



20 January 2021

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

1. The Securities and Exchange Commission of Thailand (SEC) and the Securities and Futures Commission (SFC) signed a Memorandum of Understanding concerning Mutual Recognition of Covered Funds and Covered Management Companies and related cooperation (Memorandum) on 20 January 2021 (as amended from time to time).
2. In this circular, Hong Kong domiciled funds<sup>1</sup> that are eligible for SEC approval and/or have received SEC approval under the MRF are denoted as “Hong Kong Covered Funds” and Hong Kong management companies that are eligible to manage Hong Kong Covered Funds are denoted as “Hong Kong Covered Management Companies” while “Hong Kong Covered Entities” refers to Hong Kong Covered Funds and/or Hong Kong Covered Management Companies.

#### **General principles**

3. MRF operates on the principles that, in respect of a Hong Kong Covered Fund that has been authorised by the SFC and is seeking or has received approval for offering to the public in Thailand:
  - (a) the Hong Kong Covered Fund shall meet the eligibility requirements in accordance with this circular and comply with all of the applicable requirements set out in this circular (see below);
  - (b) the Hong Kong Covered Fund shall remain authorised by the SFC and be allowed to be offered, marketed and distributed to the retail investors in Hong Kong;
  - (c) the Hong Kong Covered Fund shall operate and be managed in accordance with the relevant laws and regulations in Hong Kong and its constitutive documents;
  - (d) the sale and distribution of units/shares of the Hong Kong Covered Fund in Thailand shall comply with the applicable laws and regulations in Thailand;
  - (e) where relevant, the Hong Kong Covered Entity shall comply with the additional rules released by the SEC governing the approval, post-approval and ongoing compliance in the context of the offering, marketing and distribution of units/shares of the Hong Kong Covered Fund to the public in Thailand;
  - (f) the Hong Kong Covered Entity shall ensure investors in both Hong Kong and Thailand receive fair treatment, including in respect of investor protection, exercise of rights, compensation and disclosure of information; and there must

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<sup>1</sup> It means open-ended fund companies, unit trusts or other forms of collective investment schemes (CIS) domiciled in Hong Kong.



be no arrangements which provide an advantage for investors in Thailand or Hong Kong that would result in prejudice to investors in the other jurisdiction, and vice versa; and

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

4. In general, Hong Kong Covered Entities that are seeking SEC approval or have received SEC approval for offering units/shares of Hong Kong Covered Funds to the public in Thailand pursuant to Sections 57, 65, 69, and 72 of the Securities and Exchange Act B.E 2535 (SEA) must comply with the relevant Thai laws and regulations and the guidelines, circulars, and other requirements as may be issued by the SEC from time to time (together with the SEA, the relevant Thai laws and regulations). On the basis of the principles set out above, if a Hong Kong Covered Entity complies with the relevant Hong Kong laws and regulations and the conditions as set out in this circular, it is generally deemed to have complied in substance with the relevant Thai laws and regulations and will enjoy a streamlined process of authorisation for offering units/shares of a Hong Kong Covered Fund to the public in Thailand.
5. In view of the differences between the Thai and the Hong Kong regulatory regimes, and to ensure proper investor protection and consistency with the existing Thai regime for approved retail funds, this circular sets out the eligibility and ongoing requirements, as well as SEC rules, which a Hong Kong Covered Entity must satisfy if it intends to seek approval for public offering of units/shares of the Hong Kong Covered Fund in Thailand from the SEC under Sections 57, 65, 69, and 72 of the SEA. The SFC will issue a separate circular which sets out additional requirements with which a Thai Covered Fund and/or a Thai Covered Management Company must comply when applying for SFC authorisation pursuant to Section 104 of the Securities and Futures Ordinance (SFO) for offering units of a Thai Covered Fund to the public in Hong Kong, as well as other requirements which a Thai Covered Management Company and a Thai Covered Fund must observe after obtaining SFC authorisation.

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

6. The eligibility requirements (Eligibility Requirements) are set out in Annex B to this circular.
7. Hong Kong Covered Funds applying for SEC approval must fall within one or more than one of the following eligible fund types<sup>2</sup>:
  - (a) general equity funds, bond funds and mixed funds;

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<sup>2</sup> Please note that these are not legally defined categories. They have no statutory legal meaning but are merely indications.



- (b) feeder funds, where underlying fund is not itself a feeder fund and falls within one of the fund types in paragraphs 7(a), 7(c) and 7(d), and complies with the requirements in this circular;
- (c) unlisted index funds; and
- (d) passively managed index tracking exchange-traded funds (ETFs) including physical gold ETFs<sup>3</sup>.

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

8. The Hong Kong Covered Entity that is seeking SEC approval must indicate to the SEC the fund type within which the Hong Kong Covered Fund belongs pursuant to paragraph 7 above. All Hong Kong Covered Entities must comply with the requirements set out under the “Requirements applicable to all Hong Kong Covered Entities” section below, as well as the relevant requirements set out under the “Requirements applicable to each specific type of Hong Kong Covered Funds” section below.

#### **Requirements applicable to all Hong Kong Covered Entities**

9. To ensure proper investor protection and consistency with the existing Thai regime for approved retail funds, all Hong Kong Covered Entities are required to comply with requirements set out in paragraphs 10 – 42 below, as well as the relevant requirements as set out in Annex A to this circular. The following paragraphs are without prejudice to the requirements of Hong Kong domestic laws which may also apply to Hong Kong Covered Entities.

#### *Representatives in Thailand*

10. A firm in Thailand must be appointed for each Hong Kong Covered Fund as its representative in compliance with the relevant Thai laws and regulations relating to the Provisions relating to Offering for Sale of Units of Foreign Collective Investment Scheme<sup>4</sup> by the Hong Kong Covered Entity.

#### *Operational and ongoing requirements*

##### Home jurisdiction supervision

11. The Hong Kong Covered Fund must, on an ongoing basis, remain authorised by the SFC for offering its units/shares to the public in Hong Kong. The Hong Kong Covered Management Company of the Hong Kong Covered Fund must also remain licensed by or registered with the SFC for Type 9 regulated activity (asset management). Both the Hong Kong Covered Fund and its Hong Kong Covered Management Company must be subject to ongoing regulation and supervision by the SFC.

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<sup>3</sup> Physical gold invested by such gold ETFs must possess a standard and fineness recognized by the London Bullion Market Association.

<sup>4</sup> Notification of the Capital Market Supervisory Board No. Tor.Jor. 4/2561 Re: Provisions relating to Offering for Sale of Units of Foreign Collective Investment Scheme

### Jurisdiction

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

### Changes to Hong Kong Covered Funds

13. No change shall be made to a Hong Kong Covered Fund resulting in non-compliance with the Eligibility Requirements set out in Annex B to this circular. If the SFC is aware of such change, it will notify the SEC as soon as possible.
14. Changes to a Hong Kong Covered Fund must be made in accordance with the applicable Hong Kong laws and regulations and the provisions of its constitutive documents<sup>5</sup>. Changes to a Hong Kong Covered Fund shall not contravene the applicable Hong Kong laws and regulations and the requirements set out in this circular.
15. These changes shall be effective upon authorisation by the SFC or compliance with the appropriate procedures.
16. However, changes that affect Thai investors only and revisions made to the offering documents of a Hong Kong Covered Fund relating to such changes should be made in accordance with the requirements under the relevant Thai laws and regulations. Prior consultation with the SEC concerning such changes is encouraged.
17. The Hong Kong Covered Entity shall ensure that the SEC is informed of any change filed with or approved by the SFC in respect of a Hong Kong Covered Fund approved by the SEC in Thailand as soon as possible and in any event within one week (so far as is reasonably practicable given the different time zones and public holidays of the jurisdictions) from the date of filing with or approval by the SFC.
18. The SFC will confirm to the SEC that the Hong Kong Covered Fund effecting (i) changes by way of holders' approval; (ii) change of trustee/custodian; and (iii) change of investment delegate continues to meet the Eligibility Requirements set out in Annex B to this circular.
19. Investors in Hong Kong and Thailand must be notified at the same time (so far as is reasonably practicable given the different time zones and public holidays of the jurisdictions) about any changes to the Hong Kong Covered Fund by the Hong Kong Covered Entity. Equal treatment should be given to investors in both jurisdictions in terms of the form which that notice takes<sup>6</sup>.
20. For avoidance of doubt, changes that render the Hong Kong Covered Fund ineligible under this MRF (for example – the fund changes strategy and this fund no longer meets the eligible fund type definition) must be notified to the SEC and SFC as soon

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<sup>5</sup> For the avoidance of doubt, change in entity to which the Hong Kong Covered Management Company delegates the investment management function of the Hong Kong Covered Fund under its management is subject to SFC's prior approval.

<sup>6</sup> To the extent there are requirements on minimum notice period to Thai investors under relevant Thai laws and regulations, the Hong Kong Covered Entity should comply with these requirements and ensure that investors in Hong Kong and Thailand receive equal treatment in terms of the notice period and information disclosed.



as possible, and subject to paragraph 22, the Hong Kong Covered Entity is automatically ineligible to publicly offer the units/shares of the Hong Kong Covered Fund in Thailand under Thai laws and regulations.

#### Breach

21. In the event of a material breach of Hong Kong domestic laws and regulations or the requirements set out or referred to in this circular, the Hong Kong Covered Entity must endeavour to notify the SFC and SEC at the same time and rectify the breach promptly. The Hong Kong Covered Entity shall notify the SEC once the breach has been rectified.
22. Following SEC approval of a Hong Kong Covered Fund under Sections 57, 65, 69, and 72 of the SEA, if a Hong Kong Covered Entity ceases to meet the requirements as set out in this circular, it must notify the SEC immediately. The units/shares of the Hong Kong Covered Fund must not continue to be offered, marketed and distributed to the public in Thailand and the Hong Kong Covered Entity must not accept subscriptions from investors in Thailand, without SEC's prior approval.

#### Cessation of offerings

23. Following SEC approval of a Hong Kong Covered Fund, if the Hong Kong Covered Entity no longer wishes to offer for sale of the units/shares of the Hong Kong Covered Fund to the public in Thailand, it should provide notice to the SEC and Thai investors of its intention to cease such offering in accordance with the relevant Thai laws and regulations.

#### Withdrawal of approval

24. The SEC may at any time review a Hong Kong Covered Fund's approval and may modify, add to or withdraw any of the conditions of such approval, or withdraw the approval, as it considers appropriate.

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

##### Sale/distribution

25. The sale and distribution of units/shares of a Hong Kong Covered Fund in Thailand must be conducted by intermediaries properly licensed by or registered with the SEC and must comply with the relevant Thai laws and regulations relating to the sale and distribution of units of funds.

##### Offering documents

26. The disclosure of information relating to a Hong Kong Covered Fund must be complete, accurate, fair, clear, and effective. It must be capable of being easily understood by investors.
27. The offering documents of a Hong Kong 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.

28. The prospectus authorised by the SFC may be used. Unless otherwise provided in this circular, matters such as the type of documents, content, format, frequency of update and the updating procedures must comply with the applicable Hong Kong laws and regulations and the provisions of its constitutive documents. The SFC-authorized prospectus may be supplemented by a Thai covering document to comply with the disclosure requirements set out in Annex A to this circular<sup>7</sup>. The prospectus shall also disclose any other information which may have a material impact on investors in Thailand. The offering documents and the Thai covering document shall not contain any information that would be inconsistent with the offering documents authorised by the SFC and/or inaccurate/misleading regarding the Hong Kong Covered Fund.
29. The Hong Kong Covered Entity must take reasonable steps and measures to ensure that any updated offering documents and their changes are made available to investors in Hong Kong and Thailand at the same time (so far as is reasonably practicable given the different time zones and public holidays of the jurisdictions). The revised offering documents of a Hong Kong Covered Fund shall be filed with the SEC as soon as possible and in any event within one week after the revised offering documents have received SFC's authorisation or are filed with the SFC<sup>8</sup>.

#### Ongoing disclosure

30. The Hong Kong Covered Entity must take reasonable steps and measures to ensure that the ongoing disclosure of information of the Hong Kong Covered Fund (including periodic financial reports, notices and announcements) is despatched and made available to investors in Hong Kong and Thailand at the same time (so far as is reasonably practicable given the different time zones and public holidays of the jurisdictions) and, in the case of suspension of dealings, immediately notify the SEC. A Hong Kong Covered Entity must comply with the requirements set out in Annex A to this circular and, on an ongoing basis, disclose any other information which may have a material impact on investors in Thailand. The ongoing disclosure should be filed with the SEC as soon as possible and in any event within one week after it has received SFC's authorisation or is filed with the SFC.
31. Subject to paragraph 33, Hong Kong financial reports and reports of auditors of financial reports of the Hong Kong Covered Fund prepared in compliance with the applicable financial reporting standards and submitted to the SFC may be used for distribution in Thailand.

#### Language

32. The submission of information or document to the SEC and offering documents and notices to Thai investors of a Hong Kong Covered Fund must be provided in English or Thai.

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<sup>7</sup> A disclosure requirement in Annex A to this circular would be considered met if the relevant disclosure is already included in the prospectus authorised by the SFC. The Hong Kong Covered Entity does not need to duplicate the disclosure in the Thai covering document.

<sup>8</sup> For avoidance of doubt, revisions made to the offering documents of a Hong Kong Covered Fund relating to changes that affect Thai investors only shall be filed with the SEC as soon as possible and in any event within one week from the date of issuance.



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

#### Advertising

34. All advertisements in relation to a Hong Kong Covered Fund of which the units/shares are offered for sale in Thailand must comply with the relevant Thai laws and regulations, in particular, the Rules in Detail on Advertising and Sales Promotion for Securities Companies<sup>9</sup>.

#### Fees

35. For offering to the public in Thailand, the Hong Kong Covered Entity must ensure that any SEC invoiced fees<sup>10</sup> in respect of the Hong Kong Covered Fund are paid.

### **Requirements applicable to each specific type of Hong Kong Covered Funds**

36. In general, the SEC will deem a Hong Kong Covered Fund to have complied substantially with the requirements of Thai laws and regulations. There are, however, requirements which each specific type of Hong Kong Covered Funds must comply with. Please refer to Annex A to this circular for details.

### **Application process**

37. The SEC understands that this marks the first time Hong Kong Covered Funds may seek approval from the SEC. The SEC therefore encourages applicants to consult the SEC early for any clarification or guidance as to how the relevant requirements may apply and be complied with in light of their specific circumstances.
38. The SEC 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 SEC's website.
39. Applicants shall request the SFC to provide directly to the SEC a certificate confirming that the Eligibility Requirements listed in Annex B to this circular are met. The SEC will not be able to take up an application if no such certificate is received from the SFC. Further details of the MRF application process for a Hong Kong Covered Fund seeking approval from the SEC are set out in the Information Checklist<sup>11</sup>, which will be available at the SEC's website upon implementation of the MRF arrangement.

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<sup>9</sup> Equivalent to Clauses 45-48 of Notification of the Capital Market Supervisory Board No. Tor Thor. 35/2556 Re: Standard Conduct of Business, Management Arrangement, Operating System, and Providing Services to Clients of Securities Companies and Derivatives Intermediaries and Notification of the Office of the Securities and Exchange Commission No. Sor Thor. 10/2558 Re: Rules in Detail on Advertising and Sales Promotion for Securities Companies and Derivatives Intermediaries

<sup>10</sup> Notification of the Office of the Securities and Exchange Commission No. Sor Thor. 4/2561 Re: Additional Provisions relating to Offering for Sale of Units of Foreign Collective Investment Scheme

<sup>11</sup> For avoidance of doubt, please refer to the Checklist for Mutual Recognition of Funds between Hong Kong Special Administrative Region of the People's Republic of China and Thailand (HK-TH MRF) Application Form under Form 35 – HK-TH MRF on the SEC website.



40. Upon receipt of the application documents, the SEC will inform the applicant at once in case the submitted application or the supporting documents or evidences have any defect or do not fulfill applicable requirements.
41. The SEC will thereafter notify the result of the application assessment to a Hong Kong Covered Entity for offering, marketing and distributing units/shares of a Hong Kong Covered Fund to the public in Thailand within twenty-one calendar days from the receipt of a duly completed application provided that the Hong Kong Covered Fund meets all the applicable requirements set out in this circular.
42. The SEC may refuse the application if outstanding issues are not addressed to the satisfaction of the SEC within twenty-one calendar days from the receipt of a duly completed application.

### **Implementation**

43. The SEC and SFC will endeavour to take all actions necessary to implement the MRF arrangement within 6 to 12 months following the signing of the Memorandum and will publish separate announcements informing the industry of the effective implementation of the arrangement.

**Investment Management Policy Department  
Securities and Exchange Commission, Thailand**



## Annex A

### ***Requirements to be complied with by all Hong Kong Covered Entities***

	<b>Equivalent Thai rules and regulations</b>
<b>1. General requirements</b>	
Withdrawal of approval	Clause 11 of Notification of the Capital Market Supervisory Board No. Tor Nor. 89/2558
The operation of the mutual fund	Clause 12 of Notification of the Capital Market Supervisory Board No. Tor Nor. 89/2558

<b>2. Cross-border offering requirements</b>	
<u>Provisions relating to offering for sale of units of foreign CIS</u> Part 1 - general provisions Part 2 - application for approval, approval of offer for sale of units of foreign CIS and conditions after approval Part 3 - submission of registration statement and draft prospectus Part 4 - disclosure of information concerning financial position and performance of foreign CIS	Notification of the Capital Market Supervisory Board No. Tor Jor. 4/2561
<u>Additional provisions relating to offering for sale of units of foreign CIS</u> Chapter 1 - application form for sale of units of foreign CIS and submission of evidentiary documentation Chapter 2 - provision relating to Draft Prospectus Chapter 3 - reporting of the sale of units of foreign CIS to investors in Thailand	The Office of the Securities and Exchange Commission No. Sor Jor. 4/2561
<u>Checklist for MRF Application Form</u> Form 35 - MRF	The website of the SEC
<u>Registration Statement</u> Form 69 - CIS full Form 69 - CIS annually update Form 69 - CIS material update	<ul style="list-style-type: none"> <li>• The website of the SEC</li> <li>• The attachments of Notification of the Capital Market Supervisory Board No. Tor Jor. 4/2561</li> </ul>
<u>Template of Fund Factsheet</u>	The website of the SEC
<u>Sales Report Form</u>	The website of the SEC
<u>Cessation of Offerings</u>	(1) At least one month's notice or such longer period as required under applicable laws and regulations or the provisions as set out in the

	<p>offering or constitutive document (in the case of cessation of offerings in connection with a merger or termination of Hong Kong Covered Fund)<sup>12</sup> or (2) at least three months' notice (in the case of cessation of offerings other than in connection with a merger or termination of a Hong Kong Covered Fund)<sup>13</sup> should be provided to the SEC and investors of the proposed merger or termination or any intention to cease offering of units/shares of a Hong Kong Covered Fund to the public in Thailand. The notice shall at least contain the following information:</p> <ul style="list-style-type: none"> <li>• reasons for the merger or termination and/or the cessation of offerings (as the case may be);</li> <li>• for cessation of offerings in connection with a merger or termination, relevant provisions under the constitutive documents that enable such merger or termination;</li> <li>• consequences of the merger or termination and/or the cessation of offerings (as the case may be) and their effects on existing investors;</li> <li>• for cessation of offerings in cases other than in connection with a merger or termination, any proposed changes in the operation of the Hong Kong Covered Fund and their effects on existing investors;</li> <li>• alternatives available to investors (including, if possible, a right to switch without charge into another Hong Kong Covered Fund); and</li> <li>• estimated costs or expenses of the merger or termination and/or cessation of offerings (as the case may be) and who is expected to bear them.</li> </ul>
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<b>3. Disclosure requirements in relation to offering documents</b>	<b>Equivalent Thai rules and regulations</b>
Information to be disclosed in the offering document	<ul style="list-style-type: none"> <li>• Section 123 of the SEA</li> <li>• Notification of the Capital Market Supervisory Board No. Tor Nor. 3/2556</li> </ul>

<sup>12</sup> Subject to the Hong Kong Covered Entity having served notice as required under (1) and other requirement specified in applicable laws, regulations, and the constitutive documents, the Hong Kong Covered Entity may cease offering of units/shares of the Hong Kong Covered Fund with immediate effect following the completion of the merger or termination (as the case may be).

<sup>13</sup> For cessation of offerings in cases other than in connection with a merger or termination of a Hong Kong Covered Fund, the Hong Kong Covered Entity shall demonstrate to the satisfaction of the SEC that proper measures have been put in place to ensure that interests of Thai investors who may remain to be invested in the Hong Kong CIS will be safeguarded (e.g. the Hong Kong CIS will continue to be regulated or supervised by the SFC).

	<ul style="list-style-type: none"> <li>Notification of the Office of the Securities and Exchange Commission No. Sor Nor. 88/2558</li> </ul>
Information concerning financial position and performance of foreign CIS	Clauses 33-35 of Notification of the Capital Market Supervisory Board No. Tor Jor. 4/2561
Performance fee	Notification of the Office of the Securities and Exchange Commission No. Sor Nor. 88/2558 <sup>14</sup>

4. Ongoing disclosure and reporting requirements	Equivalent Thai rules and regulations
Notice period to unitholders and/or SEC	<p><u>Changes to the scheme</u></p> <ul style="list-style-type: none"> <li>Section 129 of the SEA</li> </ul> <p><u>Deferral of dealings</u></p> <ul style="list-style-type: none"> <li>Clause 25(2) of Notification of the Office of the Securities and Exchange Commission No. Sor Nor. 87/2558</li> </ul> <p><u>Suspension of subscription/redemption</u></p> <ul style="list-style-type: none"> <li>Clause 29 of Notification of the Office of the Securities and Exchange Commission No. Sor Nor. 87/2558</li> </ul> <p><u>Amalgamation and Merger</u></p> <ul style="list-style-type: none"> <li>Clauses 73(1), 73(2), 76-78 of Notification of the Office of the Securities and Exchange Commission No. Sor Nor. 87/2558</li> </ul> <p><u>Fees</u></p> <ul style="list-style-type: none"> <li>Clauses 97, 98(2), 99 of Notification of the Office of the Securities and Exchange Commission No. Sor Nor. 87/2558</li> </ul>
Advertising	<ul style="list-style-type: none"> <li>Clauses 45-48 of Notification of the Capital Market Supervisory Board No. Tor Thor. 35/2556</li> <li>Notification of the Office of the Securities and Exchange Commission No. Sor Thor. 10/2558</li> <li>Clause 19 of Notification of the Capital Market Supervisory Board No. Tor Jor. 4/2561</li> </ul>
Monthly disclosure on the website of management company	Clauses 33(2), 34(2), 44 of Notification of the Office of the Securities and Exchange Commission No. Sor Nor. 87/2558

<sup>14</sup> Where a Hong Kong Covered Entity charges performance fee, it is only required to disclose information concerning the detail of calculation and the disbursement of the fee together with an example of calculation to enable the investors to understand the fee calculation method of the fund which may be used for making an appropriate investment decision.

Annually update / material change	Clauses 25-28 of Notification of the Capital Market Supervisory Board No. Tor Jor. 4/2561
Semi-annually update of fund factsheet	Clause 6 of Notification of the Capital Market Supervisory Board No. Tor Nor. 3/2556
Other documents to be made available to Thai investors as specified in the offering documents	Upon request by investors, specific information regarding these documents should be made available to Thai investors in English or Thai. Information regarding how investors can make such information requests should also be clearly disclosed in the Thai offering documents.

<b>5. Disclosure requirements in relation to financial reports</b>	
Financial reports	Clause 29 of Notification of the Capital Market Supervisory Board No. Tor Jor. 4/2561 <sup>15</sup>

***Requirements to be complied with by each specific type of Hong Kong Covered Funds***

	<b>Equivalent Thai rules and regulations</b>
Passively managed index tracking ETFs	<p><u>Definition of ETFs</u></p> <ul style="list-style-type: none"> <li>2.9 of Part 2, Appendix 2 of Notification of Capital Market Supervisory Board No. Tor Nor. 87/2558</li> </ul> <p><u>Specific features of ETFs</u></p> <ul style="list-style-type: none"> <li>Clause 11 of Notification of Capital Market Supervisory Board No. Tor Nor. 88/2558</li> </ul> <p><u>Additional Rules for ETFs</u></p> <ul style="list-style-type: none"> <li>Clauses 137, 138, 140 and 141 of Notification of the Office of the Securities and Exchange Commission No. Sor Nor. 87/2558</li> </ul>

*Note:* The Thai rules and regulations specified in this Annex represent the equivalent requirements to be complied with by Hong Kong Covered Entities.

<sup>15</sup> Financial reports must be prepared in compliance with internationally recognized accounting standards, including Hong Kong Financial Reporting Standards or International Financial Reporting Standards or such other accounting standards acceptable to the SFC.

## Annex B Eligibility Requirements

### Hong Kong Covered Fund

1. The Hong Kong Covered Fund must be established, domiciled and managed in accordance with Hong Kong laws and regulations and its constitutive documents. It must be a CIS which is authorised by the SFC in accordance with Section 104 of the SFO for offering to the public in Hong Kong.
2. The Hong Kong Covered Fund applying for SEC approval must fall within one or more than one of the following eligible fund types<sup>16</sup>:
  - (a) general equity funds, bond funds and mixed funds;
  - (b) feeder funds, where underlying fund is not itself a feeder fund and falls within one of the fund types in paragraphs 2(a), 2(c) and 2(d) of this Annex and complies with the requirements in paragraph 5(a) of this Annex;
  - (c) unlisted index funds; or
  - (d) passively managed index tracking ETFs including physical gold ETFs<sup>17</sup>.
3. The Hong Kong Covered Fund must not be money market funds, hedge funds, fund of hedge funds, structured funds, listed open-ended funds (also known as active ETFs) and closed-ended funds, in accordance with 8.2, 8.7, 8.8, 8.10 and 8.11 of the Code of Unit Trusts and Mutual Funds (UT Code).
4. The Hong Kong Covered Fund's net derivative exposure (as defined in 7.26 of the UT Code) must not exceed 100% of the fund's net asset value (NAV).
5. The Hong Kong Covered Fund is subject to the following investment restrictions in respect of its investment in funds:
  - (a) the underlying funds may be Hong Kong-domiciled funds (including ETFs) that are authorised by the SFC and comply with the requirements in this circular;
  - (b) the underlying funds may be UCITS schemes (including ETFs) domiciled in Luxembourg and Ireland, and CIS domiciled in the UK authorised as UK UCITS;
  - (c) the Hong Kong Covered Fund may invest up to 10% of its NAV in unlisted funds<sup>18</sup> not falling within paragraphs 5(a) and 5(b) above;

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<sup>16</sup> Please note that these are not legally defined categories. They have no statutory legal meaning but are merely indications.

<sup>17</sup> Physical gold invested by such gold ETFs must possess a standard and fineness recognized by the London Bullion Market Association.

<sup>18</sup> Such unlisted funds must be under supervision of a regulator who is a member of the International Organization of Securities Commission (IOSCO) and a signatory to the IOSCO Multilateral Memorandum of Understanding.



- (d) the Hong Kong Covered Fund may have indirect exposure to restricted assets<sup>19</sup> via its investment in underlying funds falling within paragraphs 5(a), 5(b) and 5(c) above not exceeding 20% of the Hong Kong Covered Fund's NAV;
  - (e) investment in any single listed real estate investment trusts must not exceed 10% of the Hong Kong Covered Fund's NAV; and
  - (f) investment in any single ETF other than those set out in paragraphs 5(a) and 5(b) above must not exceed 10% of the Hong Kong Covered Fund's NAV.
6. The Hong Kong Covered Fund must not directly invest in virtual assets<sup>20</sup> in any form, save for any indirect exposure via underlying funds as permitted in paragraph 5 above.
  7. The Hong Kong Covered Fund must not engage in a physical short sale transaction.
  8. The Hong Kong Covered Fund is subject to an aggregate limit of 10% of its NAV in respect of borrowings or engaging in repurchase transactions (including direct and indirect exposure via investment in underlying funds falling within paragraphs 5(a), 5(b) and 5(c) above), on a temporary basis for the purpose of liquidity management.

#### Hong Kong Covered Management Company

9. The Hong Kong Covered Fund must be managed by a Hong Kong Covered Management Company that is licensed by or registered with the SFC for Type 9 regulated activity (asset management) in accordance with Part V of the SFO that satisfies the requirements in Chapter 5 of the UT Code on an ongoing basis.
10. The Hong Kong Covered Management Company of a Hong Kong Covered Fund must not have been the subject of any major regulatory or enforcement actions (i.e. the revocation or suspension of the Hong Kong Covered Management Company's licence by the SFC pursuant to Section 194 of the SFO) by the SFC in the past three years or, if it has been established for less than three years, since the date of its establishment.
11. The Hong Kong Covered Management Company of a Hong Kong Covered Fund may delegate the investment management functions to any entity, provided that such delegation is accepted under the Hong Kong laws and regulations for Hong Kong CIS authorised for public offering, and the Hong Kong Covered Management Company remains responsible for any action of its delegate(s), and such delegate operates in one of the jurisdictions recognized under Notification of Guidelines No. Nor Por.

<sup>19</sup> Restricted assets include loan participation, loan assignment, virtual assets, writing of credit default swap protection and writing of credit derivative. The list of restricted assets is available at: <https://www.sec.or.th/TH/Pages/LawandRegulations/MutualRecognitionFunds.aspx>. Additions or removals of restricted assets set out therein are subject to prior consultation of the SFC. For avoidance of doubt, Thai Covered fund may not have direct exposure to the aforementioned restricted assets. Therefore, the SEC expects the Hong Kong Covered Fund not to have direct exposure to the aforementioned restricted assets as well.

<sup>20</sup> These include digital tokens (such as digital currencies, utility tokens or security or asset-backed tokens) and any other virtual commodities, crypto assets and other assets of essentially the same nature. Please refer to the SFC weblink for the definition of virtual assets at <https://www.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=18EC77>.



4/2561 Re: Countries Recognized by the SEC Office concerning Supervisory Measures on Investment Management<sup>21</sup>.

Hong Kong Covered Fund's trustee/custodian

12. The Hong Kong Covered Fund must have a trustee/custodian that qualifies to act as a trustee/custodian for Hong Kong CIS authorised for public offering.

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<sup>21</sup> The list of recognized jurisdictions are available at: <http://capital.sec.or.th/webapp/nrs/data/7904ae0.pdf>