34(C)	<p>For an existing SFC-authorized fund as at the Effective Date which has disclosed in its offering document that it may pay dividend out of capital of the fund or it may pay dividend out of gross income while charging/paying all or part of the fund’s fees and expenses to/out of the capital of</p>	<p>A transitional period of 6 months from the Effective Date (<b>expiring on 7 May 2013</b>) will be provided for all Existing Disclosed Schemes to comply with the disclosure requirements on the Dividend Composition Information.</p> <p>Notwithstanding the above, fund managers are reminded that the offering document (including the KFS) of an Existing Disclosed Scheme should be updated to</p>												

	Question	Answer
	<p>the fund (“Existing Disclosed Schemes”), will there be a transitional period for compliance with the requirements (including the disclosure of the Dividend Composition Information following the Effective Date (as defined in 34(B)) above?</p>	<p>incorporate the disclosure mentioned under items (a), (b) and (c) in FAQ 34 above as soon as practicable following the Effective Date. For Existing Disclosed Schemes which are currently paying dividend out of capital or currently paying dividend out of gross income while charging/paying all or part of the fund’s fees and expenses to/out of the capital of the fund or intend to do so at anytime, their offering documents (including the KFS) <b>and their marketing materials</b> should be updated promptly. Under these circumstances, the revised offering documents (including the KFS) do not require the SFC’s prior approval but must, nevertheless, be filed with the SFC within one week from the date of issuance in accordance with 11.1B of the UT Code.</p> <p>For an existing SFC-authorized fund which has not disclosed in its offering document that it may pay dividend out of capital of the fund or it may pay dividend out of gross income while charging/paying all or part of the fund’s fees and expenses to/out of the capital of the fund in the offering document (including the KFS) and it now proposes to do so, SFC’s prior approval should be obtained in respect of such proposed change under 11.1 of the UT Code and in general it is expected that at least one month’s prior written notice should be provided to the holders of the fund before such change takes effect.</p> <p>In any event, fund managers are reminded that they should ensure the intermediaries engaged by them are well aware of the distribution policy of the relevant funds and the effects of paying dividends out of capital or charging/paying fees and expenses to/out of capital by the funds managed by them so that intermediaries can inform investors accordingly of such effects and the risks involved.</p>
	<p><b>Disclosure of information to investors regarding US Foreign Account Tax Compliance Act (“FATCA”)</b></p>	
35	<p>What information should be disclosed to the investors regarding FATCA?</p>	<p>Reference is made to the circular of the SFC to issuers of SFC-authorized investment products concerning FATCA dated 21 March 2014.</p> <p>Issuers of SFC-authorized funds should keep investors informed of information concerning their SFC-authorized funds which is necessary to enable investors to</p>

	Question	Answer
		<p>appraise the position of the SFC-authorized funds from time to time. In this connection, it is the issuers' duty to ensure that the offering documents (including the Product KFS) of their SFC-authorized funds are up-to-date and contain the information necessary for investors to make an informed judgement about the SFC-authorized funds. At a minimum, the following information is generally expected to be provided to investors in the offering documents:-</p> <ol style="list-style-type: none"> <li>1. a general description of the FATCA regime;</li> <li>2. details of any intergovernmental agreement to implement FATCA between the US and the country in which the SFC-authorized fund is established;</li> <li>3. disclosure relating to the FATCA status of the SFC-authorized funds (such as its registered status as a participating foreign financial institution/reporting foreign financial institution or its status as a deemed compliant foreign financial institution);</li> <li>4. a warning that all prospective investors should consult with their own tax advisors regarding the possible implications of FATCA on them and the SFC-authorized funds;</li> <li>5. relevant FATCA risk disclosure (including the consequences of any withholding tax on the SFC-authorized funds and the consequential impact on the investors); and</li> <li>6. where there is disclosure on compulsory redemption and/or the manager has a right to withhold, set-off or deduct reasonable amounts from the redemption proceeds, it should also be disclosed that: (i) such withholding, set-off or deduction is permitted by applicable laws and regulations and (ii) the manager is acting in good faith and on reasonable grounds.</li> </ol> <p>The revised offering document should be filed with the SFC within one week from the date of issuance pursuant to 11.1B of the UT Code together with a properly completed "Filing Form for Revised Offering Documents that Incorporate Changes Falling within 11.1B of the Code on Unit Trusts and Mutual Funds (UT Code) and Do</p>

	Question	Answer
		<p>Not Require SFC's Prior Approval”  <a href="http://www.sfc.hk/web/EN/forms/products/forms.html">http://www.sfc.hk/web/EN/forms/products/forms.html</a>, in which certain FATCA-related confirmation will be made.</p> <p>Issuers are also reminded to pay close attention to the updates and announcement which may be made by the Government of the Hong Kong Special Administration Region from time to time in relation to the Hong Kong intergovernmental agreement designated to facilitate compliance with FATCA.</p>
	<b>Disclosure of the ongoing charges figure</b>	
36	<p>For the purposes of disclosure of the ongoing charges figure in Product Key Facts Statements, where an SFC-authorized fund invests in listed REITs or ETFs, would such investments be treated as investment in other funds as referred in paragraph 22 of the <i>Guidelines for the disclosure and calculation of the ongoing charges figure</i> dated 4 July 2014 (“Guidelines”)?</p>	<p>Being a closed-ended fund whose assets are typically not fungible, a listed REIT is more akin to a listed company than a traditional fund. As such, listed REITs may generally be treated as listed securities and not subject to paragraph 22 of the Guidelines for the purposes of calculating the ongoing charges figure.</p> <p>On the other hand, ETFs are mostly passively managed open-ended funds that invest in a portfolio of fungible securities and/or financial instruments to replicate the performance of a financial index or benchmark and more akin to traditional funds in nature. Hence, where an SFC-authorized fund invests in ETFs, it is generally expected to take into account the ongoing charges figures of such ETFs in the calculation of its ongoing charges figure in accordance with the requirements set out in paragraph 22 of the Guidelines.</p>
37	<p>Where an SFC-authorized fund is subject to a fixed rate of ongoing charges, can the maximum rate of the ongoing charges applicable to the SFC-authorized fund be disclosed in the KFS pursuant to the Guidelines?</p>	<p>If an SFC-authorized fund is subject to a fixed rate of ongoing charges and any excessive level of expenses / charges will not be borne by the fund, the fund manager may disclose the maximum level of the ongoing charges figure calculated in accordance with the Guidelines if this maximum figure is higher than the actual figure. Otherwise, the ongoing charges figure shall be calculated based on the latest annual or interim financial statements in accordance with the Guidelines.</p>
38	<p>This FAQ has been moved to FAQ 9 on Exchange Traded Funds and Listed Funds</p>	

	Question	Answer
	<p><b>Cross-border offering of Hong Kong CIS in Australia pursuant to the Australia–Hong Kong Mutual Recognition of Funds (Australia-HK MRF)</b></p>	
39	<p>Australian Securities and Investments Commission (“ASIC”) issued a class order [CO 08/506] Hong Kong collective investment schemes (“Class Order”) in 2008 as a means of giving effect to the Declaration on Mutual Recognition of Cross-border Offering of Collective Investment Schemes (“Declaration”) signed between ASIC and the SFC on 7 July 2008. The Class Order was repealed on 1 October 2018. Does the repeal of the Class Order affect the Declaration?</p>	<p>Notwithstanding the repeal of the Class Order, ASIC has confirmed that it remains committed to the aim of the Declaration and that the repeal of the Class Order is an operational change rather than a policy change. ASIC has further confirmed that, following the expiry of the Class Order, it will continue to give effect to the Declaration by providing a streamlined process (“Streamlined Process”) for Hong Kong CIS to obtain individual relief from registration in Australia under Regulatory Guide 178 <i>Foreign collective investment schemes</i> (“RG 178”) and from certain licensing, product disclosure and fund-raising requirements in line with the eligibility requirements and arrangements as set out in the Class Order. It is the intention of ASIC that there will be no substantive difference between the requirements and arrangements of the application under the Class Order and those under the Streamlined Process.</p>
39(A)	<p>What are the eligibility requirements on Hong Kong CIS for application for regulatory relief from ASIC under the Streamlined Process?</p>	<p>ASIC will process an application of a Hong Kong CIS (“Eligible Hong Kong CIS”) for the relief from registration as an Australian managed investment scheme and from certain licensing, product disclosure and fund-raising requirements, provided that:</p> <ul style="list-style-type: none"> <li>(a) the Hong Kong CIS is authorized by the SFC;</li> <li>(b) the manager of the Hong Kong CIS is licensed by the SFC;</li> <li>(c) none of the Hong Kong CIS, its manager or its trustee/custodian is exempted from any Hong Kong regulatory requirements because the Hong Kong CIS, its manager or its trustee/custodian is also regulated elsewhere; and</li> <li>(d) the Hong Kong CIS is not principally marketed to investors in Australia.</li> </ul> <p>A Hong Kong CIS is currently not considered as principally marketed to investors in Australia if Australian investors account for no more than 30% of the value of the Hong Kong CIS. It is expected that the manager of the Hong Kong CIS will monitor and ensure compliance with this threshold limit.</p>



	Question	Answer
39(B)	What are the arrangements under the Streamlined Process?	<p>ASIC recognises that the Hong Kong regulatory regime for public funds is sufficiently equivalent to Australia.</p> <p>Starting from 1 October 2018, despite the expiry of the Class Order, Eligible Hong Kong CIS may make an individual application for relief from ASIC under the Streamlined Process. The information which ASIC requires as part of the application and the criteria to be assessed by ASIC in granting the relief under the Streamlined Approach are identical to what ASIC previously set out under the Class Order. That is, the applicant is only required to provide certain documents about itself (as currently set out in section RG 178.73 of the RG 178 and previously set out in the Schedule B of the Class Order) and is not required to provide additional documentation (in particular, the information as currently set out under sections RG 178.75 and RG 178.76 of the RG 178) to demonstrate sufficient equivalence of the Hong Kong regulatory regime. An application fee is payable for making an application. The fees that currently apply to applications for relief under RG 178 are set out in item 80 of Schedule 1 to the <a href="#">Corporations (Fees) Regulations 2001</a>, which may change over time. Please contact ASIC for information about current fees applicable for the particular application.</p> <p>ASIC is in the process of updating the RG 178 to clarify the information it will require for the application of relief from foreign CIS operators from jurisdictions which ASIC has assessed as sufficiently equivalent, including Hong Kong.</p>
39(C)	What are the documents and information required to be provided for the application of relief under the Streamlined Process?	<p>The following documents and written information in relation to an Eligible Hong Kong CIS (as applicable) are required to be provided to ASIC for the application of relief under the Streamlined Process:</p> <ul style="list-style-type: none"> <li>(a) evidence that the Hong Kong CIS is authorized under subsection 104(1) of the SFO;</li> <li>(b) a deed from the company for the benefit of and enforceable by ASIC, the other persons referred to in subsection 659B(1) of the Corporations Act 2001 and any member or former member of the Eligible Hong Kong CIS in</li> </ul>

	Question	Answer
		<p>Australia at the time they were offered interests/shares in the Eligible Hong Kong CIS, which applies notwithstanding that the company may have ceased to rely, or never have relied, on the relief, and which provides that:</p> <ul style="list-style-type: none"> <li>(i) the deed is irrevocable except with the prior written consent of ASIC; and</li> <li>(ii) the company covenants to comply with the Hong Kong regulatory requirements in respect of its conduct in Australia as if the conduct occurred in Hong Kong in like circumstances; and</li> <li>(iii) the company covenants to: <ul style="list-style-type: none"> <li>(1) ensure that each of its agents and representatives that engages in conduct in Australia will comply with the Hong Kong regulatory requirements in respect of their conduct in Australia as if the conduct occurred in Hong Kong in like circumstances; and</li> <li>(2) ensure that each of its agents and representatives that engages in conduct in Australia has entered into a deed as required by this paragraph as if references to the company were references to the agent or representative; and this paragraph (iii) were omitted; and</li> </ul> </li> <li>(iv) the company submits to the non-exclusive jurisdiction of the Australian courts in legal proceedings conducted by any of the following: <ul style="list-style-type: none"> <li>(1) ASIC (including under section 50 of the ASIC Act); and</li> <li>(2) any member (or former member) of the Eligible Hong Kong CIS who was in Australia when they were offered interests/shares in the Eligible Hong Kong CIS; and</li> <li>(3) in relation to proceedings relating to a financial services law – any person referred to in subsection 659B(1) of the Corporations Act 2001;</li> </ul> </li> </ul>

	Question	Answer
		<p>and in the case of proceedings brought by a person covered by subparagraph (1) or (3), whether brought in their name, on behalf of the Crown or otherwise;</p> <p>(v) the company covenants to comply with any order of an Australian court in respect of any matter relating to the provision of the financial services in relation to the Eligible Hong Kong CIS or the operation of the Eligible Hong Kong CIS; and</p> <p>(vi) the company covenants that, on written request of either the SFC or ASIC, it will give or vary written consent and take all other practicable steps to enable and assist the SFC to disclose to ASIC and ASIC to disclose to the SFC any information or document that the SFC or ASIC has that relates to the company or the eligible Hong Kong CIS;</p> <p>(c) written consents to the disclosure by SFC to ASIC and ASIC to SFC of any information or document that SFC or ASIC has that relates to the company or Eligible Hong Kong CIS;</p> <p>(d) the most recent financial statements of the eligible Hong Kong CIS, any audit report, and any subsequent public disclosures by that eligible Hong Kong CIS about its financial position or compliance with the Hong Kong regulatory requirements and if the documents are not in English, and English translation;</p> <p>(e) a copy of the most recent Hong Kong offering document relating to an offer of interests/shares in the Eligible Hong Kong CIS;</p> <p>(f) a copy of the constitution or other governing rules (however described) of the eligible Hong Kong CIS;</p> <p>(g) a description of how the company will plan for, monitor and assess its compliance with the requirements and conditions of the relief and any</p>

	Question	Answer
		<p>Australian regulatory requirements to which it will be subject;</p> <p>(h) a description of the financial services relating to the Eligible Hong Kong CIS that the company intends to provide in Australia; and</p> <p>(i) where the company is an exempt manager – information about the interests/shares in the Eligible Hong Kong CIS that the company intends to offer or issue to persons in Australia and how it plans to seek members in Australia.</p>

*Last updated: 16 November 2018*