



Appendix B – II – AFM Circular

AFM Streamlining requirements and process for mutual recognition of Recognised Hong Kong Funds

15 May 2019

AFM-SFC Mutual Recognition of Funds (MRF) between the Netherlands and Hong Kong

1. The Autoriteit Financiële Markten (AFM) and the Securities and Futures Commission (SFC) signed a Memorandum of Understanding (MoU) concerning Mutual Recognition of Covered Funds and Management Companies and related cooperation on 15 May 2019. The MoU provides a framework for mutual recognition of units or shares of covered funds to be offered to the public in both markets.
2. For the purpose of this Circular, unless otherwise defined herein, the words beginning with a capital letter refer to the list of definitions set out in article 1 of the MoU.
3. Hereafter, the Hong Kong Funds that are eligible for AFM approval and/or have received AFM approval under the MRF are denoted as “Recognised Hong Kong Funds”.

General principles

4. MRF operates on the principles that, in respect of a Recognised Hong Kong Fund that has been authorized by the SFC and is seeking approval or has been approved for offering to the public in the Netherlands:
 - a. the Recognised Hong Kong 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 Recognised Hong Kong Fund shall remain authorized by the SFC in Hong Kong and is allowed for public offering to retail investors within Hong Kong;
 - c. the Recognised Hong Kong 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 or shares of the Recognised Hong Kong Fund in the Netherlands shall comply with the applicable laws and regulations in the Netherlands;

e. the Hong Kong Management Company and the Recognised Hong Kong Fund shall comply with the additional rules released by the AFM in the Netherlands governing the authorization or approval, post-authorization and ongoing compliance, and the sale and distribution of units or shares of the Recognised Hong Kong Fund in the Netherlands.

f. the Hong Kong Management Company of the Recognised Hong Kong Fund shall ensure investors in both Hong Kong and the Netherlands receive fair treatment, including in respect of investor protection, exercise of rights, compensation and disclosure of information; and there must be no arrangements which provide an advantage for investors in Hong Kong and/or the Netherlands that would result in prejudice to the investors in the other jurisdiction, and vice versa; and

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

5. In general, the Recognised Hong Kong Funds that are seeking AFM approval or have received AFM approval for offering units or shares to the public in the Netherlands pursuant to article 2:66, paragraph 1, Wft and article 2:73 Wft have to comply with the relevant requirements set out in Annex A to this Circular and the applicable EU and Dutch Domestic laws and regulations (as may be amended or otherwise modified from time to time).

On the basis of the principles set out above, if an eligible Recognised Hong Kong Fund 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 AFM requirements and will enjoy a streamlined process of approval for offering units or shares to the public in the Netherlands.

6. In view of the differences between the Dutch and the Hong Kong regulatory regimes, and to ensure adequate investor protection and consistency with the existing Dutch regime for authorized retail funds, this Circular sets out the additional requirements with which an eligible Recognised Hong Kong Fund has to comply when applying for AFM approval pursuant to Dutch law for offering units or shares to the public in the Netherlands under the MRF (in accordance with article 2:73 Wft and article 2:66, paragraph 1, Wft), as well as other requirements which a Recognised Hong Kong Fund and a Hong Kong Management Company have to observe after obtaining AFM approval. The SFC will issue separate rules regarding the authorization of eligible Dutch UCITS for public offering in Hong Kong.

7. The AFM will approve with conditions an eligible Recognised Hong Kong Fund for offering, marketing and distribution of units or shares to retail investors in the Netherlands within 8 weeks,¹ provided that the eligible Recognised Hong Kong Fund meets all the eligibility requirements set out in this Circular and that the AFM has received a complete and satisfactory set of Application Documents as described in paragraph 41 below in relation to the application process.

Eligibility Requirements and types of Recognised Hong Kong Funds

8. The Hong Kong Management Company and/or Recognised Hong Kong Fund applying for AFM approval must meet the requirements that adequate protection is afforded to investors, that the arrangements for the Recognised Hong Kong Fund's constitution and for the Hong Kong Management Company must be adequate, and the powers and duties of the Hong Kong Management Company and of the trustee or depositary must be adequate.

9. The eligibility requirements (Eligibility Requirements) are set out in Annex B to this Circular.

¹ Such period may be extended by 4 weeks should additional information be required by the AFM.

10. Recognised Hong Kong Funds applying for AFM approval must fall within one or more than one of the following eligible fund types²:

- a. general equity funds, bond funds and mixed funds; and
- b. index funds (other than exchange-traded funds).

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

11. The Hong Kong Management Company of a Recognised Hong Kong Fund that is seeking AFM approval must indicate to the AFM the fund type within which the Recognised Hong Kong Fund belongs pursuant to paragraph 10 above.

12. All Recognised Hong Kong Funds must comply with the requirements set out under the “Requirements applicable to all Recognised Hong Kong Funds” section below.

Requirements applicable to all Recognised Hong Kong Funds

13. To ensure adequate investor protection and consistency with the existing Dutch regime for approved retail funds, Recognised Hong Kong Funds are required to comply with the requirements set out in paragraphs 14 – 47 below, as well as the relevant requirements as set out in Annex A to this Circular.

Representatives in the Netherlands

14. Each Recognised Hong Kong Fund must appoint a firm in the Netherlands as its representative. Each Recognised Hong Kong Fund must confirm to the AFM the address of the place of business in the Netherlands for service on the Recognised Hong Kong Fund of notices and/or other documents and must keep the AFM updated should these details change.

Operational and ongoing requirements

Home Jurisdiction supervision

15. The Recognised Hong Kong Fund must, on an ongoing basis, remain authorized by the SFC for offering to the public in Hong Kong. The Hong Kong Management Company must also remain appropriately licensed by or registered with the SFC for Type 9 regulated activity. Both the Recognised Hong Kong Fund and the Hong Kong Management Company must be subject to ongoing regulation and supervision by the SFC.

Reporting obligation

16. Hong Kong Management Companies marketing Hong Kong Recognised Funds in the Netherlands are required to comply with the reporting requirements under article 24(1), (2) and (4) of Directive 2011/61/EU. The reporting frequency and the reporting periods are those set out in the ESMA Reporting Guidelines (ESMA/2014/869).

17. In a configuration where a Hong Kong Management Company is marketing Recognised Hong Kong Funds in the Netherlands and in other Member States of the EU, the reporting to the AFM under the requirements of article 24(1), (2) and (4) of Directive 2011/61/EU should only cover the data for those Hong Kong funds that are marketed in the Netherlands.

Jurisdiction

² Please note that these are not legally defined categories. They have no statutory legal meaning, but are merely indications. Recognised Hong Kong Funds shall need confirmation by the SFC that they fall within one or more than one of the eligible fund types during the application process.

18. The Hong Kong Management Company shall ensure and procure its distributors to ensure that Dutch investors are able to bring actions concerning the Recognised Hong Kong Fund and the Hong Kong Management Company in the courts of the Netherlands.

Changes to Recognised Hong Kong Funds

19. Changes to a Recognised Hong Kong Fund shall be made in accordance with the applicable Hong Kong and Dutch laws and regulations, the provisions of its constitutive documents and the requirements set out in this Circular.³ These changes shall be effective upon approval by the SFC or compliance with the appropriate procedures.

20. The SFC shall notify the AFM of any change approved by the SFC in respect of a Recognised Hong Kong Fund approved by the AFM in the Netherlands as soon as possible and in any event within one week from the date of approval.

The SFC will confirm to the AFM that the Recognised Hong Kong Fund effecting such changes continues to meet the Eligibility Requirements as set out in Annex B.

21. Investors in Hong Kong and the Netherlands 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 Recognised Hong Kong Fund by the Hong Kong Management Company. Equal treatment should be given to investors in both jurisdictions in terms of the form which that notice takes.⁴

22. For the avoidance of doubt, when changes render the Recognised Hong Kong Fund ineligible to be considered as a Recognised Hong Kong Fund under this Circular (for example – the fund changes strategy and this fund can no longer meet the requirements of a Recognized Hong Kong Fund), the Recognised Hong Kong Fund is no longer permitted to offer units or shares to investors in the Netherlands. If the SFC is aware of such changes, it shall notify the AFM as soon as possible.

Breach

23. In the event of a breach of Hong Kong laws and regulations or the requirements set out or referred to in this Circular, the Hong Kong Management Company shall endeavor to notify the AFM and the SFC at the same time and rectify the breach promptly. The Hong Kong Management Company shall also notify the AFM once the breach has been rectified.

24. Following AFM approval of a Recognised Hong Kong Fund under article 2:66, paragraph 1, Wft and article 2:73 Wft, if a Recognised Hong Kong Fund ceases to meet the requirements as set out in this Circular, its Hong Kong Management Company shall notify the AFM as soon as reasonably practicable. In case of such breach, units or shares of the Recognised Hong Kong Fund may not continue to be offered to the public in the Netherlands and the Hong Kong Management Company and/or the Recognised Hong Kong Fund may not accept subscriptions from investors in the Netherlands.

Withdrawal of authorization

25. Following AFM approval of a Recognised Hong Kong Fund, if its Hong Kong Management Company does not wish to maintain such approval, it should apply for withdrawal of approval from the AFM and provide notice to Dutch investors of its intention not to maintain such approval in accordance with the relevant Dutch Laws and Regulations.

26. The AFM may at any time review its approval and may modify, add to or withdraw any of the conditions of such authorisation, or withdraw the authorization, as it considers appropriate.

³ For the avoidance of doubt, change in delegate(s) is subject to SFC's prior approval.

⁴ To the extent there are requirements on minimum notice period and content of or template for the notice to Dutch investors under the relevant Dutch Laws and Regulations, the Recognised Hong Kong Fund shall comply with these requirements and ensure that investors in Hong Kong and the Netherlands receive equal treatment in terms of the notice period and information disclosure.

Termination

27. Termination of a Recognised Hong Kong Fund shall require the approval of the SFC with immediate notice from the SFC to the AFM. A termination notice should be sent to investors in the Netherlands, be published on the website of the Hong Kong Management Company and/or Recognised Hong Kong Fund and submitted to the AFM.

Sale/distribution, offering documents, ongoing disclosure and advertisements

Sale/distribution

28. The sale and distribution of a Recognised Hong Kong Fund in the Netherlands must be conducted by intermediaries properly licensed by or registered with the AFM (which may include the management company so properly licensed) and shall comply with the relevant Dutch Laws and Regulations relating to the sale and distribution of funds.

Offering documents

29. The disclosure of information relating to a Recognised Hong Kong Fund shall be complete, accurate, fair, clear, effective, and shall be capable of being easily understood by investors.

30. The offering documents of a Recognised Hong Kong 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.

31. A Recognised Hong Kong Fund may use the offering documents authorized by the SFC. Unless otherwise provided for in this Circular, matters such as the type of documents, content, format, frequency of update and the updating procedures shall comply with the applicable Hong Kong laws and regulations and the provisions of its constitutive documents. In addition, the SFC-authorized offering documents must be supplemented by a Dutch covering document to comply with the disclosure requirements set out in Annex A to this Circular⁵ and to disclose any other information which may have a material impact on the investors in the Netherlands. The offering documents and the Dutch covering document shall not contain any information that would be inconsistent with the offering documents authorized by the SFC and/or inaccurate/misleading regarding the Recognised Hong Kong Fund.

32. The Hong Kong Management Company shall take reasonable steps and measures to ensure that the offering documents of a Recognised Hong Kong Fund and their changes are made available to the investors in Hong Kong and the Netherlands at the same time (so far as is reasonably practicable given the different time zones and public holidays of the jurisdictions).

Ongoing disclosure and filing

33. The Hong Kong Management Company shall take reasonable steps and measures to ensure that the ongoing disclosure of information of a Recognised Hong Kong Fund (including periodic financial reports, notices and announcements) is dispatched and made available to the investors in Hong Kong and the Netherlands 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 AFM. A Recognised Hong Kong Fund shall comply with the requirements set out in Annex A and, on an ongoing basis, disclose any other information which may have a material impact on the investors in the Netherlands.

⁵ A disclosure requirement in Annex A would be considered met if the relevant disclosure is already included in the prospectus approved by SFC. The Hong Kong Recognised Fund does not need to duplicate the disclosure in the Dutch covering document.

34. As soon as reasonably possible, a Recognised Hong Kong Fund must file with the AFM any revised instrument constituting the fund, any revised offering documents, any annual and subsequent half yearly financial reports and any updated UCITS Key Investor Information Document (KIID).⁶

35. Subject to paragraph 36, a Recognised Hong Kong Fund may use its Hong Kong financial reports as the basis for distribution in the Netherlands, provided that the reports are supplemented by the additional information and meet the other requirements set out in Annex A to this Circular. The provided information shall include a statement that no other funds than Recognised Hong Kong Funds are open to investments by Dutch investors.

Language

36. The offering documents and notices to investors in the Netherlands of a Recognised Hong Kong Fund must be provided in Dutch. The Dutch translation of the offering documents must be certified by a duly authorized or acknowledged translator.

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

Advertisements

38. All advertisements in relation to the Recognised Hong Kong Fund issued in the Netherlands shall comply with the relevant Dutch Laws and Regulations as set out in Annex A to this Circular.

Fees

39. For offering to the public in the Netherlands, the Recognized Hong Kong Fund/Hong Kong Management Company will be subject to the applicable (i) application, (ii) authorization and (iii) annual fees. The Recognised Hong Kong Fund/Hong Kong Management Company must ensure that any AFM invoiced fees in respect of the Recognised Hong Kong Fund are paid.

Application process

40. The AFM will approve the Recognised Hong Kong Funds for offering, marketing and distribution of units or shares to investors in the Netherlands provided that it has received from the Hong Kong Management Company or the Recognised Hong Kong Fund a complete set of Application Documents.

41. The following Application Documents shall be provided to the AFM by the applicant directly (except for item b below which shall be provided by the SFC directly to the AFM):

- a. a duly signed and completed application form available on the AFM website;
- b. a certificate from the SFC confirming that the Eligibility Requirements listed in Annex B to this Circular are met;
- d. the offering documents in Dutch;

⁶ As required by European Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website.

e. a Key Investor Information Document (KIID) as required by Regulation (EU) No 583/2010 in Dutch⁷ 44. Upon receipt of the Application Documents, the AFM will have 10 (ten) working days to assess that all Application Documents have been duly and properly submitted.

42. Provided that the Recognised Hong Kong Fund meets all the applicable requirements set out in this Circular and if no request for information, as described in paragraph 43 below, is issued by the AFM, the AFM will approve with conditions a Recognised Hong Kong Fund within the 8 (eight) week period. The eight-week period will start from the date the AFM confirms that it has received, to its satisfaction, the Application Documents listed in paragraph 41 above. Should a request for information be issued by the AFM, **such period may be extended by 4 weeks** and the AFM will approve a Recognised Hong Kong Fund within the **additional 4** (four) weeks (the four-week period) provided that all outstanding issues have been addressed to the satisfaction of the AFM.

43. A request for information may be sent by the AFM for any clarifications relating to paragraphs 14 to 42 and relating to matters in Annex A to this Circular that it considers necessary.

44. The AFM may refuse the application if outstanding issues are not addressed to the satisfaction of the AFM within the **additional** four-week period.

45. Once the AFM approves the Recognised Hong Kong Fund, it will notify the SFC.

46. The application process shall be made through the AFM Digital Portal: <http://www.digitaal.loket.afm.nl/en-US/Pages/default.aspx>

47. The AFM 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 AFM's website.

Strategy, Policy and International Affairs Division

Asset Management Division

Legal Affairs Division

Autoriteit Financiële Markten

⁷ European Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website.

Annex A

Requirements to be complied with by all Recognised Hong Kong Funds

Dutch statutory and regulatory measures applicable to the marketing of shares or units of Recognised Hong Kong Funds in the Netherlands

Recognised Hong Kong Funds must comply with statutory and regulatory measures applicable to the marketing of units or shares of collective investment schemes⁸ in the Netherlands. Hereafter are quoted the main financial law provisions in the Netherlands stemming from the Dutch Act on Financial Supervision (Wet op het financieel Toezicht (**Wft**)), the Dutch Decree on Conduct of Business Supervision of Financial Undertakings under the Wft (Besluit Gedragstoezicht financiële ondernemingen Wft (**Bgfo**)) and the Further Regulation on Conduct of Business Supervision of Financial Undertakings (Nadere regeling gedragstoezicht financiële ondernemingen Wft (**Nrgfo**)) applicable to the marketing in the Netherlands of share or units of Recognised Hong Kong Funds. For the purposes of Annex A, references to UCITS shall be construed as references to Recognised Hong Kong Funds.

Provision of information (KIID and Prospectus)

Relevant Dutch law: Articles 4:19 Wft, 65(2) Bgfo, 66a Bgfo, and 4:49 Wft

Article 4:19 Wft

1. A financial enterprise shall ensure that the information provided or made available by or on behalf of it in respect of a financial product, financial service or ancillary service, including advertising, does not prejudice information to be provided or made available pursuant to the Dutch Act on Financial Supervision (**Wft**)

2. The information - including advertising, in respect of a financial product, financial service or ancillary service - provided or made available to clients by a financial enterprise must be correct, clear and not misleading.

3. The financial enterprise must ensure that the commercial purpose of the information provided or made available is recognizable as such.

Article 65(2) Bgfo

A provider of units in a UCITS shall provide a key investor information document for each UCITS in which it offers its units.

Article 66a Bgfo

1. Key investor information shall provide information on the following essential elements in respect of the UCITS concerned:

- a. the identification of the UCITS and the relevant supervisory authority;
- b. a short description of the investment objectives and investment policy;
- c. the historical return or, if relevant, future performance scenarios;
- d. the costs;

⁸ Under Dutch law, a Recognised Hong Kong Fund would be considered, for the purpose of the following circular, as an alternative investment fund (AIF). Therefore, the marketing rules applicable to the AIF shall apply, except provided otherwise, to their full extent to Recognised Hong Kong Funds.

e. the risk/reward profile of the unit, including appropriate guidance and warnings in relation to the risks associated with the unit in the relevant UCITS;

2. The essential investment information clearly states:

a. where and how additional information about the offered units and the prospectus can be obtained;

b. that the annual financial accounts and half-yearly figures are available on the website of the manager and that these documents can be obtained from the manager free of charge on request at any time; and

c. in which language the information referred to in subsections a and b is available to the participants.

3. The key investor information is drawn up in such a way that clients can understand the nature and risks associated with the units in a UCITS without any reference to other documents.

4. A translation of the key investor information contains no other changes or additions with respect to the translated document, than necessary because of the translation.

5. With regard to key investor information, further rules have been laid down in European Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website.

Article 4:49 Wft

1. A management company shall have a prospectus available on its website with regard to each collective investment scheme under its management.

2. The prospectus shall contain at least the following information:

b. a statement from the management company to the effect that the management company itself, the collective investment scheme and any depositary associated with it comply with the additional requirements laid down in this Annex of the MRF.

d. the management company's registration document⁹ and

6. On application, the Dutch Authority for the Financial Markets may, whether or not for a fixed period, grant a full or partial dispensation from Subsection (1), as well as from the provisions arising from Subsection (2), if the applicant demonstrates that it cannot reasonably comply with that subsection and that the objectives which Subsection (1) seeks to achieve are achieved in other ways.

Provision of information in Dutch

Relevant Dutch law: Article 49(2) Bgfo

Article 49(2) Bgfo

The financial enterprise provides the relevant information in the Dutch language. The information can be provided in another language:

a. if the consumer or client so requests and the financial enterprise has agreed to this;

⁹ Article 4:48(1) Wft prescribes that a management company shall have a registration document available on its website that contains information about the management company, the collective investment schemes it manages or intends to manage and any depositaries associated with those schemes.

- b. if the parties have made the choice to apply the law of another state to the agreement concerning a financial product; or
- c. if it concerns key investor information and the use of the relevant language has been approved by the Dutch Authority for the Financial Markets.¹⁰

Notification of changes

Relevant Dutch law: Article 4:20(3) Wft

During the term of a contract regarding a financial product, financial service or ancillary service, an investment firm or financial service provider shall inform the consumer or, where it concerns a financial instrument or insurance, the client in time with regard to material changes.

Such changes include:

(a) changes to constitutive documents;

(b) changes of the depositary, management company, investment delegates and Hong Kong Representative, and their regulatory status;

(c) (i) material changes in investment objectives, policies and restrictions of the scheme (including expansion in the purpose or extent of use of financial derivatives instruments for investment purposes);
(ii) introduction of new fees and charges, or increase in fees and charges payable out of the property of the scheme or by the investors;
(iii) material changes in dealing arrangements, pricing arrangements or distribution policy of the scheme;
and

(d) any other changes that may have a material adverse impact on holders' rights or interests (including changes that may limit holders' ability in exercising their rights).

Consumers or clients must be given a minimum period of one month to step out under the old conditions. This means that the changes may only enter into force after the one month's notice.

Advertisements

Relevant Dutch law: Articles 52(1), 52(4), 55 Bgfo

Article 52(1) Bgfo

If a financial enterprise provides information in an advertisement, other than via television or radio, on a third pillar pension product and complex product insofar as it is an insurance with an investment component or packaged retail investment product, it shall provide information on the most important financial risks of that product, which are made clear inter alia by a risk indicator and, if it concerns an investment object, the most important other risks associated with that product.

Article 52(4) Bgfo

If a financial enterprise prior to the formation of a third pillar pension product contract provides information on that product, it shall refer to the key information document for pension products or, if it concerns units in a UCITS, to the key investor information.

Article 55 Bgfo

1. An advertisement about a manager of a collective investment scheme, collective investment scheme, manager of a UCITS, or UCITS, mentions at least the following:

¹⁰ Please note that the AFM does not accept any other language than Dutch.

a. the name of the manager of a collective investment scheme, collective investment scheme, manager of a UCITS, or UCITS;

b. the fact that it concerns a manager of a collective investment scheme, collective investment scheme, manager of a UCITS, or UCITS;

c. that the manager of a collective investment scheme, collective investment scheme, manager of a UCITS, or UCITS is included in the register held by the Dutch Authority for the Financial Markets; and

d. if it concerns a UCITS: where the prospectus, referred to in Section 4:49(1) of the Wft,¹¹ is available.

2. Subsections c and d of the first paragraph do not apply to advertising on radio and television.

3. Without prejudice to Article 52, in an advertisement other than via the television or radio regarding a UCITS, where appropriate, attention shall be clearly drawn to the fact that:

a. the UCITS primarily invests in financial derivatives;

b. the UCITS follows a stock or bond index;

c. the value of the assets of the UCITS may fluctuate strongly as a result of the investment policy; or

d. an exemption as referred to in Article 136, paragraph 2,¹² has been granted to the UCITS, mentioning the State, the public body or the international organization that issues or guarantees the financial instruments referred to in Article 136, paragraph 2, in which the UCITS invests more than thirty-five percent of its assets under management.

¹¹ A management company shall have a prospectus available on its website with regard to each collective investment scheme under its management.

¹² **Article 136(2) Bgfo:** Upon request, the Dutch Authority for the Financial Markets may grant an undertaking for collective investment in transferable securities dispensation from paragraph (1) if:

- a. its portfolio includes securities and money market instruments from at least six different issues by an issuing state, public body or international organisation referred to in paragraph (1);
- b. the financial instruments of one and the same issue do not exceed 30 percent of the managed assets of the undertaking for collective investment in transferable securities;
- c. the issuing state, the public body or the international organisation is specified in the articles or fund regulations of the undertaking for collective investment in transferable securities; and
- d. the unit holders in the undertaking for collective investment in transferable securities enjoy protection that is equivalent to the protection resulting from paragraph (1) and Sections 134, 135 and 137.

Article 136(1) Bgfo: In derogation from Section 134(1), no more than 35 percent of the managed assets of an undertaking for collective investment in transferable securities may be invested in securities and money market instruments issued or guaranteed by a Member State, a public body with regulatory power in a Member State, a non-Member State or an international organisation to which one or more Member States belong.

Article 134(1) Bgfo: Of the managed assets of an undertaking for collective investment in transferable securities, no more than 10 percent shall be invested in securities and money market instruments issued by the same undertaking. An undertaking for collective investment in transferable securities shall invest no more than 20 percent of the managed assets in deposits held with one bank.

Annex B

Eligibility Requirements

Recognised Hong Kong Fund

1. The Recognised Hong Kong Fund must be established, domiciled and managed in accordance with Hong Kong laws and regulations and its constitutive documents and authorized by the SFC for public offering in Hong Kong under section 104 of the SFO.
2. Recognised Hong Kong Funds applying for AFM approval must fall within one or more than one of the following eligible fund types¹³:
 - a. general equity funds, bond funds and mixed funds; and
 - b. index funds (other than exchange-traded funds).
2. The Recognised Hong Kong Fund's net derivative exposure¹⁴ (as defined in 7.26 of the Code on Unit Trusts and Mutual Funds (UT Code)) must not exceed 100% of the fund's net asset value.
3. The Recognised Hong Kong Fund must not invest (i) in physical commodities including precious metals or commodity based investment or real estate, (ii) crypto-assets or crypto-currencies, or (iii) certificates representing the assets referred to under (i) or (ii).
4. The Recognised Hong Kong Fund must not have share classes with hedging arrangements other than currency hedging.
5. Should the Recognised Hong Kong Fund charge a performance fee, the fee must be clearly disclosed in the offering documents.

Hong Kong Management Company

6. The Recognised Hong Kong Fund must be managed by a Hong Kong 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.
7. The Hong Kong Management Company of a Recognized Hong Kong Fund must not have been the subject of any major regulatory or enforcement actions by the SFC in the past 3 years or, if it has been established for less than 3 years, since the date of its establishment.
8. The Hong Kong Management Company may delegate the investment management functions to any person, provided that such delegation is accepted under Hong Kong laws and regulations for Hong Kong funds authorised for public offering, the Hong Kong Management Company remains responsible for any action of its delegate(s).

Recognised Hong Kong Fund's depositaries

9. The Recognised Hong Kong Fund must have a trustee/depositary that is qualified to act as a trustee/depositary of publicly offered funds. The trustee/depositary shall be subject to prudential supervision (either at an entity level or on a consolidated group basis) of the Hong Kong Monetary Authority (HKMA) (in the case of licensed banks or its subsidiaries), the Mandatory Provident Fund Schemes Authority (MPFA) (in the case of a non-bank trustee) or an acceptable overseas jurisdiction (in

¹³ Please note that these are not legally defined categories. They have no statutory legal meaning, but are merely indications. Recognised Hong Kong Funds shall need confirmation by the SFC that they fall within one or more than one of the eligible fund types during the application process.

¹⁴ Before 1 January 2020, the Recognised Hong Kong Fund must not use leverage as calculated under the commitment approach or have net derivative exposure exceeding 100% of the fund's net asset value (as the case may be).

the case of an overseas bank or its subsidiary). These trustees also have to meet the eligibility requirements (including capital and internal control report and auditor's report by independent auditors) under the UT Code.