

## Investment Management Alert

May 29, 2015

### The CSRC and the SFC Announces Launch of the Mainland-Hong Kong Mutual Recognition of Funds Scheme

#### Introduction

On May 22, 2015, the Hong Kong Securities and Futures Commission (“**SFC**”) and the China Securities Regulatory Commission (“**CSRC**”) issued a joint announcement on the decision to implement the Mainland-Hong Kong Mutual Recognition of Funds Scheme (the “**Scheme**”) and signed a Memorandum of Regulatory Cooperation on Mainland-Hong Kong Mutual Recognition of Funds, which will allow eligible mainland Chinese funds to obtain authorisation from the SFC to offer to retail investors in Hong Kong, and eligible Hong Kong funds to obtain authorisation from the CSRC to offer to retail investors in mainland China.

The Scheme will be implemented on July 1, 2015.

#### Proposed Regulatory Framework issued by the CSRC and the SFC

The CSRC and SFC, respectively, issued the “Provisional Rules for Recognised Hong Kong Funds” and “Circular on Mutual Recognition of Funds between the Mainland and Hong Kong” on May 22, 2015.

The “Provisional Rules for Recognised Hong Kong Funds” and “Circular on Mutual Recognition of Funds between the Mainland and Hong Kong” set out, amongst other requirements, eligibility requirements, application procedures, operational requirements and regulatory arrangements for the recognition of Hong Kong funds for offer in mainland China and mainland Chinese funds for offer in Hong Kong respectively.

As is generally the case with these types of schemes, a quota will operate to limit the total amount that may be raised under the Scheme. The total initial investment quota will be RMB 300 billion “north-bound” for Hong Kong retail funds offered in mainland China and RMB 300 billion “south-bound” for mainland Chinese retail funds offered in Hong Kong.

#### I. Recognised Hong Kong Funds

The CSRC-issued “Provisional Rules for Recognised Hong Kong Funds” (the “**Provisional Rules**”) prescribe that a Hong Kong retail fund will need to satisfy certain requirements and be registered with the CSRC before that fund may be offered in mainland China.

#### Eligibility Requirements

Recognised Hong Kong funds (“**RHKF**”) are defined as unit trusts, mutual funds or other types of collective investment schemes which are domiciled and are operating in Hong Kong, and are offered to the public of Hong Kong in accordance with applicable laws. Each RHKF must have been established for

at least one year, be domiciled in Hong Kong, conduct its operations in Hong Kong; and be approved to be marketed to the public in Hong Kong under supervision of the SFC.

It is anticipated that legislation will be in place in the near future to permit funds domiciled in Hong Kong to be established as open-ended investment companies.

### **Types of Fund**

The RHKF must be an equities fund, hybrid fund, bond fund or index fund (including an index-tracking ETF), and must not be primarily investing in the mainland Chinese market. The CSRC may consider extending the Scheme to include other types of products in future.

### **Assets under Management**

The RHKF must have assets under management (**AUM**) of not less than RMB 200 million (or equivalent in other currencies) and must not have more than 50% of its total AUM raised from distribution in mainland China.

### **Manager**

The RHKF must appoint a manager which is registered and has its operations in Hong Kong, and holds a Type 9 asset management licence (the “**Manager**”). The Manager must not delegate its investment management duties to an investment management company which is located outside Hong Kong, and must not have been the subject of any disciplinary action 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.

### **Agent**

The Manager is required to appoint a qualified mainland Chinese agent to manage the RHKF's operations within mainland China (the “**Agent**”). The Agent must have the approval of the CSRC to perform public fund management or custodial activities. The Agent is responsible for registration of the RHKF with the CSRC, disclosure of information, sales and distribution arrangements, data exchange, settlement, regulatory reporting to the CSRC and client services. The Manager is, however, required to continue to monitor and conduct periodic assessments of the performance of the Agent.

### **Trustee/Custodian**

The RHKF must appoint a trustee and a custodian which fulfils the requirements set out by the SFC.

### **Investment Operations**

The investment activities, custody of assets, fund valuation, subscription, redemption, fee arrangements, taxation, fund investor meetings, amendments to fund constitutive documents, termination, merger or withdrawal of the RHKF must be conducted in accordance with the SFC requirements and applicable legislation in Hong Kong.

### **Sale and Distribution**

The sale and distribution of the RHKF in mainland China must comply with mainland Chinese laws and regulations (including the Provisional Rules). The distribution must be conducted through a qualified distribution agent in mainland China, which may be appointed by the Manager directly or via the Agent.

### **Disclosure of Information**

The disclosure of information in mainland China by the RHKF, including, *inter alia*, the issuance of the offering memorandum and the product key facts statement, shall adopt the same content, format, timing and frequency as those required by the SFC and the applicable legislation under Hong Kong laws. However, the disclosures will need to be supplemented by additional disclosures and information required under the Provisional Rules.

### **Continuing Obligations**

The Manager must adopt appropriate measures to ensure that the RHKF continues to fulfil the qualification requirements provided in the Provisional Rules. The failure to meet the relevant requirements under the Provisional Rules may mean that the sale and distribution of the relevant RHKF may be suspended until the requirements are met.

### **Timing**

The Provisional Rules will come into force on July 1, 2015.

## **II. Recognised Mainland Chinese Funds**

The SFC issued a Circular on Mutual Recognition of Funds between the Mainland and Hong Kong (the “**Circular**”) on May 22, 2015, which provides that recognised mainland Chinese funds (the “**RMF**”) applying for SFC authorisation must meet certain requirements in order for the RMF to be offered to the public of Hong Kong.

### **Eligibility Requirements**

The RMF must be established for more than one year, is managed and operates in accordance with mainland Chinese laws and regulations and its constitutive documents.

### **Types of Fund**

The RMF must be an equities fund, hybrid fund, bond fund or index fund (including an index-tracking ETF), and must not primarily invest in the Hong Kong market. The SFC may consider extending the Scheme to include other types of products in future.

### **AUM**

The requirements regarding AUM required of the RMF is the same as those required of the RHKF under the Provisional Rules. The RMF must have assets under management of not less than RMB 200 million (or equivalent) and the value of shares/units in the fund sold to investors in Hong Kong shall not be more than 50 percent of the value of the fund's total assets.

**Manager**

The manager of the RMF must be registered and operate in mainland China in accordance with the mainland Chinese laws and regulations and be licensed by the CSRC to manage publicly offered securities investment funds. The manager of an RMF must not have been the subject of any major regulatory actions by the CSRC in the past 3 years or, if it has been established for less than 3 years, since the date of its establishment, and cannot delegate its investment management functions to a party operating outside mainland China.

**CSRC Registration**

The RMF must be registered with the CSRC to publicly offer securities investment funds under the Securities Investment Fund Law of mainland China.

**Hong Kong Representative**

Each RMF must appoint a Hong Kong company to be its representative, which must comply with Chapter 9 of the SFC Code on Unit Trusts and Mutual Funds.

**Sale and Distribution**

The sale and distribution of the RMF in Hong Kong must be conducted by intermediaries licensed by or registered with the SFC, and shall comply with the applicable Hong Kong laws and regulations relating to distribution of funds.

**Others**

The Circular further prescribes requirements regarding the appointment of the custodian of the RMF, the investment operations and offering documents of the RMF, and requirements on ongoing disclosures and advertisements of the RMF.

Please see [here](#) for the full Circular.

**Conclusion**

The Scheme marks an important milestone in the mutual opening of the mainland Chinese and Hong Kong capital markets, and, in particular, the opening up of the mainland Chinese funds market to offshore funds. It is expected that the Scheme will enhance the development and cooperation of the mainland Chinese and Hong Kong asset management industries.

**Contact Information**

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