9 June 2017

Investment Products
Securities and Futures Commission
35/F, Cheung Kong Center
2 Queen's Road Central
Hong Kong

Re: Review of Code on Unit Trusts and Mutual Funds (“UT Code Review”)

Dear Sir/Madam,

ICI Global\(^1\) appreciates the time that the Securities and Futures Commission (“SFC”) has spent studying and considering possible areas of regulatory enhancement on the UT Code governing SFC authorized funds. This review is an important undertaking and fundamental to the growth of Hong Kong as an international asset management center.

In general, we support SFC’s intention to align with international regulatory developments and standards, including by looking at the work of the Financial Stability Board (“FSB”) and International Organization of Securities Commissions (“IOSCO”) and the current market practices and approaches in other jurisdictions. Hong Kong is a dynamic, global asset management center with a diverse array of funds available to fund investors. In addition to Hong Kong domiciled funds, there are also funds domiciled in other jurisdictions, such as UCITS, and funds marketed under the various mutual recognition of funds (“MRF”) schemes. These different fund types and structures add significant complexity to the review of the UT code review. Consequently, we believe it is imperative that the SFC carefully consider whether and how the provisions of the UT Code will apply to funds domiciled outside of Hong Kong that are authorized by the SFC. Further, due to the scale of this important and ambitious undertaking, we request that the SFC provide a generous period of time for industry stakeholders to provide feedback as further consultations are issued.

The comments below summarize the specific feedback received and questions posed by ICI Global members during the soft consultation period. The comments are grouped according to the same sections/headings reference used in the soft consultation presentation slides.

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\(^1\) ICI Global carries out the international work of the Investment Company Institute, the leading association representing regulated funds globally. ICI’s membership includes regulated funds publicly offered to investors in jurisdictions worldwide, with total assets of US$25.2 trillion. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of regulated investment funds, their managers, and investors. ICI Global has offices in London, Hong Kong, and Washington, DC.
A. Management companies and investment delegates

We welcome the SFC’s recognition of the importance of being able to leverage group resources for key investment personnel. While we support measures to ensure effective supervisory oversight, we urge the SFC not to raise inappropriate barriers that could restrict a firm’s access to investment expertise. Funds have diverse investment objectives and strategies and a delegation framework that accommodates access to the best expertise needed for a global fund and investor base is essential.

In particular, with respect to affiliated managers, we request that the SFC consider allowing schemes to effect an investment manager change without prior SFC approval so long as (1) the new manager is an affiliate within the same group that is already subject to the Acceptable Inspection Regime and (2) the new manager has already been approved to manage other SFC-authorized funds.

A.2. Minimum capital requirements

We encourage the SFC to compare its proposal regarding minimum capital requirements with the requirements in other key jurisdictions, including with respect to the required amounts and the purpose of the funds. We also recommend that the SFC consider the prior experiences of asset managers in Hong Kong when they have ceased operations and/or needed to access the capital. This information should inform whether any further changes to these requirements are needed.

B. Trustees/custodians

The proposed enhancements regarding trustees/custodians are generally consistent with the approaches currently adopted in other jurisdictions. We are unclear, however, which provisions would apply to offshore domiciled funds, such as UCITS, and request clarification in this regard.

Core investment requirements/restrictions (Chapter 7 of the UT Code)

In general, the proposed enhancements on core investment requirements and restrictions are similar to those implemented in other jurisdictions. With respect to the provisions regarding the “20% Group Limit,” we request that the SFC define the term “same group.”

C. and D. Financial derivative instruments (“FDIs”) and Securities financing transactions (“SFTs”)

FDIs and SFTs are complicated technical areas; they are also very important for efficient portfolio management. As noted above, the SFC has authorized funds domiciled in other jurisdictions, which funds operate under the regulatory framework of both their home jurisdiction and Hong Kong. Consequently, many funds are already subject to specific provisions and restrictions on leverage and the use of FDIs. Prior to making any changes, it is paramount that the SFC understand how the existing limits are affected by any proposed changes, and that it not adopt limits that are too restrictive and could make the Hong Kong fund market less competitive. We highly encourage the SFC to compare the current practices and regulations in Hong Kong against the practices and regulations in other jurisdictions, as well as any international standards. Additionally, we request that the SFC describe the basis and rationale for any proposed changes in the follow-up consultation(s).

E.2. Proposed enhanced disclosure requirements for all SFC authorized funds (slide 18 and 19)
We request that the SFC clarify whether and, if so, how the additional requirements on financial statements would be applied to UCITS and other offshore funds. Additionally, the SFC indicates that UPMFs (i.e., fund of funds) will be removed from Chapter 8 of the UT Code; it is unclear, however, whether UPMFs that are not UCITS will be authorized under Chapter 7 under the revamped UT Code. We request clarification in this regard.

**Money Market Funds (“MMF”)**

With respect to MMF, we request clarification regarding how the SFC’s requirements for MMF will be applied to UCITS or other offshore funds that are MMF and are already subject to MMF regulations applicable in their domicile jurisdiction.

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Thank you very much for your attention. We look forward to working closely with the SFC on the UT Code enhancements. Please do not hesitate to contact me should you require further information.

Yours sincerely,

Qiumei Yang

CEO, ICI Global Asia Pacific