

## **AMF requirements and process for mutual recognition of Hong Kong Funds**

**10 July 2017**

### **AMF-SFC Mutual Recognition of Funds (MRF) between France and Hong Kong**

1. The Securities and Futures Commission (SFC) and the Autorité des Marchés Financiers (AMF) signed a Memorandum of Understanding (MoU) on France-Hong Kong mutual recognition of funds on 10 July 2017. The MoU provides a framework for mutual recognition of covered funds offered, marketed and distributed to retail investors in France and the public in Hong Kong.
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. For the purpose of this Circular, the term “Hong Kong Covered Fund” means a Hong Kong-domiciled CIS authorized or seeking authorization for offering, marketing and distribution to retail investors in France through a streamlined process in accordance with Section 1 of the Chapter IV of the Second Book of the French Monetary and Financial Code pursuant to this Circular, provided that such fund meets the applicable conditions as set out in this Circular.
4. For the purpose of this Circular, the term “Hong Kong Covered Management Company” means a Hong Kong-domiciled management company which is licensed or authorized by the SFC to manage Hong Kong Covered Funds and meets the applicable conditions as set out in this Circular.

#### **General principles**

5. MRF operates on the principles that, in respect of a Hong Kong Covered Fund that has been authorized by the SFC and is seeking or has received authorization to be offered, marketed and distributed in France to investors that do not meet the criteria set out in art. D. 533-11 of the French Monetary and Financial Code (retail investors) :
  - a. the Hong Kong Covered Fund shall meet the eligibility requirements (Eligibility Requirements) set out in Annex B to this Circular;
  - b. the Hong Kong Covered Fund shall remain authorized by the SFC in Hong Kong and is allowed to be offered, marketed and distributed to the public within 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 the Hong Kong Covered Fund in France shall comply with the applicable laws and regulations in France;

- e. the Hong Kong Covered Fund and the Hong Kong Covered Management Company shall comply with the additional rules released by the AMF governing the authorization, post authorization and ongoing compliance in the context of the offering, marketing and distribution of the Hong Kong Covered Fund to retail investors in France;
  - f. the Hong Kong Covered Management Company of the Hong Kong Covered Fund shall ensure holders in both Hong Kong and France receive fair treatment, including in respect of investor protection, exercise of rights, compensation and disclosure of information.
6. In general, funds that are seeking AMF authorization or have received AMF authorization for offering, marketing and distribution in France to retail investors pursuant to Section 1 of the Chapter IV of the Second Book of the French Monetary and Financial Code have to comply with the French Monetary and Financial Code, the General Regulation of the AMF, this Circular, guidelines and other requirements as may be issued by the AMF from time to time (together with the French Monetary and Financial Code, the French laws and regulations). On the basis of the principles set out above, if a Hong Kong Covered Fund complies with the relevant Hong Kong laws and regulations and the conditions described in this Circular, it will enjoy a streamlined process of authorization for offering, marketing and distribution in France to retail investors.
7. In view of the differences between the Hong Kong and the French regulatory regimes, to ensure proper investor protection and consistency with existing French AMF-authorized funds, this Circular sets out the additional requirements with which a Hong Kong Covered Fund has to comply when applying for AMF authorization for offering, marketing and distribution to retail investors in France under the MRF, as well as other requirements which a Hong Kong Covered Fund has to observe after obtaining AMF authorization.
8. The AMF will grant authorization to a Hong Kong Covered Fund for offering, marketing and distribution to retail investors in France within one month (the one-month period)<sup>1</sup> provided that the Hong Kong Covered Fund meets all the applicable requirements set out in this Circular and that the AMF has received a complete and satisfactory set of Application Documents as described in paragraph 45 below in relation to the application process.

### **Eligibility Requirements and types of Hong Kong Covered Funds**

9. The Eligibility Requirements are set out in Annex B to this Circular.
10. The SFC and the AMF may consider extending the MRF to include other types of funds in future in accordance with the MoU.
11. A Hong Kong Covered Fund must comply with the requirements set out under the "Requirements applicable to all Hong Kong Covered Funds" section below.

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

12. To ensure proper investor protection and consistency with existing French schemes authorized for offering, marketing and distribution to retail investors in France, Hong Kong Covered Funds are required to comply with the requirements set out in paragraphs 13 – 53 below, as well as the relevant requirements set out in Annex A to this Circular.

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<sup>1</sup> Such period may be extended to two months should additional information be required by the AMF.

### *Requirements on Hong Kong Covered Management Companies*

13. If the total amount of assets under management distributed in France pursuant to the MoU of a Hong Kong Covered Management Company represents more than 50% of the global amount of assets under management managed by such Hong Kong Covered Management Company, each of the Hong Kong Covered Management Company of Hong Kong Covered Fund(s), and its possible Delegate(s), is required to comply with the remuneration rules provided under Articles 14a and 14b of the Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities, as may be amended, supplemented or otherwise modified from time to time (Remuneration Rules).

If the total amount of assets under management distributed in France pursuant to the MoU of a Delegate represents more than 50% of the global amount of assets under management managed by such Delegate, the Delegate is required to comply with the Remuneration Rules.

### *Central agent in France*

14. The Hong Kong Covered Fund must appoint a firm in France as its representative in compliance with article 421-27 of the General Regulation of the AMF. The applicant must provide to the AMF a proof that a central agent has been appointed for its Hong Kong Covered Fund among the Application Documents (as defined in paragraph 45 below) to be provided to the AMF to be authorized under the MOU.

### *Operational and ongoing requirements*

#### SFC supervision

15. The Hong Kong Covered Fund must, on an ongoing basis, remain authorized by the SFC for offering, marketing and distribution to the public in Hong Kong, be subject to the ongoing regulation and supervision of the SFC and comply with the Eligibility Requirements set out in Annex B to this Circular.

#### Reporting obligation

16. The Hong Kong Covered Fund shall have at least 20% of the Hong Kong Covered Fund's net asset value attributable to investors in Hong Kong on an ongoing basis for offering, marketing and distribution to retail investors in France.

The Hong Kong Covered Management Company shall confirm to the SFC semi-annually that at least 20% of the Hong Kong Covered Fund's net asset value is attributable to investors in Hong Kong at the end of each reporting period.

17. If the SFC becomes aware or is notified that the Hong Kong Covered Fund or its Hong Kong Covered Management Company fails to meet the requirements set out in paragraph 16 above, it shall notify the AMF as soon as possible.

#### Jurisdiction

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

### Changes to Hong Kong Covered Funds

19. 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 shall notify the AMF as soon as possible.
20. Changes to a Hong Kong Covered Fund shall be made in accordance with the applicable Hong Kong laws and regulations and the provisions of its constitutive documents<sup>2</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.
21. These changes shall be effective upon approval by the SFC or compliance with the appropriate procedures.
22. However, changes that affect French 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 French laws and regulations. Prior consultation with the AMF concerning such changes is encouraged.
23. The SFC shall notify the AMF of any change approved by the SFC in respect of a Hong Kong Covered Fund authorized by the AMF in France as soon as possible and in any event within one week from the date of approval.

In addition, the SFC will confirm to the AMF that the Hong Kong Covered Fund effecting such changes continues to meet the Eligibility Requirements set out in Annex B to this Circular.

24. The Hong Kong Covered Management Company shall ensure that the AMF is informed of any change filed with the SFC as soon as possible and in any event within one week from the date of filing with the SFC.
25. Holders in France shall be notified about the changes to the Hong Kong Covered Fund according to the relevant French laws and regulations.

### Breach

26. In the event of a breach of Hong Kong laws and regulations or of the requirements set out or referred to in this Circular comes to the attention of the SFC, the SFC will notify promptly the AMF pursuant to the MoU. The Hong Kong Covered Management Company shall rectify the breach promptly. The SFC will notify the AMF when the Hong Kong Covered Management Company has rectified the breach.
27. Following AMF authorization, if a Hong Kong Covered Fund ceases to meet any of the requirements as set out in this Circular, the AMF may withdraw its authorization to offer, market and distribute the fund to retail investors in France, after informing the SFC. In any case, the Hong Kong Covered Fund shall cease to be offered to retail investors in France and shall not accept subscriptions from new investors in France without the AMF's prior approval.

### Withdrawal of authorization

28. Following the authorization of a Hong Kong Covered Fund, if its Hong Kong Covered Management Company does not wish to maintain such authorization, it shall apply for withdrawal of authorization from the AMF in accordance with the applicable French laws and regulations.

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<sup>2</sup> For the avoidance of doubt, change in Delegate(s) is subject to SFC's prior approval.

### Termination

29. Termination of a Hong Kong Covered Fund shall require the approval of the SFC with immediate notice from the SFC to the AMF. Termination notice to French investors should be submitted to the AMF for prior approval.

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

#### Sale/distribution

30. The sale and distribution of a Hong Kong Covered Fund in France must be conducted by intermediaries properly licensed or registered to provide investment services (investment advice and/or reception and transmission of orders...) in France pursuant to the relevant French laws and regulations. The sale and distribution of a Hong Kong Covered Fund in France shall comply with the applicable French laws and regulations relating to distribution, sale and marketing of funds.

#### Offering documents

31. The disclosure of information relating to a Hong Kong Covered Fund shall be complete, accurate, fair, clear, effective, and shall be capable of being easily understood by investors.
32. 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.
33. The offering documents used to market a Hong Kong Covered Fund in France shall include the following statement:
- “Ce fonds est autorisé par l’AMF pour être commercialisé auprès des investisseurs non professionnels en France. Il demeure régi par les lois, ordonnances ou autres réglementations applicables à Hong Kong et relève de la supervision de l’autorité hongkongaise *Securities and Futures Commission (SFC)*. Il est soumis à des règles (notamment de diversification) différentes de celles applicables aux organismes de placement collectifs à destination des investisseurs non professionnels et agréés en France.”<sup>3</sup>
34. A Hong Kong Covered Fund may utilize the prospectus authorized by the SFC. Unless otherwise provided in this Circular, matters such as the content of the prospectus, its format, the frequency of its update and the update procedures shall comply with the applicable Hong Kong laws and regulations and the provisions of its constitutive documents. In addition, the SFC-authorized prospectus may be supplemented by a French covering document to comply with the disclosure requirements set out in Annex A to this Circular and to disclose any other information which may have a material impact on investors in France. The prospectus and the French covering document shall not contain any information that would be inaccurate/misleading regarding the Hong Kong Covered Fund.
35. The Hong Kong Covered Management Company shall ensure fair treatment for investors in France and in Hong Kong in making available to them the offering documents of a Hong Kong Covered Fund and their possible changes. In any case, the Hong Kong Covered Management Company shall comply with the requirements regarding information to be provided to investors provided under relevant French laws and regulations. Subject to paragraph 22, the revised offering documents of a Hong Kong Covered Fund shall be filed with the AMF as soon as possible and in any event within one week after the revised offering documents have received SFC’s authorization or are filed with the SFC.

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<sup>3</sup> French translation of: “This fund, authorized by the AMF for offering, marketing and distribution to retail investors in France, remains governed by laws, ordinances and other regulations or requirements applicable in Hong Kong and is supervised by the Securities and Futures Commission in Hong Kong. It complies with rules (including investment restrictions) that are different from the requirements applicable to other French retail funds authorized by the AMF.”

### Ongoing disclosure

36. The Hong Kong Covered Management Company shall provide ongoing disclosure of information (including periodic financial reports and notices) to retail investors in France regarding the Hong Kong Covered Fund as provided under relevant French laws and regulations, especially according to Instruction 2011-19 of the AMF<sup>4</sup>.
37. The Hong Kong Covered Management Company shall ensure fair treatment of investors in France and Hong Kong regarding the ongoing disclosure of information of a Hong Kong Covered Fund (including periodic financial reports and notices).
38. The ongoing disclosure should be filed with the AMF as soon as possible and in any event within one week after it has received SFC's authorization or is filed with the SFC.
39. Hong Kong Covered Funds shall 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 France.
40. Subject to paragraph 42, a Hong Kong Covered Fund may use its Hong Kong financial reports as the basis for distribution in France, provided that it is supplemented by the additional information and meet the other requirements set out in Annex A to this Circular.

### Language

41. The offering documents and notices to French investors of a Hong Kong Covered Fund shall be provided in French. The French translation of the offering documents must be certified by a duly authorized or acknowledged translator.
42. The constitutive documents and financial reports of a Hong Kong Covered Fund shall be made available to French investors in French.

### Advertising guidelines

43. All advertisements and marketing materials in relation to the Hong Kong Covered Fund issued in France shall comply with the applicable French laws and regulations as set out in Annex A to this Circular.

### **Application process**

44. The AMF will authorize the Hong Kong Covered Funds for offering, marketing and distribution to retail investors in France provided that it has received from the applicant a complete set of Application Documents (Application Documents as defined hereinafter).
45. The following Application Documents shall be provided to the AMF by the applicant directly (except for item b below which shall be provided by the SFC directly to the AMF) :
  - a. a duly signed and completed application form available on the [AMF website](#);
  - b. a certificate from the SFC confirming that the Eligibility Requirements listed in Annex B to this Circular are met;
  - c. the constitutive document (articles of association for example) in French or in English;
  - d. the prospectus in French or in English; and where they exist, the latest annual report and any subsequent half-yearly report, in French or in English;

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<sup>4</sup> It is expected that to the extent there are requirements on minimum notice period and content of or template for the notice to French investors under the relevant French laws and regulations, the Hong Kong Covered Fund should comply with these requirements.

- e. a key information for investors document, as governed by Article L. 214-23 III of the French Financial and Monetary Code, in its version in force at the date of the entry into force of the MRF, or, as the European Regulation n°1286/2014<sup>5</sup> may require, a key information document;
  - f. any marketing material to be used for marketing the Hong Kong Covered Funds in France; and
  - g. a proof of payment made to the “*Autorité des Marchés Financiers*” in the amount of the applicable application fee according to Article L. 621-5-3, I, 4) and D. 621-27, 4) of the French Monetary and Financial Code.
46. Upon receipt of the Application Documents, the AMF will have five working days to assess that all Application Documents have been duly and properly submitted.
47. Provided that the Hong Kong Covered Fund meets all the applicable requirements set out in this Circular and if no request for information, as described in paragraph 48 below, is issued by the AMF, the AMF will grant authorization with conditions<sup>6</sup> to a Hong Kong Covered Fund within the one-month period. The one-month period will start from the date the AMF confirms that it has received, to its satisfaction, the Application Documents listed in paragraph 45 above. Should a request for information be issued by the AMF, the AMF will grant authorization to a Hong Kong Covered Fund within two months (the two-month period) provided that all outstanding issues have been addressed to the satisfaction of the AMF.
48. A request for information might be sent by the AMF for any clarifications relating only to matters relating to paragraphs 30 to 43 and in Annex A to this Circular that it considers necessary.
49. The AMF may refuse the application if outstanding issues are not addressed to the satisfaction of the AMF within the two-month period.
50. Once the AMF authorizes the application, it will notify the SFC.
51. The application process shall be made through the following address: [gio@amf-france.org](mailto:gio@amf-france.org).
52. The AMF encourages applicants to consult the Asset Management Division early for any clarification or guidance as to how the relevant requirements may apply and be complied with in light of their specific circumstances.
53. The AMF may issue other circulars or instructions, frequently asked questions and other documents from time to time to provide practical guidance to the industry. Please refer to the AMF’s website or contact Asset Management Division.

**Policy Regulation and International Affairs Division**  
**Asset Management Division**  
**Autorité des Marchés Financiers**

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<sup>5</sup> Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs)

<sup>6</sup> For the authorization of a Hong Kong Covered Fund to become effective, the conditions that are required to be fulfilled include: (i) the submission of offering documents properly addressing all the comments of the AMF, (ii) the submission of French version of offering documents together with the French translation certificate(s); (iii) the due appointment of a centralizing agent; and (iv) the payment of fees to the AMF.

## Annex A

### Requirements to be complied with by all Hong Kong Covered Funds

#### **French statutory and regulatory measures applicable to the marketing of shares or units of Hong Kong Covered Funds in France**

Hong Kong Covered Funds must comply with statutory and regulatory measures applicable to the marketing of shares or units of collective investment schemes<sup>7</sup> in France. Hereafter are quoted France's main financial law provisions stemming from the Monetary and Financial Code, the General Regulation of the Autorité des Marchés Financiers (AMF), and the AMF's instructions, positions and recommendations applicable to the marketing in France of share or units of Hong Kong Covered Funds. It deals also with other requirements applicable to such marketing pursuant to the MRF. However, this Annex does not refer to other applicable provisions arising, for example, from contract law or consumer law.

Pursuant to AMF Position AMF DOC-2014-04 (Guide to UCITS and AIF marketing regimes in France), the act of marketing units or shares of a UCITS or an AIF consists in presenting them on French territory by different means (advertising, direct marketing, advice...) with a view to encouraging an investor to subscribe to or purchase them.

However, under the conditions mentioned in the Position AMF DOC-2014-04, the following shall not be considered acts of marketing in France:

- i. the purchase, sale or subscription of units or shares of UCITS or AIF in response to a client's unsolicited request to purchase a specifically designated UCITS or AIF, provided that the investor is authorised to do so;
- ii. the purchase, sale or subscription of units or shares of UCITS or AIF under the terms of a third party portfolio management agreement, provided that such financial instruments are authorised in the investor's portfolio;
- iii. the purchase, sale or subscription of units or shares of a UCITS or AIF within the framework of the financial management of UCITS or AIF provided that such financial instruments are authorised in the assets of the UCITS or AIF.
- iv. the practice of management companies (or third parties acting on their behalf) to approach investors to assess their appetite prior to the launch of a UCITS or AIF when the followings are complied with:
  1. restriction to contacting 50 (i) professional investors or (ii) non-professional investors whose initial subscription is greater than or equal to 100,000 euros;
  2. the absence of provision of a subscription form and/or a document presenting definitive information about the fund's characteristics that would allow these investors to subscribe or undertake to subscribe for the units or shares of the UCITS or AIF. Such a presentation of the project then prevents application of the "reverse solicitation" exception
- v. the purchase, sale, or subscription of:
  1. UCITS or AIF units or shares as part of the remuneration policy of the Hong Kong Covered Management Company,
  2. UCITS or AIF units or shares for the benefit of the management team of the management company that manages them, its senior managers, or the management company itself, and
  3. Carried interest units;
- vi. over-the-counter sales between investors (professional or non-professional)

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<sup>7</sup> Under French law, a Hong Kong Covered 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 Hong Kong Covered Funds.

- vii. the participation of management companies in conferences or investor meetings without investors being solicited to invest in a specific product
- viii. the response by a management company to a call for tenders from an institutional investor for the establishment of a UCITS or AIF.

Distributors of Hong Kong Covered Funds units or shares are responsible for determining, under the supervision of the competent authorities and courts, whether they are actually engaged in marketing activities in France.

When units or shares of a Hong Kong Covered Fund have been marketed as defined above, those units or shares shall be considered as being marketed in France whenever investors among whom marketing in France was carried out are unitholders or shareholders in the said Hong Kong Covered Fund.

Pursuant to the MRF, units or shares of Hong Kong Covered Funds may be marketed in France only to retail investors (including professional investors treated as retail investors according to Article 314-5 of the General Regulation of the AMF).

## 1. Relations between Hong Kong Covered Funds and the AMF

### Appointment of a centralising correspondent for Hong Kong Covered Funds

#### Regulatory provisions

Article 421-27, AMF General Regulation

#### Instruction

Instruction AMF DOC-2014-03 on procedure for marketing units or shares of AIFs – Article 21

*Rule overview:* A Hong Kong Covered Fund marketed in France has to appoint one or more correspondents, including a centralising correspondent, established in France under the conditions set out in this AMF Instruction.

### Fixed-sum AMF filing fee relating to marketing

#### Statutory provisions

Article L. 621-5-3 I 4°, Monetary and Financial Code

#### Regulatory provisions

Article D. 621-27 4, Monetary and Financial Code

Article 421-27, AMF General Regulation

*Rule overview:* Hong Kong Covered Funds are subject to a set fee, as provided in the above provisions. The Hong Kong Covered Fund centralising correspondent is responsible for paying the fee to the AMF. The amount is 2,000 euros per sub-fund or per Hong Kong Covered Fund with no sub-funds. The fee is payable on the day the authorisation application is filed with the AMF and on 30 April of each subsequent year.

### Sending information to the AMF

Hong Kong Covered Funds must send the information relating to:

- Annual and half-yearly reports;
- Changes affecting the Hong Kong Covered Fund (change of name, creation of a new class of units or shares, creation of a new compartment, merger, demerger, liquidation, winding up, transfer), along with amendments to its key investor information document (KIID) and prospectus);
- Post-filing changes to the Hong Kong Covered Fund that will affect its marketing in France.

This information must be sent to the AMF at [gjo@amf-france.org](mailto:gjo@amf-france.org).

## 2. Soliciting, establishing a relationship with and informing investors

### **General provision on investor solicitation**

Soliciting the public to invest in Hong Kong Covered Funds is subject to the same provisions as those applicable to French UCITS (see. Article hereinabove), especially (i) Article 40 3° of AMF Instruction 2011-19, (ii) Article 8 of AMF Instruction 2011-19 and (iii) Annex XII of AMF Instruction 2011-19.

### **Direct marketing of banking or financial products and services**

#### Statutory provisions

Articles L. 341-1 to L. 341-16, Monetary and Financial Code

#### Regulatory provisions

Articles D. 341-1 to R. 341-16, Monetary and Financial Code

*Rule overview:* Direct marketing of financial products or services is an active selling method regulated under the Monetary and Financial Code. This regime applies whenever banking or financial products and services are marketed directly in France, including where only the person solicited is based in France.

### **Advertisements: content and dissemination of advertisements**

#### ***Provisions applicable to all distributors of Hong Kong Covered Funds***

#### Regulatory provisions

Articles 314-30, 421-25, AMF General Regulation

#### Instruction

Instruction AMF DOC-2014-03 on procedure for marketing units or shares of AIFs – Article 23

#### AMF position-recommendation

Position-recommendation AMF DOC-2011-24: Guide to drafting commercial documents and marketing collective investment schemes

#### ***Specific provisions for investment services providers authorised in France or operating under the right of establishment***

#### Statutory provisions

Article L. 533-12, Monetary and Financial Code

#### Regulatory provisions

Article 314-10 to 314-31, AMF General Regulation

*Rule overview:* By the terms of Article 421-25 of the AMF General Regulation, the AMF may exercise the prerogatives referred to in Article 314-30 with regard to any person distributing Hong Kong Covered Funds.

All advertisements from the Hong Kong Covered Fund aimed at investors shall be clearly identified as such. They shall be accurate, clear and not misleading. More specifically, if an advertisement containing an invitation to buy units or shares of a Hong Kong Covered Fund includes specific information about the Hong Kong Covered Fund, it may not contain information that contradicts the information provided in the information documents for investors, or that understates the importance of such information.

Such advertisements shall state whether information documents for investors are available.

They shall stipulate where and in which languages holders and potential investors in the Hong Kong Covered Fund can obtain this information and these documents, or how they can gain access to them.

By the terms of Article 314-10 of the AMF General Regulation, "*Investment services providers shall ensure that all information that they address to clients, including marketing information, satisfies the conditions laid down in I of Article L. 533-12 of the Monetary and Financial Code. Investment services providers shall ensure that all information, including marketing information, that they address to retail clients or that is likely to be received by retail clients, satisfies the conditions laid down in Articles 314-11 to 314-17 of the AMF General Regulation.*"

Finally, in accordance with Article 314-30 of the AMF General Regulation, "*The AMF may require investment services providers to submit to it their marketing communications for the investment services that they provide and the financial instruments that they offer prior to publication, distribution or broadcast. It may require changes to the presentation or the content to ensure that the information is accurate, clear and not misleading.*"

The abovementioned provisions of Articles 421-25, 314-10 and 314-30 and following of the AMF General Regulation apply notably to advertising for the Hong Kong Covered Funds.

If the AMF has asked to submit the marketing communications of the Hong Kong Covered Fund to it, such communications shall be sent to the following e-mail address: [gjo@amf-france.org](mailto:gjo@amf-france.org)

### **Distance marketing of consumer financial services**

#### Statutory provisions

Articles L. 343-1 and L. 343-2 of the Monetary and Financial Code

*Rule overview:* These provisions result from implementation of Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services.

### **Language used in information documents**

The constitutive document, the prospectus and the KIID of a Hong Kong Covered Fund marketed in France must be in French.

### **Information available to the public in France**

#### Statutory provisions

Article L. 214-24-19, Monetary and Financial Code

#### Regulatory provisions

Article 421-27, AMF General Regulation

#### Instruction

Instruction AMF DOC-2014-03 on procedure for marketing units or shares of AIFs - Article 24 for the part referring to article 421-27 of the AMF General Regulation.

#### Position-Recommendation

Position-Recommendation AMF DOC-2011-05 on Guide to the regulatory documents governing collective investments schemes (section related to the KIID)

*Rule overview:* Hong Kong Covered Management Companies are required to inform shareholders or unitholders under the same conditions as those imposed by the domestic law of the country in which the Hong Kong Covered Fund is marketed.

Therefore, subject to paragraphs 19 – 25 of this Circular a Hong Kong Covered Fund must:

1. Make the French-language version of the key investor information document (KIID) available to the public during the subscription period.

2. Make the information that they are required to make available to their unitholders or shareholders available to the public on the premises of the institutions authorised to take subscription and redemption orders.

3. The Hong Kong Covered Management Company is bound by the same disclosure requirements towards unitholders or shareholders as it is under the domestic laws of the country where the Hong Kong Covered Fund is marketed, on the terms set out in Article 8 of Instruction AMF-DOC 2011-19 and using the standard template found in Annex XII of this Instruction, where appropriate.

### **Informing investors after they have made an investment**

See point 5: Monitoring investor relations

### **3. Providing investment services when marketing share or units of Hong Kong Covered Funds**

#### **Supply of investment services by an investment services provider authorised in France or operating under the right of establishment when marketing shares or units of Hong Kong Covered Funds**

##### Statutory provisions

Article L. 321-1, Monetary and Financial Code

Articles L. 533-11 to L. 533-13 and L. 533-14 to L. 533-20, Monetary and Financial Code

##### Regulatory provisions

Article D. 321-1, Monetary and Financial Code

Articles R. 533-11 to R. 533-14, Monetary and Financial Code

Articles 314-1 *et seq* (excluding provisions relating to portfolio management services and management of collective investment schemes) and 421-26, AMF General Regulation

##### AMF instruction, positions and recommendations

Instruction AMF DOC-2008-04 of 15 July 2008: Application of business conduct rules to marketing of units or shares in UCITS or AIFs by asset management companies, management companies or managers

Position-recommendation AMF DOC-2007-25: Q&A on the rules of conduct applicable to investment services providers

*Rule overview:* The AMF has noted that when financial instruments are marketed, the distributor generally provides at least one investment service, such as investment advice or order reception/transmission for third parties.

Accordingly investment services providers authorised in France or operating under the right of establishment, together with their tied agents if they have any, are required to comply with French conduct of business rules governing the supply of the investment service(s) concerned, notwithstanding the specific rules applicable to the marketing of Hong Kong Covered Funds hereinabove mentioned, where applicable<sup>8</sup>.

#### **Use of a tied agent<sup>9</sup>**

*Rule overview:* See the above measures applicable to investment services providers.

<sup>8</sup> Foreign investment services providers operating in France under the freedom to provide services are subject to the conduct of business rules of their home state.

<sup>9</sup> Within the meaning of Article 4(1)(25) of Directive 2004/39/EC of 21 April 2004 on markets in financial instruments (MiFID). The regime applicable to tied agents is set forth in Articles L. 545-1 *et seq* of the Monetary and Financial Code.

## **Use of a financial investment advisor<sup>10</sup>**

### Statutory provisions

Articles L. 541-8-1 and L. 541-9, Monetary and Financial Code

### Regulatory provisions

Articles 325-3 to 325-9 and 325-13, AMF General Regulation

### AMF position

Position AMF DOC-2006-23: Q&A on the regime applicable to financial investment advisors

*Rule overview:* A financial investment advisor may provide an investment advice service and receive a client's order for transmission purposes if, and only if, that order concerns one or more shares or units of collective investment schemes (listed exhaustively in Article L. 214-1 of the Monetary and Financial Code, i.e. "undertakings for collective investment in transferable securities, securitisation funds, real-property investment partnerships, forestry-linked savings companies, real-property collective investment undertakings" and fixed capital investment companies) for which the financial investment advisor has previously provided an investment advice service to the same client.

## **4. Remuneration of Hong Kong Covered Funds distributors**

### **Hong Kong Covered Funds with categories of units or shares reserved for a specific investor category**

#### Regulatory provisions

Articles 422-23 and 421-26 II, AMF General Regulation

*Rule overview:* If a Hong Kong Covered Fund or the sub-fund of a Hong Kong Covered Fund has categories of units or shares reserved for a specific category of investor, as defined in the prospectus, the distributor must ensure that the investor fulfills the subscription requirements.

## **5. Monitoring investor relations**

### **Informing investors after they have made an investment**

#### Statutory provisions

Article L. 214-24-19, Monetary and Financial Code

#### Regulatory provisions

Article 421-27, AMF General Regulation

#### Instruction

AMF Instruction AMF DOC-2014-03 on procedure for marketing units or shares of AIFs – Article 24

*Rule overview:* the Hong Kong Covered Fund must send its annual report to investors and the documents referred to in Article L. 214-24-19 of the Monetary and Financial Code. Plus, certain changes that may occur during the life of a Hong Kong Covered Fund or a Hong Kong Covered Fund's sub-fund must be brought to the attention of shareholders or unitholders.

These changes and the arrangements for informing investors about them are described in Instruction AMF-DOC 2011-19.

<sup>10</sup> Within the meaning of Article L.541-1 of the Monetary and Financial Code.

## 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 and authorized by the SFC under section 104 of the SFO for public offering in Hong Kong.
2. At least 20% of the Hong Kong Covered Fund's net asset value must be attributable to investors in Hong Kong.
3. The Hong Kong Covered Fund must be a general equity fund, bond fund or mixed fund as defined in Annex C to this Circular.
4. The Hong Kong Covered Fund must not use leverage exceeding 100% of the fund's net asset value as calculated under the commitment approach provided under 8.9(b) of the UT Code.
5. The Hong Kong Covered Fund must not invest in (i) physical commodities including precious metals or commodity based investments or real estate, or (ii) certificates representing them.
6. The Hong Kong Covered Fund must not be a money market fund, an exchange traded fund, an index fund, or a structured fund as defined in Annex C to this Circular.
7. The Hong Kong Covered Fund must not have share class with hedging arrangement other than currency hedging.
8. The Hong Kong Covered Fund must have at least one dealing day for redemption every two weeks.
9. Should a Hong Kong Covered Fund charge a performance fee, the fee:
  - a. can only be payable no more frequently than annually;
  - b. must be clearly disclosed in offering documents; and
  - c. must be calculated :
    - either, against a benchmark, which is consistent with the risk and reward profile of the fund; or
    - on a high-on-high principle (i.e, the fee can only be payable if the net asset value per unit/share exceeds the net asset value per unit/share on which the performance fee was last calculated and paid). In such case, if a performance fee is levied on the share class(es) offered to the investors in France by the Hong Kong Covered Fund, the reference to which the performance fee (commonly known as high water mark) is calculated must not be reset after AMF authorization of the Hong Kong Covered Fund.

#### Hong Kong Covered Management Company

10. The Hong Kong Covered Management Company must be domiciled in Hong Kong and licensed by the SFC for Type 9 regulated activity (asset management) in accordance with Part V of the SFO.
11. The Hong Kong Covered Management Company and its responsible officers (as defined in Part 1 of Schedule 1 to the SFO) who are licensed for Type 9 regulated activity have not been subject to any of the following disciplinary actions taken by the SFC, in the past 3 years or since the date of the establishment of the Hong Kong Covered Management Company if it has been established for less than 3 years:

- a. with respect to the Hong Kong Covered Management Company, a revocation or suspension of its licence by the SFC pursuant to section 194 of the SFO; and
  - b. with respect to the responsible officers of the Hong Kong Covered Management Company, a revocation or suspension of their licences by the SFC pursuant to section 194 of the SFO.
12. Where the Hong Kong Covered Management Company delegates the investment management decisions to another entity authorized to manage collective investment schemes, such entity is operating in one of the acceptable inspection regimes recognized under 5.1 of the UT Code (AIR Delegate)<sup>11</sup>.

#### Custodian

13. The custodian/trustee appointed by the Hong Kong Covered Fund must be a bank licensed under section 16 of the Banking Ordinance (Chapter 155 of the Laws of Hong Kong); or a subsidiary of such a bank; or a trust company approved by the Mandatory Provident Fund Schemes Authority.

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<sup>11</sup> For the purpose of providing confirmation on Eligibility Requirements pursuant to paragraphs 23 and 45 of this Circular, in addition to confirming the matters listed in Annex B to this Circular, where applicable, the SFC will also confirm to the AMF that it has conducted regulatory check with the authority primarily responsible for regulating the AIR Delegate and is not aware of any regulatory concerns.

## Annex C

### Types of Hong Kong Covered Funds

Terms used in the MRF	Hong Kong definition	Covered under the MRF arrangement
<b>equity fund</b>	<p>A Hong Kong-domiciled general equity fund should comply with the requirements under Chapter 7 of the Code on Unit Trusts and Mutual Funds of the SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products (UT Code).</p> <p>A Hong Kong-domiciled equity fund should invest at least 70% of its non-cash assets in equities.</p> <p>A Hong Kong-domiciled equity fund that invests in financial derivative instruments (FDIs) with commitment leverage of up to 100% of its NAV should comply with the requirements under Chapter 8.9 of the UT Code.</p>	√
<b>bond fund</b>	<p>A Hong Kong-domiciled bond fund should comply with the requirements under Chapter 7 of the UT Code.</p> <p>A Hong Kong-domiciled bond fund should invest at least 70% of its non-cash assets in fixed income securities.</p> <p>A Hong Kong-domiciled bond fund that invests in FDIs with commitment leverage of up to 100% of its NAV should comply with the requirements under Chapter 8.9 of the UT Code.</p>	√
<b>mixed fund</b>	<p>A Hong Kong-domiciled mixed fund should comply with the requirements under Chapter 7 of the UT Code.</p> <p>A Hong Kong-domiciled mixed fund should invest at least 70% of its non-cash assets in a combination of equities and fixed income securities.</p> <p>A Hong Kong-domiciled mixed fund that invests in FDIs with commitment leverage of up to 100% of its NAV should comply with the requirements under Chapter 8.9 of the UT Code.</p>	√
<b>money market fund</b>	<p>A Hong Kong-domiciled money market / cash management fund (MMF) means a collective investment scheme, the sole objective of which is to invest in short-term deposits and debt securities.</p> <p>A MMF should comply with the requirements under Chapter 8.2 of the UT Code.</p>	X

	<p>A MMF seeking SFC's authorization is expected to adopt a variable NAV. For a MMF which adopts a stable / constant NAV and/or use amortised cost accounting for valuation, the MMF should comply with the relevant principles set out in the "Policy Recommendations for Money Market Funds (Final Report)" issued by the International Organization of Securities Commissions dated October 2012.</p>	
<b>ETF</b>	<p>An ETF should comply with the requirements under Chapters 8.6, 8.8 (applicable to ETF which adopts a synthetic replication strategy) and Appendix I of the UT Code.</p> <p>A Hong Kong-domiciled ETF is a collective investment scheme, the principal objective of which is to track, replicate or correspond to a financial index or benchmark, with an aim of providing or achieving investment results or returns that closely match or correspond to the performance of the index or benchmark.</p> <p>A ETF may adopt one or more of the following strategies to achieve the fund's index tracking objective: (i) full replication by investing in a portfolio of securities that replicates the composition of the underlying index; (ii) representative sampling by investing in a portfolio of securities featuring a high correlation with the underlying index, but not exactly the same as those in the index; or (iii) synthetic replication through the use of financial derivative instruments (such as swaps and performance-linked structured products issued by counterparties) to replicate the index performance.</p> <p>SFC-authorized ETFs must be listed on The Stock Exchange of Hong Kong for trading.</p>	X
<b>index fund</b>	<p>An index fund should comply with the requirements under Chapters 8.6 and 8.8 (applicable to index fund which adopts a synthetic replication strategy) of the UT Code.</p> <p>A Hong Kong-domiciled index fund is a collective investment scheme, the principal objective of which is to track, replicate or correspond to a financial index or benchmark, with an aim of providing or achieving investment results or returns that closely match or correspond to the performance of the index or benchmark.</p> <p>An index fund may adopt one or more of the following strategies to achieve the fund's index tracking objective: (i) full replication by investing in a portfolio of securities that replicates the composition of the underlying index; (ii) representative sampling by investing in a portfolio of securities featuring a high correlation with the underlying index, but not exactly the same as those in the index; or (iii) synthetic replication through the use of financial derivative instruments (such as swaps and performance-linked structured products issued by counterparties) to replicate the index performance.</p>	X

<p><b>structured fund</b></p>	<p>A Hong Kong-domiciled structured fund (including index fund / ETF that adopts a synthetic replication strategy) is a collective investment scheme which seeks to achieve its investment objective primarily through investing substantially in FDIs, for example swap or market access products or similar arrangements. A structured fund is passively managed and usually tracks the performance of an index and / or offers structured pay-outs when certain pre-determined conditions are met.</p> <p>The fund should comply with the requirements under Chapter 8.8 of the UT Code.</p>	<p>X</p>
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