



ISLE OF MAN  
FINANCIAL SERVICES AUTHORITY

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*Lught-Reill Shirveishyn Argidoil Ellan Vannin*

# **COLLECTIVE INVESTMENT SCHEMES**

**CLOSED-ENDED INVESTMENT COMPANIES  
AND OTHER MATTERS: CONSULTATION ON  
DRAFT LEGISLATION**

**CONSULTATION PAPER**

**CP17-04/T05**

Issue Date: 28 April 2017

Closing Date: 26 May 2017

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## CONSULTATION PAPER

This consultation paper is issued by the Isle of Man Financial Services Authority (**'the Authority'**), the regulatory body for the financial sector in the Isle of Man.

The purpose of this consultation is to obtain information, views and evidence in relation to:

- Topic 1 - the widening of the definition of collective investment schemes to include a limited number of Closed-Ended Investment Companies (**'CEICs'**);
- Topic 2 - possible exemption for managers, asset managers, or investment advisers to Specialist Funds; and
- Topic 3 - the draft Collective Investment Schemes (Recognised Schemes) Ireland Order.

***This consultation is relevant to persons providing services to collective investment schemes, as well as to corporate service providers that provide services to closed-ended investment companies.***

The closing date for comments is **26 May 2017**.

Please send comments in writing and preferably by email (but not scanned documents) to:

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### *Confidentiality*

*The information you send may be published in full or in a summary of responses.*

*All information in responses, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2015 and the Data Protection Act 2002). If you want your response to remain confidential you should explain why confidentiality is necessary. Your request will be acceded to only if it is appropriate in the circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding.*

If you have a query in relation to how this consultation has been carried out, please contact the Authority's Policy and Authorisations Division by email at [IOMFSAPOLAUTH@gov.im](mailto:IOMFSAPOLAUTH@gov.im) or by telephone on +44 (0) 1624 646000.

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## GLOSSARY OF TERMS

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<b>Authority</b>	The Isle of Man Financial Services Authority
<b>Association</b>	The Isle of Man Wealth & Fund Services Association
<b>CEIC</b>	Closed-Ended Investment Company
<b>CISA08</b>	The Collective Investment Schemes Act 2008
<b>FSA08</b>	The Financial Services Act 2008
<b>IOSCO</b>	The International Organization of Securities Commissions

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## 1 EXECUTIVE SUMMARY

### 1.1 Overview

This consultation paper covers three distinct topics, however, all relate to collective investment schemes. The three topics are:

- a) Topic 1 - changes to legislation necessary to widen the definition of collective investment schemes to include a limited number of CEICs. This is necessary for the protection of the public and also to meet IOSCO principles, and consists of the draft Collective Investment Schemes (Regulated Fund) Regulations and the draft Collective Investment Schemes (Definitions) Order;
- b) Topic 2 - changes to legislation that may take place if, following a submission by the Association, the Authority determines to introduce an exemption for managers, asset managers or investment advisers to Specialist Funds, and consists of an extract of draft amendments to the Financial Services (Exemption) Regulations; and
- c) Topic 3 - draft amendments to the Collective Investment Schemes (Recognised Schemes) Ireland Order which are housekeeping in nature and simply include reference to new Regulations enacted by the Central Bank of Ireland.

### 1.2 What is this Consultation Paper for?

This consultation paper invites affected parties to consider the text of:

- draft Collective Investment Schemes (Regulated Fund) Regulations (Topic1);
- draft Collective Investment Schemes (Definitions) Order (Topic 1);
- draft possible exemptions for managers, asset managers or investment advisers to Specialist Funds, the draft conditions for which are detailed within the draft amendments to the Financial Services (Exemptions) Regulations (Topic 2); and
- draft Collective Investment Schemes (Recognised Schemes) Ireland Order (Topic 3).

In relation to all topics, especially Topic 2, the Authority would be grateful to receive views on whether any increase in business levels would be anticipated, and also whether any increased risk to the industry or the Island's reputation as a result of the possible exemption may be posed.

Comments should be submitted to the Authority prior to the consultation's closing date.

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### 1.3 Who is affected by this Consultation Paper?

This consultation is particularly relevant to persons providing services to collective investment schemes, as well as to corporate service providers that provide services to closed-ended investment companies.

## 2 CONSULTATION PROCESS

### 2.1 The Authority's regulatory objectives

The Authority's regulatory objectives are set out in section 2(2) of the FSA08 as —

- (a) securing an appropriate degree of protection for policyholders, members of retirement benefits schemes and the customers of persons carrying on a regulated activity;
- (b) the reduction of financial crime; and
- (c) the maintenance of confidence in the Island's financial services, insurance and pensions industries through effective regulation, thereby supporting the Island's economy and its development as an international financial centre.

Proposals in this consultation are intended to further objectives (a) and (c).

The Authority is required to give consideration to certain factors when undertaking its role in accordance with paragraph 3 of Schedule 1 to the FSA08. The factors that are most relevant to this proposal are as follows:

Factor	Information
The need for the regulatory, supervisory and registration regimes to be effective, responsive to commercial developments and proportionate to the benefits which are expected to result from the imposition of any regulatory burden	The possible exemption for managers, asset managers or investment advisers of Specialist Funds would provide parity with some competitor jurisdictions, and may result in a new source of business for the Isle of Man funds sector. The Authority considers that the draft conditions applicable to any exemption, as set out within the draft amendment to the Financial Services (Exemptions) Regulations, are proportionate to the risks associated with this scheme type.
The desirability of implementing and applying recognised international standards	Amendments to the definition of collective investment schemes (to mandatorily include a limited type of closed-ended investment company) is required in order to comply with

Factor	Information
	principles and objectives of securities regulation issued by IOSCO, and will provide an improved level of customer protection for the public. However, the limited mandatory nature of the amendment, coupled with the ability for other CEICs to voluntarily become collective investment schemes seeks to provide proportionality, and improved choice of vehicle.
The international character of the financial services, insurance and pensions industries and their markets and the desirability of maintaining the competitive position of the Island	As detailed in the two boxes above.

The amendment to the Collective Investment Schemes (Recognised Schemes) (Ireland) Order is house-keeping in nature only and simply updates reference to legislation enacted by the Central Bank of Ireland.

## 2.2 Responding to the Consultation Paper

The Authority considers open dialogue with stakeholders as essential in developing its proposals and greatly appreciates comments on the topics in this document. The purpose of this consultation is to gather information, data, views and evidence, from which an informed decision may be made on the topics covered by the paper, and the content of draft proposed legislation.

Please note that your comments may not result in a change to the proposals.

The Authority wishes to encourage submission of views but requests that comments are not submitted anonymously as they will not be considered or included in the Consultation Response.

Professional bodies, trade associations and other representative groups are asked to provide a summary of the people and organisations that they represent when responding, as well as the methodology used to gain members' input.

A list of representative groups to which this Consultation Paper has been sent is shown at Appendix A.

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## 3 PROPOSALS

### 3.1 Topic 1 - Extending the definition of collective investment scheme to encompass some CIECs

- 3.1.1 The former Financial Supervision Commission issued a high-level consultation during 2014 regarding a general review of collective investment schemes legislation. A further consultation was issued during 2015 which detailed those items to be progressed to the next stage of review.

Amongst the proposals outlined within the aforementioned consultation documents was the intention to broaden the definition of a collective investment scheme to include a limited number of closed-ended investment companies ('CEICs'), namely those promoted with the intention of becoming available to the public or any section of it.

The rationale for the amendment is to provide an improved level of customer protection for the public, and also to comply with the objectives and principles of securities regulation issued by IOSCO. The IOSCO principles apply equally to closed and open-ended investment companies, and in relation to, and for the protection of retail consumers.

- 3.1.2 The Authority has since engaged in informal discussion with representatives of the Regulatory Sub-Committee of the Association regarding this matter to refine the proposals.

A copy of the draft legislation is attached at Appendices B and C.

- 3.1.3 Appendix B is the draft Collective Investment Schemes (Definitions) Order showing changes in tracked form. The specific areas on which to focus are the Interpretation Article 3, and Article 5(2).

Article 3 contains many new definitions that are simply required due to updating the definition of "near cash" to match the more modern definition in other collective investment schemes legislation, however, for the purposes of CEICs the key definition is that of "closed-ended investment company".

Article 5(2)(b) specifies when a CEIC will mandatorily be a collective investment scheme, which, in brief, is where it is NOT listed on a securities market supervised by an ordinary member of IOSCO and its units are promoted with the intention of becoming available to the public or any section of it.

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Article 5(2)(c) provides for a closed-ended company to elect to be a collective investment scheme voluntarily (even if it is, for example, listed, or is not promoted to the public). This election mechanism was requested by the Association.

Articles 5(3) and (4) specifies when a CEIC's units are not intended to become available to the public.

Article 5(5) clarifies that CEICs established before the coming into operation of the draft legislation will not be collective investment schemes unless they elect to be so, or they accept investments in units from the public after that date.

- 3.1.4 Appendix C is the draft Collective Investment Schemes (Regulated Fund) Regulations. The Authority considers that for those CEICs that are in future caught by the definition of a collective investment scheme (whether mandatorily or voluntarily), the most suitable scheme type is the Regulated Fund. Following discussion with the Association, members of the Regulatory Sub-Committee advised the Authority that combined Regulations would be preferable to separate Regulations for open-ended and closed-ended.
- 3.1.5 The text in Appendix C shows changes from the current Regulated Funds Regulations in red text if the changes are CEIC related, and in blue text where the changes are those required for IOSCO principle purposes (and thus apply to open-ended structures as well as CEICs). The text in black is as currently found in the Regulated Fund Regulations.

## **3.2 Topic 2 – Possible exemptions for managers, asset managers or investment advisers of Specialist Funds**

- 3.2.1 The Association submitted proposals to the Authority outlining possible exemptions for managers, asset managers, or investment advisers to Specialist Funds. Acting as a manager, asset manager or investment adviser to a collective investment scheme is a licensable activity under the Regulated Activities Order 2011 – Class 3(6) and Class 3(7) respectively. Some jurisdictions, such as the British Virgin Islands, Cayman and Bermuda, permit various exemptions for the provision of such services; the Isle of Man's current offering is more restricted. The Association considers that permitting suitable exemptions will support the Isle of Man's funds sector in competing for business, and may encourage the establishment of new Specialist Funds.
- 3.2.2 The Authority considers that an all-encompassing exemption is not appropriate, however, an exemption conditional upon certain restrictions, may be contemplated, subject to there being a sufficient business case for the expenditure of its resources on this matter, and subject to risk being adequately addressed. Draft conditions for exemption are outlined under section 3.9(2) of Appendix D.

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- 3.2.3 The draft exemption is contingent upon the requirement for an Isle of Man licensed Administrator to be responsible for the oversight of the Specialist Fund Exempt Person. This provides the Authority with recourse to the Isle of Man licensed Administrator regarding any compliance matters.
- 3.2.4 In addition, it is considered that an increased minimum initial investment amount of \$250,000 (or equivalent in any other currency) for those schemes utilising such an exemption will be required.
- 3.2.5 Amendment to secondary legislation, namely the Financial Services (Exemptions) Regulations 2011, would be sufficient to achieve the possible changes. This is because the provision of administration services to the Specialist Fund Exempt Person is within the parameters of Class 3(9) of the Regulated Activities Order 2011; “Providing management or administration services to a person acting as mentioned in paragraphs (1),(2),(6) or (7)”.

### **3.3 Topic 3 – Draft Collective Investment Schemes (Recognised Schemes) Ireland Order**

- 3.3.1 Recognised Schemes are collective investment schemes authorised under the laws of other countries and which are of a type specified in an Order made by the Authority. The benefit of such Orders is that they enable the Recognised Schemes to be promoted to retail investors in the Island, so that residents of the Isle of Man can have access to a variety of investment options, including retail funds.
- 3.3.2 The CISA08 allows the Authority to make such Orders only if it is satisfied that adequate protection will be afforded to participants in the schemes covered by those Orders.

The Collective Investment Schemes (Recognised Schemes) Order 2011, replaced its 2003 equivalent, but since that date Ireland has introduced new regulations which list collective investment schemes authorised by the Central Bank of Ireland. Therefore there is a need to replace the 2011 Order, so as to keep the Isle of Man’s legislation in line with that of Ireland.

The attached draft Order (Appendix E) only differs from the 2011 Order in that it refers to the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 instead of the 2003 predecessor. Technical details of Ireland’s schemes have been confirmed with the Irish regulatory authority.

The change will not represent a reduction in protection for investors in the Isle of Man as the relevant schemes will still need to be notified to the Authority and meet applicable protection requirements.

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## **4 IMPACT ASSESSMENT**

The Authority is very aware of the cost of regulation and seeks to meet its regulatory objectives with minimum negative impact.

### **4.1 Topic 1 - Extending the definition of collective investment scheme to encompass some CIECs**

4.1.1 The mandatory extension of the definition of collective investment scheme has been specifically chosen so as to go no further than is necessary for the purposes of compliance with IOSCO principles and to protect the public – and so to reduce any unnecessary impact. The Authority’s previous consultations and discussions on this topic suggest that there are very few CEICs that will fall into this mandatory definition.

4.1.2 Furthermore, the introduction of an ability for a CEIC to voluntarily become a collective investment scheme provides the industry with added flexibility.

### **4.2 Possible exemptions for managers, asset managers or investment advisers of Specialist Funds**

4.2.1 It is clear that the Association believes that the impact of the possible exemptions will be beneficial to the Island’s funds industry.

4.2.2 The Authority would like to understand further the anticipated benefit, especially if this is quantifiable, and there is a specific question in relation to this matter posed below.

4.2.3 The Authority is also cognisant of the fact that along with any exemption, also comes risk, and it is important that risks are mitigated. In order to mitigate risks the possible exemption applies only to the Island’s most institutional of fund types, and the increased minimum investment amount of \$250,000 further assists in preventing ‘non-specialists’ from investing in such schemes. Likewise the use of an Isle of Man Administrator with certain responsibilities also balances the exemption and provides for a form of industry oversight.

### **4.3 Draft Collective Investment Schemes (Recognised Schemes) (Ireland) Order**

4.3.1 It is not anticipated that there will be any impact on regulated entities, investors or other persons as a result of the draft Order, which is purely housekeeping in nature.

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## 5 QUESTIONS

### Question

Question 1. General. Do you have any general comments or observations on any of the topics set out in this consultation?

Question 2: Topic 1. The Draft Collective Investment Schemes (Definitions) Order make provisions that enable a CEIC that does not meet the mandatory description of a collective investment scheme to elect to opt-in to the regime. Please provide comment as to whether, and in what circumstances, you envisage this provision may be utilised?

Question 3: Topic 1. Feedback provided following the high-level consultation in 2014 and the subsequent consultation in 2015, indicated that the number of CEICs included within the mandatory requirement would be minimal. The Authority would welcome further feedback in relation this matter.

Question 4: Topic 2. In relation to the possible exemption, the Authority considers that in order to benefit from this exemption it is important that the fund to which the SF exempt person provides services to is clearly institutional in nature. It is therefore determined that funds with a minimum initial contribution of at least \$250,000 would tend to reflect that institutional nature, whereas the standard minimum initial contribution applying to Specialist Funds (\$100,000) is less clear, especially given the effect of inflation and the passage of time since that value was originally set. Comments on this point would be welcomed, especially regarding whether the figure of \$250,000 or a lesser figure (but which is greater than \$100,000) should apply.

Question 5: Topic 2. Do you anticipate that the introduction of the possible exemption may pose increased risk to consumers / regulated entities and/or the reputation of the Isle of Man as an international financial centre? Please provide details.

Question 6: Topic 2. Please indicate whether you would utilise any exemption, and provide approximate quantitative data where possible, such as the estimated volume of business to be derived from the exemption (for example, the number of new funds, and the size and value of new business/assets under management).  
Examples whereby licenced entities have lost business to jurisdictions offering a similar exemption would also be useful.

## 6 NEXT STEPS

Following the closure of the consultation period the Authority will publish a summary of the comments received on its [consultations webpage](#).

After consideration of views expressed in response to the consultation, in relation to Topics 1 and 3 the Authority will seek to progress the draft legislation in 2017, with the aim of it coming into operation as soon as is practical.

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In relation to Topic 2, after consideration of views expressed in response to the consultation, and specifically any data provided by respondents as to the benefits and risks of taking the exemption forward, the Authority will consider whether to progress the amendment to legislation.



**APPENDIX A – LIST OF REPRESENTATIVE GROUPS WHO HAVE BEEN SENT THIS CONSULTATION PAPER**

- Alliance of Isle of Man Compliance Professionals
- Association of Corporate Service Providers
- Isle of Man Wealth & Fund Services Association.



## APPENDIX B – DRAFT COLLECTIVE INVESTMENT SCHEMES (DEFINITIONS) ORDER

Statutory Document No. XX\XX

### COLLECTIVE INVESTMENT SCHEMES ACT 2008

#### COLLECTIVE INVESTMENT SCHEMES (DEFINITION) ORDER 20XX

*Approved by Tynwald*                      20XX

*Coming into operation*                      20XX

The Isle of Man Financial Services Authority, after consulting in accordance with section 24(13) of the Collective Investment Schemes Act 2008<sup>1</sup>, makes this Order under section 1(5) of that Act.

#### **1. Title**

This is the Collective Investment Schemes (Definition) Order 20XX.

#### **2. Commencement**

If approved by Tynwald<sup>2</sup>, this Order comes into operation on XX 20XX.

#### **3. Interpretation**

In this Order –

“the Act” means the Collective Investment Schemes Act 2008;

“approved bank” means –

- (a) a person, in respect of which a financial services licence issued under the Financial Services Act 2008<sup>3</sup> is in force, which permits the carrying on of a regulated activity falling within Class 1(1) or 1(2); and

<sup>1</sup> 2008 c.7

<sup>2</sup> As required by section 25 of the Act.

<sup>3</sup> 2008 c.8

- (b) any person who is authorised under the law of a member state to carry on a business which is a banking business for the purposes of that member state's law; or
- (c) a firm authorised to carry on a banking or deposit-taking business under the law of any other country or territory which is acceptable to the Authority;

"the Authority" means the Isle of Man Financial Services Authority;

"cash" includes foreign currency;

"certificates representing securities" has the meaning given in Part 1 of Schedule 2 to the Regulated Activities Order 2011<sup>4</sup>;

"close relative", in relation to an individual, means a child, step-child, parent, step-parent, brother, sister, step-brother, step-sister or spouse of that individual;

"closed-ended investment company" means a body corporate-

- (a) which seeks to raise capital from investors for the sole purpose of investing that capital in accordance with a defined investment policy; and
- (b) in which the rights of participants, represented by shares or securities of that body corporate, are not redeemable in normal circumstances out of funds provided by the closed-ended investment company at the election of the holders of the shares or securities;
- (c) but, for the avoidance of doubt, and unless the Authority provides prior consent, an investment company that has been open-ended, shall remain open-ended for the purposes of this Order, despite becoming closed-ended;

"deposit" has the meaning given in Part 1 of Schedule 2 to the Regulated Activities Order 2011;

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<sup>4</sup> [SD 2011/0884 as amended by SD 2013/0373 and SD 2016/0188](#)

“functionary” includes the governing body, a member of the governing body and a person appointed to provide services to a collective investment scheme, including (without limitation) a manager, administrator, fiduciary custodian, trustee, custodian, asset manager, investment adviser or promoter;

“governing body” has the same meaning as in the Act but also includes the directors of a scheme which is a closed-ended investment company;

“Government and other public securities” means investments within the meaning given in Part 1 of Schedule 2 to the Regulated Activities Order 2011, and which are issued by or on behalf of:

(a) the Government of the Island, or of a member state;

(b) a local authority in the Island or in any member state;

(c) the Government of any country or territory; or

(d) an international organisation the members of which include a member state,

and includes investments which would fall within the meaning given in Part 1 of Schedule 2 to the Regulated Activities Order 2011 if that Part extended to investments guaranteed by the Government of the Island;

“near cash” means money, deposits or investments which fall within any of the following –

(a) money deposited with an approved bank which is in:

(i) a current account; or

(ii) a deposit account, if the money can be withdrawn immediately and without payment of a penalty exceeding 7 days’ interest calculated at ordinary commercial rates;

(b) certificates of deposit issued by an approved bank if immediately redeemable at the option of the holder;

(c) Government and other public securities, if redeemable at the option of the holder or bound to be redeemed within 2 years;

(d) a bill of exchange issued by any Government or body which is the issuer of a Government and other public security;

(e) deposits with a local authority of a kind which fall within paragraph 9 of Part II of Schedule 1 to the Trustee Investments Act 1961<sup>(h)</sup> of Parliament, and equivalent deposits with any local authority in a member state, if the money can be withdrawn immediately and without payment of a penalty as described at (a) above; and

(f) investments of a kind described in paragraphs 1 and 2 of Schedule 1 to the Trustee Investments Act 1961 of Parliament, and equivalent investments which are issued or guaranteed by any Government of a country or territory;

“member state” means a member state of the European Union or of the European Economic Area;

“securities” has the meaning given in Part 1 of Schedule 2 to the Regulated Activities Order 2011;

“units” has the same meaning as in the Act and also includes shares or securities in a closed-ended investment company; and

“US\$” means United States Dollars and its equivalent in any other currency, and a figure expressed in US\$ includes its equivalent value in that other currency.

#### **4. Characteristics of arrangements which do not amount to a collective investment scheme under section 1 of the Act**

Arrangements do not amount to a collective investment scheme if –

- (a) the property to which the arrangements relate (other than cash awaiting investment) consists of shares, debentures, government securities, instruments, certificates representing securities, long-term insurance or

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<sup>(h)</sup> [1961 c.62](#)

units in relation to authorised or recognised collective investment schemes (as those terms are defined in Part 1 of Schedule 2 to the Regulated Activities Order 2011);

- (b) each participant is the owner of a part of that property and entitled to withdraw it at any time; and
- (c) the arrangements do not have the characteristics mentioned in section 1(3)(a) of the Act and have those mentioned in section 1(3)(b) only because the parts of the property belonging to different participants are not bought and sold separately except where a person becomes or ceases to be a participant.

#### **5. Arrangements which do not amount to a collective investment scheme under section 1 of the Act**

**(1)** The following are not collective investment schemes -

- (a) arrangements operated by a person otherwise than by way of business;
- (b) arrangements where each of the participants carries on a business (other than investment business as that term is defined in Class 2 of Schedule 1 to the Regulated Activities Order 2011) and enters into the arrangements for commercial purposes related to that business;
- (c) arrangements where each of the participants is a body corporate in the same group as the governing body, manager or administrator;
- (d) arrangements where -
  - (i) each of the participants is a *bona fide* employee or former employee (or the wife, husband, widow, widower, child or step-child under the age of eighteen of such an employee or former employee) of a body corporate or of another body corporate in the same group as that body corporate; and
  - (ii) the property to which the arrangements relate consists of cash or near cash or of securities in or of a member of that group;
- (e) arrangements where the entire contribution of each participant is a deposit or a sum -
  - (i) paid by a deposit taker;

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- (ii) paid by a person in the course of carrying on a business consisting wholly or mainly of lending money;
  - (iii) paid by one company to another at a time when the same person would be treated as the controller of both of them if, in the definition of controller in section 26 of the Act, the percentage referred to in paragraph (d) of that definition was 50 per cent;
  - (iv) which is paid by a person who, at the time when it is paid, is the spouse or a close relative of the person receiving it or who is, or is the spouse or a close relative of, a director or controller of that person;
- (f) franchise arrangements, that is to say, arrangements under which a person earns profits or income by exploiting a right conferred by the arrangements to use a trade name or design or other intellectual property or the goodwill attached to it;
- (g) arrangements the predominant purpose of which is to enable persons participating in them to share in the use or enjoyment of a particular property or to make its use or enjoyment available gratuitously to other persons;
- (h) arrangements under which the rights or interests of the participants are certificates representing securities;
- (i) arrangements the purpose of which is the provision of clearing services and which are operated by an authorised person, a recognised clearing house or a recognised investment exchange;
- (j) contracts of insurance;
- (k) occupational pension schemes;
- (l) a limited partnership formed under the law of the Island whose interests are admitted to the Official List of the UK Listing Authority, and in this paragraph “**interests**” means –
- (i) limited partnership interests of an irredeemable nature however termed; and
  - (ii) depositary receipts or similar certificates representing such interests;
- (m) bodies incorporated under the law of the Island, or of, or of any part of, the United Kingdom, relating to building societies, credit unions or industrial

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and provident societies or registered under any such law relating to friendly societies.

(2) But, without prejudice to the generality of (1), a body corporate will be a collective investment scheme under section 1 of the Act if it meets the provisions of section 1 of the Act, and also meets the provisions of (a), (b) or (c) –

(a) it is an open-ended investment company; or

(b) it is a closed-ended investment company and-

(i) its units are not listed or admitted to trading on a securities market supervised for the purposes of market abuse by an Ordinary Member of the International Organization of Securities Commissions; and

(ii) its units are promoted by, or on behalf of, its board in such a way that the existence thereof is intended to become available to the public or any section of it; or

(c) not without the prior consent of the Authority, it is a closed-ended investment company that does not meet the description in (2)(b) but it has nevertheless elected, by a majority of participants constituting at least 75% of the total number of votes cast, to be a collective investment scheme in the documents constituting the company.

(3) For the purposes of (2)(b)(ii) and (5)(a), if-

(a) the documents constituting the company prohibit offers to the public or any section of it and the number of participants is limited to a maximum of 49; or

(b) there is a minimum initial investment level for its units of at least US\$ 100,000,

a closed-ended investment company's units are not intended to become available to the public or any section of it.

(4) For the purposes of (2)(b)(ii) and (5)(a), and without prejudice to the generality, the following shall not be considered to be the public or any section of it-

- (a) a person, body corporate, partnership, trust or other unincorporated association whose ordinary business or professional activity includes acquiring, underwriting, managing, holding or disposing of investments, whether as principal or agent, or giving advice about investments;
- (b) any director or partner of or consultant to a person referred to in (a);
- (c) a functionary, or an associate of a functionary, to the closed-ended investment company;
- (d) an employee, director or shareholder of, or consultant to a person in (c), who is acquiring the investment as part of his remuneration, or an incentive arrangement or by way of co - investment;
- (e) a trustee of a family trust settled by or for the benefit of, one or more persons referred to in (c) or (d);
- (f) a trustee or operator of any employment benefit or executive incentive scheme, or trust established for the benefit of persons referred to in (c) or (d), or their dependents;
- (g) a government, local authority, public authority or supra - national body in the Isle of Man or elsewhere;
- (h) a company, partnership, trust or other association of persons which has (or which is a wholly - owned subsidiary of a body corporate which has) assets of at least US\$1,000,000 available for investment;
- (i) an individual with a net worth, or joint net worth with their spouse, greater than US\$ 1,000,000, excluding their principal place of residence.

(5) For the avoidance of doubt, and despite (2)(b), a closed-ended investment company established before the coming into operation of this Order (“that date”) shall only be a collective investment scheme if-

- (a) it accepts investments in units from the public or any section of it, or persons who are not existing holders of units in the closed-ended investment company on or after that date; or
- (b) it elects to become a collective investment scheme under 2(c) on or after that date.

**6. Revocation**

The Collective Investment Schemes (Definition) Order 2008<sup>5</sup> is revoked.

Made 20~~XX~~.

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**Member of the Isle of Man Financial Services Authority**

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**Member of the Isle of Man Financial Services Authority**

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<sup>5</sup> [SD 462/2008](#)



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**APPENDIX C – DRAFT COLLECTIVE INVESTMENT SCHEMES (REGULATED FUND)  
REGULATIONS**

**COLLECTIVE INVESTMENT SCHEMES ACT 2008**

**COLLECTIVE INVESTMENT SCHEMES**

**(REGULATED FUND) REGULATIONS 2017**

*Approved by Tynwald* XXXXX

*Coming into operation* XXXXXX

The Isle of Man Financial Services Authority, after consulting in accordance with section 24(13) of the Collective Investment Schemes Act 2008<sup>6</sup>, makes these Regulations under section 24(1) of and Schedule 2 paragraphs 2(14) and 3(4) to that Act.

**1 Title**

These Regulations are the Collective Investment Schemes (Regulated Fund) Regulations 2017.

**2 Commencement**

These Regulations come into operation on XXXX.

**3 Interpretation**

(1) In these Regulations —

“**the Act**” is the Collective Investment Schemes Act 2008;

“**appropriate auditor**” is a person that is qualified for appointment as auditor of a company under sections 14 to 14H of the Companies Act 1982<sup>7</sup>, and –

(a) has a permanent place of business on the Island;

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<sup>6</sup> 2008 c.7

<sup>7</sup> 1982 c.2

- 
- (b) is covered by Professional Indemnity insurance of at least £20 million;
  - (c) is independent of the fund, having regard to auditing standards and the code of ethics of the body of accountants of which he is a member;

**“the Authority”** means the Isle of Man Financial Services Authority;

**“closed-ended investment company”** means a body corporate-

- (a) which seeks to raise capital from investors for the sole purpose of investing that capital in accordance with a defined investment policy; and
- (b) in which the rights of participants, represented by shares or securities of that body corporate, are not redeemable in normal circumstances out of funds provided by the closed-ended investment company at the election of the holders of the shares or securities;
- (c) but, for the avoidance of doubt, and unless the Authority provides prior consent, an investment company that has been open-ended, shall remain open-ended for the purposes of the Collective Investment Schemes (Definition) Order 2017, despite becoming closed-ended;

**“financial statements”** are annual financial statements and interim financial statements prepared in accordance with regulation 38;

**“functionary”** includes the governing body, a member of the governing body and a person appointed to provide services to a fund, including (without limitation) a manager, administrator, fiduciary custodian, trustee, asset manager, investment adviser or promoter;

**“generally accepted accounting principles or practice”** has the same meaning as in section 3A of the Companies Act 1982;

**“governing body”** has the same meaning as in the Act and also includes the directors of a scheme which is constituted as a closed-ended investment company;

**“launch date”** is the date of publication of the fund’s initial offering document and, unless the contrary is proved, will be the date of that offering document;

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**“regulated fund”** is a type of full international fund under Schedule 2 paragraph 2 to the Act and “fund” is to be construed as a regulated fund for the purpose of these Regulations;

**“securities”** has the meaning given in Part 1 of Schedule 2 to the Regulated Activities Order 2011;

**“units”** has the same meaning as in the Act and also includes shares or securities in a closed-ended investment company; and

**“Vetting Forms”** means personal questionnaires issued by the Authority.

- (2) A reference to “US\$” is to United States Dollars and its equivalent in any other currency and a figure expressed in US\$ includes its equivalent value in that other currency.

## THE GOVERNING BODY

### 4 Composition of the governing body

- (1) With the exception of funds constituted as unit trusts, a fund’s governing body must include at least 1 natural person who is resident in the Isle of Man.
- (2) The governing body of a fund constituted as a unit trust will be the trustee.

### 5 Appointment of a member to the governing body

- (1) Each member of a fund’s governing body must be fit and proper to act in that capacity.
- (2) Before being appointed to the governing body, **an individual proposed as a member** must complete and submit Vetting Forms to the Authority.
- (3) The Vetting Forms referred to in paragraph (2)–
- (a) form part of the materials required in support of a request to act as manager of a fund under regulation 9;
  - (b) form part of the materials required in support of a request to continue to act as manager of a fund where it is proposed that a new **individual** member is appointed to the fund’s governing body under regulation 10(1)(a).

- 
- (4) Where the Authority objects to the proposed appointment to act as a member of a fund's governing body, the appointment shall not take effect.

## **6 Ceasing to be a member of the governing body**

- (1) Where a member of the governing body is removed, resigns or is not reappointed at the end of **that member's** term of office, that member must notify the Authority without delay, stating the reasons for the change in the governing body's membership.
- (2) The notice in paragraph (1) can initially be made by any reasonable means however verbal notification must be followed by letter or email within 5 working days.

## **7 Duties of the governing body**

- (1) The governing body of a fund is responsible for ensuring that —
- (a) these regulations are complied with;
  - (b) the fund's offering document and relevant constitutional documents comply with the Act and these regulations;
  - (c) the fund is and continues to be managed and operated in accordance with the fund's offering document and constitutional documents;
  - (d) the fund's offering document accurately sets out all material information which, at the date of the offering document, is known by the governing body (or which any member of the governing body could have obtained by making reasonable enquiries at that time) and which is relevant to an investor or potential investor making an informed judgement about whether to invest in the fund;
  - (e) no offering document is issued to investors or potential investors unless, at the date it is issued to such persons, it is up to date in accordance with sub-paragraph (d);
  - (f) the manager of the fund is notified of all changes to the fund and arrangements for the fund and provided with a copy of all amended offering and constitutional documents without delay;

- 
- (g) investors in the fund are informed in a timely manner of material changes to the fund and the anticipated impact of such changes;
  - (h) within 6 months of the first anniversary of the launch of the fund, within 6 months of the fund's financial year-end thereafter and immediately prior to the fund ceasing to be a fund, an annual compliance declaration in the format and containing the information specified by the Authority is signed by the governing body and submitted to the Authority;
  - (i) the responsibilities imposed upon the manager under regulation 13 are discharged;
  - (j) a minimum subscription amount appropriate to the fund is determined, **unless the fund is constituted as a closed-ended investment company when a minimum investment amount appropriate to the fund must be determined**; and
  - (k) **the provisions which will apply if the initial subscription or investment value (as the case may be) for launch of the fund is not successful, are determined.**
- (2) The governing body must sign a statement of responsibility in the format and containing the information specified by the Authority in relation to the initial, and any amended, offering documents. The governing body must submit the statement of responsibility to the Authority prior to the fund's proposed launch date (in relation to the initial offering document) or prior to the issue to investors of an offering document which contains a material change.

## FUNCTIONARIES

### 8 Independence of the manager

- (1) **Where a fund is not constituted as a closed-ended investment company, the manager and fiduciary custodian or trustee of a fund must be different persons.**
- (2) **Where a fund is constituted as a closed-ended investment company, the manager and custodian of a fund must be different persons.**
- (3) **The governing body must appoint-**

- 
- (a) a manager that is independent of itself; and
  - (b) if the fund is constituted as a closed-ended investment company, at least one custodian, who must be a different person from the manager.
- (4) Where the manager and fiduciary custodian or trustee of a fund **not constituted as a closed-ended investment company** are or will be bodies corporate with the same ultimate parent company –
- (a) the manager and fiduciary custodian or trustee must be wholly owned subsidiary companies of a corporate group and must not be subsidiaries of each other;
  - (b) no individual should be in day to day control of both the business of the manager and fiduciary custodian or trustee;
  - (c) a signed undertaking satisfactory to the Authority must be given by the ultimate parent company, in respect of:-
    - (i) the proper performance by the manager and fiduciary custodian or trustee of their respective obligations in respect of the fund;
    - (ii) the existence of effective arrangements to ensure that the manager and fiduciary custodian or trustee at all times act independently of one another; and
    - (iii) compliance with the requirements of sub-paragraphs (a) and (b); and
  - (d) full disclosure of the fact that the manager and fiduciary custodian or trustee are common group companies must be made in the offering documents.
- (5) **Where the manager and custodian of a fund constituted as a closed-ended investment company are or will be bodies corporate with the same ultimate parent company –**
- (a) the manager and custodian must be wholly owned subsidiary companies of a corporate group and must not be subsidiaries of each other;
  - (b) no individual should be in day to day control of both the business of the manager and custodian;

- 
- (c) a signed undertaking satisfactory to the Authority must be given by the ultimate parent company, in respect of:-
    - (i) the proper performance by the manager and custodian of their respective obligations in respect of the fund;
    - (ii) the existence of effective arrangements to ensure that the manager and custodian at all times act independently of one another; and
    - (iii) compliance with the requirements of sub-paragraphs (a) and (b); and
  - (d) full disclosure of the fact that the manager and custodian are common group companies must be made in the offering documents.

## **9 Appointment to act as manager**

- (1) Where a manager wishes to act for a new regulated fund, the manager must –
  - (a) request the Authority's agreement to its acting as manager of the fund; and
  - (b) submit draft fund constitutional documents, offering document, material agreements and other specified documents,in line with the approval process set out in Schedule 2.
- (2) If by the end of 3 months from the submission of the request in paragraph (1) the Authority has not –
  - (a) approved to the manager's appointment;
  - (b) refused the manager's appointment; or
  - (c) notified the manager that it requires additional time to consider the application,the Authority will be deemed to have approved the manager's appointment.
- (3) The Authority's approval of the manager's appointment may be subject to conditions.

- 
- (4) The manager must submit copies of the final executed documents required by sub-paragraph (1)(b) to the Authority within 10 working days of the fund's launch date.

## 10 Changes to a fund

- (1) Where a fund –
- (a) proposes to appoint or remove –
    - (i) a member or member(s) of the governing body;
    - (ii) an administrator;
    - (iii) a fiduciary custodian or trustee;
    - (iv) a custodian or sub-custodian;
    - (v) an asset manager or investment adviser; or
    - (vi) promoter; or
  - (b) proposes a material delegation of the duties of any of the [functionaries listed in \(a\) \(i\) to \(vi\); or](#)
  - (c) proposes to make a material alteration to the fund's constitutional documents, offering document and material agreements,  
the manager must follow the procedure in paragraph (2).
- (2) In the circumstances in paragraph (1), the manager must –
- (a) send a request to the Authority to continue to act as manager of the fund in the format and containing the information specified by the Authority; and
  - (b) submit black lined versions of any revised draft fund constitutional documents, offering document and material agreements or other specified documents where material changes have been made.
- (3) If by the end of 1 month from the submission of the request and documentation required in paragraph (2) the Authority has not –
- (a) approved to the manager's continued appointment;
  - (b) refused the manager's continued appointment; or

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(c) notified the manager that it requires additional time to consider the proposed changes,

the Authority will be deemed to have approved the manager's continued appointment.

- (4) The Authority's approval of the manager's continued appointment may be subject to conditions.
- (5) The manager must submit copies of the final executed documents required by sub-paragraph (2)(b) to the Authority within 10 working days of their execution.

## **11 Appointment of a new manager**

(1) Where a fund wishes to appoint a new manager, the **intended** manager must follow the procedure in paragraph (2).

(2) In the circumstances in paragraph (1), the **intended** manager must –

(a) request the Authority's agreement to its acting as manager of the fund in the format and containing the information specified by the Authority; and

(b) submit black lined versions of any revised draft fund constitutional documents, offering document and material agreements or other specified documents.

(3) If by the end of 3 months from the submission of the request and documentation required in paragraph (2) the Authority has not –

(a) approved to the manager's appointment;

(b) refused the manager's appointment; or

(c) notified the fund that it requires additional time to consider the proposed appointment,

the Authority will be deemed to have approved the manager's appointment.

(4) The Authority's approval of the manager's appointment may be subject to conditions.

- 
- (5) The manager must submit copies of the final executed documents required by sub-paragraph (2)(b) to the Authority within 10 working days of their execution.

## 12 Removal of a manager

- (1) Where a manager wishes to cease being the manager of a fund, or is being removed as the manager of a fund, the manager must notify the Authority of the intended cessation or removal. **Such notification, must be in conjunction with the fiduciary custodian or trustee where the fund is not constituted as a closed-ended investment company.**
- (2) The notification in paragraph (1) must be accompanied by full details of –
  - (a) the circumstances surrounding the intended cessation or removal; and
  - (b) any material concerns that they may have about the fund, its governing body or its functionaries.
- (3) If by the end of 3 months from the submission of the notification the Authority has not notified the manager that it –
  - (a) has approved the manager's cessation or removal;
  - (b) refused the manager's cessation or removal; or
  - (c) requires additional time to consider the proposed changes, the Authority will be deemed to have approved the manager's cessation or removal.
- (4) The Authority's decision about the manager's cessation or removal may be subject to conditions.
- (5) For the avoidance of doubt, the provisions of this regulation shall not apply where the removal or cessation is due to the scheme being wound up, dissolved or otherwise ceasing to be in existence.

## 13 Responsibilities of a manager

- (1) The manager must notify the Authority —
  - (a) without delay —

- 
- (i) if it determines that the fund has not been managed or operated in accordance with the provisions of its constitutional or offering document;
  - (ii) if it becomes aware that any of the requirements in these Regulations have not been complied with;
  - (iii) if it becomes aware that a member of the governing body has been removed, resigned or not reappointed at the end of [that member's](#) term of office; and
  - (iv) when it becomes aware that the fund's auditor has been removed, resigned or has not been reappointed at the end of its term of office, of that fact;
  - (v) [when, for a fund not constituted as a closed-ended investment company, it determines that redemptions will be suspended;](#) and
  - (vi) [when it becomes clear that the initial subscription or investment value \(as the case may be\) for launch of the fund has not been successful;](#)
  - (vii) [if, for a fund constituted as a closed-ended investment company, it becomes aware of any proposal to reconstruct, amalgamate, terminate prematurely or extend the life of the fund;](#)
- (b) as soon as reasonably practicable after receiving —
- (i) an audit report on a fund's financial statements that
    - (A) has been qualified by the auditor; or
    - (B) contains an emphasis of matter; or
  - (ii) a management letter (or equivalent) in relation to the fund's audit which notes significant issues.
- Notifications in accordance with sub-paragraphs (i) and (ii) must be accompanied by a copy of the audit report or management letter (or equivalent) together with details of any remedial action that the governing body, manager or any other party intends to take;
- (c) within 10 working days, where the fund's audited annual financial statements have not been distributed in accordance with regulation

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40 of that fact and every four weeks thereafter until they have been issued and distributed. Each notification must —

- (i) give details of the issues giving rise to the delay;
  - (ii) contain a revised timetable for distribution of the audited annual financial statements;
  - (iii) be signed by, or on behalf of, the manager; and
  - (iv) be accompanied by –
    - (A) a copy of any shareholder communication regarding the delay; or
    - (B) if no shareholder communication has been issued, the reasons for, and **for a fund not constituted as a closed-ended investment company**, the written consent of the fiduciary custodian to, not issuing such a communication.
- (2) The manager must –
- (a) satisfy itself that the fund is being managed and operated in accordance with the provisions of its constitutional and offering documents;
  - (b) ensure that adequate procedures and controls have been implemented which are appropriate for the fund and include procedures and controls relating to –
    - (i) the fund's corporate governance arrangements;
    - (ii) compliance arrangements for the fund and services provided to the fund by the manager;
    - (iii) accuracy of pricing;
    - (iv) monitoring of investment and borrowing powers and restrictions;
    - (v) monitoring of the fund's liquidity profile, **for a fund not constituted as a closed-ended investment company**;
    - (vi) maintenance of the register of participants;

- 
- (vii) application and redemption **or re-purchase (as the case may be)** procedures;
  - (viii) issue of contract notes;
  - (ix) complaints procedures;
  - (x) breaches register and pricing errors log;
  - (xi) issue of interim and annual financial statements for the fund;
  - (xii) accuracy of fund fees and expenses charged;
  - (xiii) update of the fund's offering document;
  - (xiv) advertising;
  - (xv) notifying the fiduciary custodian or trustee without delay of any material breaches or pricing errors, **for a fund not constituted as a closed-ended investment company**; and
  - (xvi) notifying the custodian without delay of any material breaches or pricing errors **for a fund constituted as a closed-ended investment company**;
- (c) **for a fund not constituted as a closed-ended investment company**, notify the fiduciary custodian or trustee without delay of any material lapses in the implementation of the procedures and controls in sub-paragraph (b);
  - (d) **for a fund not constituted as a closed-ended investment company**, send copies of any revised offering document and any notification document, which have been provided to the Authority, to the fiduciary custodian or trustee;
  - (e) satisfy itself that the fund's investors have completed an application form and where entry criteria has been imposed by the fund that **the investors** have signed to confirm that they meet those criteria;
  - (f) complete and sign the relevant part of the regulated fund annual compliance declaration in the format and containing the information specified by the Authority. The full compliance declaration must be submitted to the Authority by the manager and governing body within 6 months of the first anniversary of the fund's launch, within

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6 months of the fund's financial year-end thereafter and immediately prior to the fund ceasing to be a fund.

- (g) supply to the Authority the statistical information in the format and containing the information specified by the Authority within 15 working days of each calendar quarter end; and
- (h) oversee the promotion of the fund.

#### 14 The fiduciary custodian or trustee

- (1) A fund **which is not constituted as a closed-ended investment company**—
  - (a) other than a unit trust must appoint a fiduciary custodian;
  - (b) that is constituted as a unit trust must appoint a trustee.
- (2) A fiduciary custodian or trustee must be –
  - (a) an authorised person whose licence allows it to act as a fiduciary custodian or trustee of a regulated fund; or
  - (b) a body corporate that—
    - (i) is incorporated in a jurisdiction with which the Authority has a co-operation agreement that includes provisions in relation to collective investment schemes;
    - (ii) is authorised to act as a fiduciary custodian or trustee for retail collective investment schemes in its jurisdiction of incorporation; and
    - (iii) receives the Authority's approval to act as such in relation to regulated funds.

#### 15 Duties of the fiduciary custodian or trustee

- (1) The fiduciary custodian or trustee **of a fund which is not constituted as a closed-ended investment company** must –
  - (a) implement appropriate procedures and controls in order to satisfy itself that the fund is being managed and operated in accordance with the provisions of its constitutional and offering documents;
  - (b) have all of the property of the fund –

- 
- (i) in its custody or placed with a sub-custodian appointed in accordance with regulation 17; and
    - (ii) held in trust for the investors;
  - (c) have the right to give and carry out instructions in respect of fund assets where it has reasonable grounds to believe that the investment and borrowing limitations in the constitutional and offering documents are not being complied with.
- (2) The fiduciary custodian or trustee must notify the Authority without delay —
- (a) if it determines that the fund has not been managed and operated in accordance with the provisions of its constitutional or offering documents;
  - (b) if it becomes aware that any of the requirements in these Regulations have not been complied with; and
  - (c) if it becomes aware of breaches (which have not been corrected within 20 working days of discovery) by the manager, of the obligations imposed on the manager by the constitutional and offering documents of the fund.

## **16 The custodian**

- (1) A custodian of a fund which is constituted as a closed-ended investment company must be –
  - (a) an authorised person whose licence allows it to act as a custodian to a regulated fund; or
  - (b) licensed in a jurisdiction outside the Isle of Man to provide custody services to this type of fund.
- (2) Before making an appointment, and on an ongoing basis, the governing body must ensure that each appointed custodian is appropriately experienced in providing services to the class of assets for which it will provide such services.
- (3) When assessing a custodian under paragraph (2), the governing body must –

- 
- (a) consider the suitability of the domicile and the regulatory framework for the provision of custody services in the jurisdiction in which the custodian is licensed; and
    - (b) obtain the manager's approval to the appointment.
  - (4) The manager must notify the governing body without delay if it becomes aware of anything which it reasonably believes is relevant to assessing a custodian's ongoing suitability under paragraph (2).
  - (5) A fund which appoints a custodian in accordance with the requirements of this regulation is not required to appoint a fiduciary custodian. A custodian so appointed shall be treated as sufficient for the purposes of Schedule 2, paragraph 2 of the Act, and any reference in that paragraph to fiduciary custodian shall be construed as referring to a custodian appointed under, and in compliance with, this regulation.

## 17 Sub-custodian

- (1) Where the fund's constitutional documents allow, the fund or the appointed trustee or fiduciary custodian, **or custodian (as the case may be)**, can appoint a sub-custodian to act as custodian for certain fund assets.
- (2) The sub-custodian **must be**—
  - (a) an authorised person **whose licence allows it to act as a sub-custodian to a regulated fund;** or
  - (b) licensed in a jurisdiction outside the Isle of Man to provide custody services to this type of fund, and**must** not be the manager or a subsidiary of the manager.
- (3) Before making an appointment, and on an ongoing basis, the governing body and fiduciary custodian or trustee, **or custodian (as the case may be)** must ensure that each appointed sub-custodian is competent to undertake the function and is appropriately experienced in providing services to the class of assets for which it will act as sub-custodian.
- (4) When assessing a sub-custodian under paragraph (3), the governing body and trustee or fiduciary custodian, **or custodian (as the case may be)** must –

- 
- (a) consider the suitability of the domicile and the regulatory framework for the provision of custody services in the jurisdiction in which the sub-custodian is **licensed**; and
  - (b) obtain the manager's approval to the appointment.
- (5) The manager must notify the governing body and fiduciary custodian or trustee, **or custodian (as the case may be)**, without delay if it becomes aware of anything which it reasonably believes is relevant to assessing a sub-custodian's ongoing suitability under paragraph (3).

## 18 Asset management

- (1) The fund must ensure that it receives relevant advisory or discretionary management services in relation to the investment and re-investment of its assets.
- (2) Before making an appointment, and on an ongoing basis, the governing body must ensure that any proposed or appointed asset manager or investment adviser is suitable to act in that capacity.
- (3) In making the assessment in paragraph (2), the governing body must –
  - (a) take account of the regulatory status of the asset manager or investment adviser and of any person providing investment services to the asset manager or investment adviser;
  - (b) consider any guidance issued by the Authority.
- (4) The manager must notify the governing body without delay if it becomes aware of anything which it believes is relevant to an assessment under paragraph (2).
- (5) Where a regulated asset manager is not appointed, the asset manager responsibilities in regulations 21 to 26 must be undertaken by the fund's manager.

## 19 Promoter

- (1) A fund **which is not constituted as a closed-ended investment company** must appoint a promoter who is responsible for promotion of the fund and the suitability and accuracy of promotional materials and advertisements in accordance with regulation 37.
- (2) **A promoter in (1)** must be –

- 
- (a) the manager; or
  - (b) a person who the governing body of the fund has assessed as being suitable to act as promoter to the fund.
- (3) A fund that is constituted as a closed-ended investment company may appoint a promoter to be responsible for promotion of the fund and the suitability and accuracy of promotional materials and advertisements. In such cases that promoter must be a person who the governing body of the fund has assessed as being suitable to act as promoter to the fund.
- (4) In making the assessment in paragraphs (2)(b) or (3), the governing body must take account of –
- (a) the regulatory status, experience and track record of the promoter; and
  - (b) any guidance issued by the Authority.
- (5) The manager must notify the governing body without delay if it becomes aware of anything which it believes is relevant to the ongoing suitability of a promoter to act for the fund.

## INVESTMENT AND BORROWING

### 20 Investment objectives

- (1) The investment objectives of the fund should be clearly set out in the constitutional and offering documents of the fund along with details of any geographical, market or sectoral emphasis, as well as the types of investments the property of the fund is to be invested in.
- (2) Where the fund is aimed at a particular category of investor that fact should be stated in the constitutional and offering documents of the fund.
- (3) Where the governing body has identified that there are special risks inherent in the fund's investment policy, details of these risks should be stated in the constitutional and offering documents of the fund.

### 21 Spread of investment risk

- (1) The governing body and asset manager of a fund must agree a policy for the spread of investment risk for the fund which takes account of the

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investment objectives policy of the fund as stated in the most recent offering document.

- (2) The policy in paragraph (1) must include any restrictions on the amount or value of the property of the fund which may be invested in securities issued by any one issuer, and the amount or value of the fund which may be invested in illiquid or unquoted investments, and derivative products, including futures or options.
- (3) If no restrictions are to be imposed or the restrictions permit more than 10% of the amount or value of the property of the fund to be invested in one issuer or in illiquid or unquoted investments or derivative products, including futures or options the terms of the policy in paragraph (1) and the risks attendant to it must be clearly disclosed in the offering document.
- (4) The full implementation of the policy for the spread of investment risk must take effect no later than 6 months after the date on which the fund becomes a regulated fund.

## **22 Risk management process**

- (1) The asset manager must use a risk management process enabling it to monitor and measure as frequently as appropriate the risk of a fund's positions and their contribution to the overall risk profile of the fund.
- (2) The following details of the risk management process must be notified by the asset manager to the manager. The manager must submit these details to the Authority in advance of the use of the process as required by sub-paragraph (1) –
  - (a) the methods for estimating risks in derivative and forward transactions; and
  - (b) the types of derivative and forward transactions to be used within the fund together with their underlying risks and any relevant quantitative limits.
- (3) The manager is responsible for oversight of the risk management process and should have appropriate controls to monitor the way in which the asset manager has implemented the risk management process.

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- (4) The asset manager is required to report all occasions where there is a material deviation from the risk management process to the manager.
  - (5) The manager must notify the Authority in advance of any material alteration to the details in sub-paragraph (2)(a) or (b) at least 1 month before it is implemented.

### **23 Hedging restrictions**

- (1) Hedging transactions should be restricted to those which lead to the reduction or elimination of risks arising from fluctuations in the prices of the underlying property of the fund or of fluctuations in interest rates or exchange rates.
- (2) Hedging transactions whose purpose is not to reduce or eliminate risks should be treated as gearing for the purposes of regulation 24.

### **24 Gearing restrictions**

- (1) A fund must not permit gearing, through the use of options, warrants, futures or other similar instruments, in excess of 25% of the net asset value of the fund unless it meets the requirements in paragraph (2).
- (2) A fund may permit gearing, through the use of options, warrants, futures or other similar instruments, of up to 100% of the net asset value of the fund; *but if it does so, the gearing policy and the risks attendant to it shall form part of the fund's investment policy and must be clearly disclosed in the offering document.*

### **25 Borrowing restrictions**

- (1) A fund must not permit borrowing in excess of 25% of the net asset value of the fund unless it meets the requirements in paragraph (2).
- (2) A fund may borrow up to 50% of the net asset value of the fund, *but if it does so, the borrowing policy and the risks attendant to it shall form part of the fund's investment policy and must be clearly disclosed in the offering document.*

### **26 Total debt commitment**

- (1) The combined level of gearing (regulation 24) and borrowing (regulation 25) for a fund must not exceed 100% of the net asset value of the fund.

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- (2) Where the combined level of gearing (regulation 24) and borrowing (regulation 25) for a fund exceeds 25% of the net asset value of the fund [the terms of total debt commitment policy and the risks attendant to it shall form part of the fund's investment policy and must be clearly disclosed in the offering document](#)

## 27 Liquidity

- (1) Except where it meets the requirements in paragraph (2), the primary investment objectives of a fund should be to invest at least 90% of the net asset value in assets which –
- (a) can be readily liquidated or accurately valued through a recognised investment exchange or market; or
  - (b) are within the normal scope of exchange traded instruments.
- (2) A fund may only invest more than 10% of the net asset value of the fund in illiquid assets, [but if it does so, the liquidity policy and the risks attendant to it shall form part of the fund's investment policy and must be clearly disclosed in the offering document.](#)

## 28 Feeder funds

Where a fund is one which invests solely in another collective investment scheme (a "feeder fund"), the information required to be included in the offering document must be stated in respect of both the feeder fund and the collective investment scheme into which it is to invest.

## 29 Umbrella funds

Where a fund is one which consists of separate parts and allows investors to exchange rights in one part for rights in another (an "umbrella fund"), the information required to be included in the offering document must be stated in respect of –

- (a) the fund as a whole; and
- (b) each sub-fund where that sub-fund differs from any other sub-fund.

## VALUATION AND PRICING

## 30 Valuation and dealing

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- (1) Where a fund is not constituted as a closed-ended investment company, and except where it meets the requirements in paragraph (2), the property of the fund must be valued, and dealings permitted in the fund, at least once in each calendar month.
  - (2) A fund may be valued, and dealings permitted in the fund, less frequently than once in each calendar month where the terms of the valuation and dealing policy and the risks attendant to it are clearly disclosed in the offering document.

### 31 Valuation – closed-ended investment company

- (1) Where a fund is constituted as a closed-ended investment company, and invests only in real property it must be valued at least once every twelve months, otherwise, except where it meets the requirements in paragraph (2), the property of the fund must be valued at least once in each calendar month.
- (2) A fund may be valued less frequently than once in each calendar month where the terms of the valuation policy and the risks attendant to it are clearly disclosed in the offering document.
- (3) If the fund's constitutional documents allow the governing body to repurchase shares at its discretion this must be clearly disclosed in the offering document.

### 32 Pricing

- (1) The pricing of units in a fund which is not constituted as a closed-ended investment company must achieve a reasonable balance between buyers and sellers.
- (2) Where a fund is constituted as a closed-ended investment company, and in the circumstances at regulation 31(3), the pricing of the repurchase must be based on net asset value.

## DOCUMENTATION

### 33 Constitutional documents

- (1) The constitutional documents of a fund must include the matters set out in Part A of Schedule 1.

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- (2) Notwithstanding (1), regulatory statements in offering documents in existence at the operative date, and which comply with the provisions of paragraph 16 of Schedule 1 to the Collective Investment Schemes (Regulated Fund) Regulations 2010<sup>8</sup> before the operative date, may continue to be used in unamended form until the offering documents are otherwise next updated, or until 31 October 2018, whichever is the sooner.

### 34 Offering document

- (1) The fund must have an offering document that —
- (a) accurately sets out all material information which, at the date of the offering document, is known to the governing body (or which the governing body could have obtained by making reasonable enquiries) and which is relevant for the purpose of making an informed judgement about whether to invest in the fund; and
  - (b) contains the matters set out in Part B of Schedule 1.
- (2) A revision of the offering document may take the form of a new offering document or of a supplement to the existing offering document; whichever method is chosen the date on which the revision was made must be prominently displayed in the document.
- (3) The offering document must be made available free of charge by the manager of the fund to any potential or existing investor.
- (4) Before issuing an offering document the Authority's consent to the appointment or continuation of the manager must be obtained in line with regulations 9, 10 and 11.
- (5) The offering document must not be issued, nor changes made to a fund until the Authority has given its approval to the appointment or continuation of the manager or the relevant time limits set out in regulations 9, 10 and 11 have elapsed **without the Authority having informed the manager or fund (as the case may be) that it requires additional time to consider its decision.**
- (6) Notwithstanding (1), regulatory statements in offering documents in existence at the operative date, and which comply with the provisions

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<sup>8</sup> SD 161/10

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of paragraph 16 of Schedule 1 to the Collective Investment Schemes (Regulated Fund) Regulations 2010<sup>9</sup> before the operative date, may continue to be used in unamended form until the offering documents are otherwise next updated, or until 31 October 2018, whichever is the sooner.

### **35 Application form**

- (1) The fund's application form must contain the certifications set out in paragraph 17 or paragraph 18 of Part C of Schedule 1, as appropriate.
- (2) Before being accepted as an investor each applicant must complete the Part 1 certification and, if applicable, the relevant Part 2 certification contained in the fund's application form.

### **36 Promotion and marketing**

A fund must only be promoted and marketed in a way that is consistent with the information contained in its constitutional and offering documents.

### **37 Advertising and marketing materials**

- (1) Every investment advertisement and **any promotional or** marketing material issued in connection with a fund must state –
  - (a) the name and address and regulatory status of the manager of the fund;
  - (b) the address from which copies of the offering document may be obtained;
  - (c) the address from which copies of the fund's latest financial statements may be obtained;
  - (d) the address at which documents constituting the fund may be inspected.
- (2) Advertisements and **promotional or** marketing materials must be accurate and consistent with statements made in the fund's offering document and must not contain any misleading statements or unsubstantiated claims.

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<sup>9</sup> SD 161/10

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- (3) Where advertisements and **promotional or** marketing materials include historical performance figures for the fund they must be –
- (a) a fair presentation of the performance showing –
    - (i) annual returns for the last 10 full consecutive years. (Where the fund has been in existence for fewer than 10 years but at least for 1 year, the annual returns, calculated net of tax and charges, should be given for as many years as are available);
    - (ii) where a fund is managed according to a benchmark or if its cost structure includes a performance fee depending on a benchmark, the information on the past performance of the fund which includes a comparison with the past performance of the benchmark according to which the fund is managed or the performance fee is calculated;
    - (iii) disclosure of the cumulative performance of the fund over the 10 year period referred to in sub-paragraph (i). A comparison should also be made with the cumulative performance (where relevant) of a benchmark, when comparison to a benchmark is required in accordance with sub-paragraph (ii). (Where the fund has been in existence for fewer than 10 years but at least for 1 year, disclosure of the past cumulative performance should be made for as many years as are available).
  - (b) accompanied by –
    - (i) a warning that historic performance is not an indicator of future performance; and
    - (ii) a statement that historic performance of the fund does not include the effect of subscription and redemption fees, **or issue and repurchase fees (as the case may be)**, (if such fees are applied).

## FINANCIAL INFORMATION

### 38 Financial statements

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- (1) The fund must ensure that financial statements are prepared annually in respect of each accounting period ending on its financial year-end date.
  - (2) The fund's annual financial statements must be prepared in accordance with generally accepted accounting principles or practice.
  - (3) In cases where the fund does not calculate a net asset value at least once in each calendar month in line with regulation 30(1), the fund must prepare interim financial statements which cover the 6 month period following the fund's launch date and thereafter the fund's most recent year end date.

### **39 Audit of financial statements**

- (1) The fund must appoint an appropriate auditor.
- (2) The appropriate auditor must audit the fund's annual financial statements in accordance with internationally accepted auditing standards and practices and issue an audit report in relation to the audit.

### **40 Distribution of financial statements**

- (1) The fund's audited annual financial statements must be provided to the Authority and distributed to investors no later than 6 months after the fund's financial year-end or within the timescales set out in the offering document if earlier.
- (2) [Where regulation 38\(3\) applies](#), the fund's interim financial statements must be provided to the Authority and made available to investors on request within four months of the date to which they are prepared or within the timescales set out in the offering document if earlier.

### **41 Removal of, resignation of or failure to reappoint an auditor**

Where the fund's auditor, is removed, resigns or is not reappointed at the end of its term of office, the auditor must supply a signed statement direct to the Authority –

- (a) stating whether there are any circumstances connected with it ceasing to hold office which should be brought to the Authority's attention; and
- (b) providing full details of those circumstances which it considers should be brought to the Authority's attention.

## ANCILLARY MATTERS

### 42 Offences

Failure to comply with the terms of these Regulations is an offence under section 18(1)(b) of the Act.

### 43 Revocation

The Collective Investment Schemes (Regulated Fund) Order 2010 is revoked.

MADE       XXXXXX

*Member of the Isle of Man Financial Services Authority*

*Member of the Isle of Man Financial Services Authority*

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**Regulations 33, 34 and 35****SCHEDULE 1****CONTENTS OF SCHEME DOCUMENTATION****PART A - Constitutional documents**

- 1 The memorandum and articles of association of a fund that is an open-ended investment company **or closed-ended investment company**, the partnership agreement of a fund which is a limited partnership and the document constituting a trust for a fund which is a unit trust must provide for the following matters -
- (a) maximum permitted level of initial charge;
  - (b) amount of notice to be given to participants to increase manager's charges, up to the maximum permitted level;
  - (c) any increase in the maximum permitted level of the manager's charges must be subject to approval by participants at an Extraordinary General Meeting or equivalent;
  - (d) amount of notice to be given to participants of any proposed change to the documents constituting the fund including-
    - (i) **for funds that are not closed-ended investment companies**, fiduciary custodian or trustee agreements and management agreements (such notice must allow a period of redemption notice to allow participants to redeem their holdings prior to the implementation of material changes); or
    - (ii) **for funds that are closed-ended investment companies, custodian agreements and management agreements (such notice must provide arrangements for the re-purchase of units in the fund prior to the implementation of material changes);**
  - (e) classes of units to be issued and voting rights attached thereto;
  - (f) minimum initial subscription / **investment** value for launch of the fund **and the provisions that will apply if the initial subscription / investment value has not been successful;**
  - (g) arrangements for the registration and transfer of title to units;

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- (h) the powers and duties of the governing body, the manager and the fiduciary custodian or trustee, **or custodian (as the case may be)** and arrangements for the appointment and removal thereof;
  - (i) the accounting periods;
  - (j) income distribution dates, if any;
  - (k) dates and method of publication of reports and accounts;
  - (l) how the property of the fund will be valued, and the basis on which the offer and redemption **(or repurchase for closed-ended investment companies)** prices will be calculated;
  - (m) procedures for-
    - (i) **for funds that are not closed-ended investment companies**, the issue and redemption of units; or
    - (ii) **for funds that are closed-ended investment companies**, the issue and re-purchase of units including-
      - (A) **if there are any provisions for the early termination of the fund's life;**
      - (B) **if there are any provisions for the extension of the fund's life;**
      - (C) **the exit strategy at the term of the fund's life, including the manner in which assets will be repaid;**
      - (D) **if there are any provisions (other than a redemption right which would make the company open-ended) for the re-purchase of units in the fund;**
  - (n) circumstances, if any, in which subscription or redemption of units, calculation of net asset value or dealing may be suspended;
  - (o) provisions covering the convening and conduct of meetings including the service of notices and documents;
  - (p) provision for winding up of the fund;
  - (q) appointment, removal, remuneration and powers and duties of the auditor; and
  - (r) **provisions relating to the material delegation of functions related to the fund by any functionary.**

## **PART B - Offering documents**

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- 2 The offering document of a fund must disclose all material information necessary for a potential investor to make an informed judgement about all aspects of the fund including the matters set out in paragraphs 3 to 16, and must contain a statement that the document is the offering document of the fund valid as at a particular date (which shall be the date of the document).
- 3 All matters contained in a fund's offering document should be set out in an easily understood format and using language so that the document's contents are clear and not misleading to potential or existing investors.
- 4 The offering document of a fund must disclose information about the fund's functionaries including -
- (1) for the fund and the fund's governing body—
    - (a) name;
    - (b) address of registered office (or equivalent) and head office if different;
    - (c) legal form;
    - (d) date and place of incorporation;
    - (e) if the fund is a company under the Companies Act 2006<sup>10</sup>, details of the company's registered agent as required under that Act;
    - (f) names and a brief biography of all individuals who are members of the governing body and significant activities for those not connected to the manager or fiduciary custodian or trustee;
    - (g) in respect of a body corporate that is a member of the governing body who is a body corporate, if it is a subsidiary, the name and jurisdiction of incorporation of its ultimate holding company;
    - (h) issued and paid up share capital of any member of the governing body which is a body corporate;
  - (2) for the fund's promoter, manager and trustee or fiduciary custodian or any material delegate of such functions (as applicable) —
    - (a) name;
- 

<sup>10</sup> 2006 c.13

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- (b) address of registered office (or equivalent) and head office if different;
  - (c) legal form;
  - (d) date and place of incorporation;
  - (e) regulatory status;
  - (f) if a subsidiary, the name and jurisdiction of incorporation of its ultimate holding company;
  - (g) issued and paid up share capital (only required for the trustee or fiduciary custodian);
  - (h) the extent to which the manager and fiduciary custodian are not independent of each other or the fund; and
  - (i) details of any interrelationships between the fund's promoter, manager and trustee or fiduciary custodian which could result in perceived or actual conflicts of interest. [This must include, in relation to a material delegate of any such function, its identity, the nature of the delegation and any potential conflicts of interest between such delegate, the fund and any other parties which may affect investors;](#)
- (3) for the investment adviser or asset manager –
- (a) name;
  - (b) address of registered office (or equivalent) and head office if different;
  - (c) regulatory status; and
  - (d) the main terms of the agreement with the manager and/or fund;
- (4) name and address of the registrar, auditor and legal adviser to the fund and the address (if any) at which the register of investors can be viewed;
- (5) details of other appointed functionaries to the fund including –
- (a) name and address; and
  - (b) nature of the function for which they are appointed; and
- (6) the main terms of the agreement between the functionary and –

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- (a) the manager;
  - (b) the governing body;
  - (c) the fund.
- 5 Charges relating to the functionaries, including –
- (a) amount of the manager's and **any custodian's** current and maximum permitted initial and periodic charges;
  - (b) details of how the manager and fiduciary custodian or trustee's, **or custodian's (as the case may be)** remuneration is to be provided for, the level of the charge and whether it is to be paid out of the property of the fund; and
  - (c) description of all other costs and charges which are authorised to be borne by the investor or out of the property of the fund (including establishment costs).
- 6 Details of the constitution of the fund including –
- (a) characteristics of the classes of units in the fund, including voting rights attached thereto;
  - (b) provisions covering the convening and conduct of meetings including the service of notices and documents;
  - (c) the required period of notice to participants of any proposed change to the documents constituting the fund, including-
    - (i) **for funds that are not closed-ended investment companies,** fiduciary custodian or trustee agreements and management agreements, and the arrangements for participants wishing to redeem their holdings prior to the implementation of material changes; or
    - (ii) **for funds that are closed-ended investment companies, custodian agreements and management agreements, and the arrangements for the re-purchase of units in the fund (other than a redemption right which would make the company open-ended) prior to the implementation of material changes;**
  - (d) the amount of notice to be given to participants to increase the manager's charges, up to the maximum permitted level;

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- (e) the fact that any increase in the maximum permitted level of the manager's charges must be subject to approval by participants at an Extraordinary General Meeting or equivalent;
  - (f) arrangements for the registration and transfer of title to units in the fund;
  - (g) details of the procedure for winding up of the fund;
  - (h) the address at which the documents constituting the fund may be inspected; and
  - (i) details of the provisions that will apply if the minimum initial subscription or investment value for launch of the fund has not been successfully reached.
- 7 Full details of the investment objectives of the fund including full particulars of the fund's investment policy including limits and restrictions on investment, hedging, gearing and borrowing powers, underwriting arrangements and due diligence in the selection of investments.
- 8 Details of how the property of the fund will be valued, the basis on which the offer and redemption (or investment and re-purchase) prices (as the case may be) will be calculated and arrangements for dealing in the fund including –
- (a) when, where and how the valuation, pricing and dealing in, or repurchase of the units of the fund will take place;
  - (b) the procedures for receiving instructions for the issue and redemption of units or shares in the fund;
  - (c) any procedures relating to the circumstances, if any, in which subscription or redemption of units, calculation of net asset value or dealing may be suspended;
  - (d) the minimum net asset value for launch of the fund;
  - (e) accounting periods, distribution of income and publication of reports;
  - (f) the address from which copies of the fund's latest reports and accounts and offering document may be obtained; and
  - (g) for funds that are closed-ended investment companies –

- 
- (i) if there are any provisions for the early termination of the fund's life;
  - (ii) if there are any provisions for the extension of the fund's life;
  - (iii) the exit strategy at the term of the fund's life, including the manner in which assets will be repaid; and
  - (iv) if there are any provisions (other than a redemption right which would make the company open-ended) for the re-purchase of units in the fund.
- 9 Details of custodial arrangements for the fund including the extent to which any underlying investments, including any assets held within special purpose vehicles, are not held or controlled by the fiduciary custodian or trustee, **or custodian (as the case may be)**.
- 10 Details of any minimum subscription **or investment** level for the fund and a statement that the fund will only accept subscriptions **or investments** equal to or exceeding that minimum level.
- 11 Details of the marketing of the fund including –
- (a) a statement of how the fund is intended to be marketed; and
  - (b) where the fund attaches special risks identified by the governing body or is aimed at a particular category of investor this should be clearly addressed in the marketing statement and the fund should be marketed in a way that aims to reduce the risk of investment by investors **that are not in that category and** for whom the fund may not be appropriate.
- 12 Performance figures including -
- (a) presentation of the historical performance of the fund together with –
    - (i) a warning that this is not an indicator of future performance;
    - (ii) disclosure of the fund's past performance, as presented graphically showing annual returns for the last 10 full consecutive years. (Where the fund has been in existence for fewer than 10 years but at least for 1 year, the annual returns, calculated net of tax and charges, should be given for as many years as are available); and

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- (iii) where a fund is managed according to a benchmark or if its cost structure includes a performance fee depending on a benchmark, the information on the past performance of the fund should include a comparison with the past performance of the benchmark according to which the fund is managed or the performance fee is calculated;
    - (iv) disclosure of the cumulative performance of the fund over the 10 year period referred to in sub-paragraph (a)(ii). A comparison should also be made with the cumulative performance (where relevant) of a benchmark, when comparison to a benchmark is required in accordance with sub-paragraph (a)(iii). (Where the fund has been in existence for fewer than 10 years but at least for 1 year, disclosure of the past cumulative performance should be made for as many years as are available).
  - (b) a statement should be made that historic performance of the fund does not include the effect of subscription and redemption fees **or issue and repurchase fees** (if such fees are applied).
- 13 Disclosure of all particular risk factors which may be reasonably associated with investment in the fund and any other material information which at the date of the offering document is known to the manager or governing body, or which the manager or governing body could have obtained by making reasonable enquiries, which would be relevant for the making of an informed investment decision.
- 14 The risk factors in paragraph 13 may include, but are not limited to, any or all of the following factors –
- (a) a clear and unambiguous explanation of any special risk arising from particular investment policies or strategies or associated with specific markets or assets relevant to the fund which may include –
    - (i) the risk that the entire market of an asset class will decline thus affecting the prices and values of the assets (market risk);
    - (ii) the risk that an issuer or a counterparty will default (credit risk);
    - (iii) (only where strictly relevant) the risk that a settlement in a transfer system does not take place as expected because a

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- counterparty does not pay or deliver on time or as expected (settlement risk);
- (iv) the risk that a position cannot be liquidated in a timely manner at a reasonable price (liquidity risk);
  - (v) the risk that the investment's value will be affected by changes in exchange rates (exchange or currency risk);
  - (vi) (only where strictly relevant) the risk of loss of assets held in custody that could result from the insolvency, negligence or fraudulent action of the custodian or of a sub-custodian (custody risk); and
  - (vii) risks related to a concentration of assets or markets;
- (b) a clear and unambiguous explanation of any other risk factors which may include –
- (i) performance risk, including the variability of risk levels depending on individual fund selections, and the existence, absence of, or restrictions on any guarantees given by third parties;
  - (ii) risks to capital, **including, for funds that are not closed-ended investment companies**, potential risk of erosion resulting from withdrawals/cancellations of units and distributions in excess of investment returns;
  - (iii) exposure to the performance of the provider/third-party guarantor, where investment in the product involves direct investment in the provider, rather than assets held by the provider;
  - (iv) inflexibility, both within the product (including early surrender risk) and constraints on switching to other providers;
  - (v) inflation risk; and
  - (vi) lack of certainty that environmental factors, such as a tax regime, will persist.

15 Additional information including –

- (a) economic information about the fund including -

- 
- (i) the fund's applicable tax regime; and
  - (ii) a statement that the taxation of income or capital gains received by individual investors depends on the tax law applicable to the personal situation of each individual investor and/or to the place where the capital is invested, and that if investors are unclear as to their tax position, they should seek professional advice or information from specialist organisations, where available;
- (b) where a fund is intended to be limited to a particular category of investor, (such as specialist of institutional investors) due to the fund's sophisticated investment policy or risk profile, this must be clearly disclosed.

## 16 Regulatory statements

The following regulatory statements must be prominently displayed in bold type –

- (a) “This fund is a Regulated Fund which is subject to the Collective Investment Schemes (Regulated Fund) 2017.

The manager of the fund is required to be an authorised person for the purposes of the Collective Investment Schemes Act 2008. The manager's appointment to this fund has been approved by the Isle of Man Financial Services Authority (“the Authority”).

In granting permission for the manager to manage [the fund], the Authority has –

- reviewed the constitutional documents and offering document of the fund;
- considered whether the members of the fund's governing body are fit and proper persons to act as such;
- considered the status of other functionaries to the fund and the fund arrangements.

The Authority has not, however, commented on, nor is it required to comment on, the investment objectives or strategy of the fund, its suitability for any investor or class of investor or the accuracy of statements made or opinions expressed about it. The fund is not subject to the benefit of any compensation arrangements.

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The Authority receives annual compliance declarations from the fund's governing body and manager.

There are statutory requirements for the Authority to be notified about material changes to the fund and matters of concern.

The [trustee/fiduciary custodian/**custodian**] is [an authorised person for the purposes of the Collective Investment Schemes Act 2008 / licensed to act as trustee / fiduciary custodian / **custodian** in [jurisdiction]].

The asset manager of the fund is [an authorised person for the purposes of the Collective Investment Schemes Act 2008 / licensed to act as [activity] in [jurisdiction]/other].

The Authority will review the manager's continuation as manager of the fund when changes are made to the fund documentation, arrangements and functionaries.

On the basis of the Authority's regulatory considerations in approving the manager's appointment and continuation, this fund is deemed to be regulated by the Authority."

- (b) "If you are unclear about the contents of this offering document you should consult a professional financial adviser."
- (c) "The value of units and the income produced by them can fall as well as rise. You are wholly responsible for ensuring that this fund is acceptable to you. Investment in Regulated Funds may involve special risks that could lead to a loss of all or a substantial portion of the investment. Unless you fully understand and accept the nature of this fund and the potential risks inherent in this fund you should not invest in this fund."
- (d) Where the fund does not expressly prohibit an investor from investing on behalf of another person – "If you are investing on behalf of someone else, the Authority expects you to be satisfied that person understands the risks associated with this type of investment."
- (e) Where the fund does not expressly prohibit a life assurance company from investing assets comprised within its long term business fund in circumstances where the fund has been selected by the policyholder of a particular **life assurance** policy as the basis for determining the benefit of that policy - "If you are a life assurance company investing assets within

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your long-term business fund, the Authority expects that relevant policyholders have had the opportunity to read the fund's offering document and as such to have information about risks associated with an investment in this fund."

## **PART C – Application form**

- 17 Where the fund is not aimed at a particular category of investor, the following certifications must be contained in the fund's application form.

The Section 2 Certification (1) may be omitted where the fund expressly prohibits an investor from investing on behalf of another person.

The Section 2 Certification (2) may be omitted where the fund expressly prohibits a life assurance company from investing assets comprised within its long term business fund in circumstances where the fund has been selected by the policyholder of a particular **life assurance** policy as the basis for determining the benefit of that policy.

**“Section 1 Certification** – This certification is to be completed by all applicants. The investor confirmations (a) to (c) apply to all applicants. The investor confirmation (d) applies to all applicants except those who are signing a Section 2 certification.

“I/we confirm that —

- (a) I am/we are sufficiently experienced to understand the features and risks associated with this type of fund;
- (b) I/we have read and fully understood the offering document, including in particular the information on the risks associated with the fund, **which I/we accept**, (contained on pages [X – X] of the offering document), before deciding to invest in the fund;
- (c) I/we confirm that, where appropriate, I/we have taken independent advice on the suitability of this investment within my/our overall investment portfolio; and
- (d) I/we accept that my/our investment in the [name of fund] involves risks that could result in a loss of a significant proportion or all of the sum invested.

[Signed ]

[Dated]”.

**Section 2 Certifications –**

- (1) “The following certification is to be completed by any investor who is investing on behalf of another person.

“I/We confirm that I am/we are investing in the [name of fund] on behalf of another person/ other persons and have Section 1 certification(s) signed by each such person to show that they understand and accept the risks associated with this type of investment.

[Signed]

[Dated]”

- (2) Where investment through a life company is not expressly prohibited by the fund

“The following certification is to be completed by an investor who is a life assurance company investing assets comprised within its long term business fund where the [name of fund] has been selected by the policyholder of a particular **life assurance** policy as the basis for determining the benefit of that policy (as appropriate).

“We confirm that we are investing assets comprised within our long term business fund and—

- (a) we have procedures and controls in place to obtain client declarations from our policyholders which include confirmation from the policy holder to the effect that —
- (i) the policyholder has the opportunity to read the offering documents for funds of this nature, where they wish to do so, and as such has information about and accepts the levels of risks associated with this type of investment; and
  - (ii) the policyholder, where necessary, meets the minimum criteria of a class of investor in a fund of this nature;
- (b) we confirm no investment in this type of fund is made without a client declaration being obtained from relevant policyholders.

[Signed ]

[Dated]””

- 18 Where the fund is aimed at a particular category of investor, the following certifications must be contained in the fund’s application form.

The Section 2 Certification (1) may be omitted where the fund expressly prohibits an investor from investing on behalf of another person.

The Section 2 Certification (2) may be omitted where the fund expressly prohibits a life assurance company from investing assets comprised within its long term business fund in circumstances where the fund has been selected by the policyholder of a particular **life assurance** policy as the basis for determining the benefit of that policy.

**“Section 1 Certification** – This certification is to be completed by all applicants. The investor confirmations (a) to (d) apply to all applicants. The investor confirmation (e) applies to all applicants except those who are signing a Section 2 certification.

“I/we confirm that —

- (a) I am/we are sufficiently experienced to understand the features and risks associated with this type of fund; and
- (b) I/we have read and fully understood the offering document, including in particular the information on the risks associated with the fund, **which I/we accept**, (contained on pages [X – X] of the offering document), before deciding to invest in the fund; and
- (c) I/we confirm that, where appropriate, I/we have taken independent advice on the suitability of this investment within my/our overall investment portfolio;
- (d) I am/we are a [category of investor] as defined on page [ ] of the offering document of [name of fund] dated [ ]; and
- (e) I/we accept that my/our investment in the [name of fund] involves risks that could result in a loss of a significant proportion or all of the sum invested.

[Signed ]

[Dated]”.

**Section 2 Certification –**

- (1) The following certification is to be completed by any investor who is investing on behalf of another person.

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“I/We confirm that I am/we are investing in the [name of fund] on behalf of another person/ other persons and have Section 1 certification(s) signed by each such person to show that they understand and accept the risks associated with this type of investment.

[Signed] [Dated]”

- (2) “The following certification is to be completed by an investor who is a life assurance company investing assets comprised within its long term business fund where the [name of fund] has been selected by the policyholder of a particular **life assurance** policy as the basis for determining the benefit of that policy (as appropriate).

“We confirm that we are investing assets comprised within our long term business fund and—

- (a) we have procedures and controls in place to obtain client declarations from our policyholders which include confirmation from the policy holder to the effect that —
  - (i) the policyholder has the opportunity to read the offering documents for funds of this nature, where they wish to do so, and as such has information about and accepts the levels of risks associated with this type of investment; and
  - (ii) the policyholder, where necessary, meets the minimum criteria of a class of investor in a fund of this nature;
- (b) we confirm no investment in this type of fund is made without a client declaration being obtained from relevant policyholders.

[Signed ] [Dated]””

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**Regulations 9(2), 10 and 11****SCHEDULE 2****REQUEST TO ACT, OR CONTINUE TO ACT, AS MANAGER TO A REGULATED FUND****REQUEST PROCESS****1 APPLICATION PROCESS TO ESTABLISH A NEW REGULATED FUND**

Before a fund can be established as a regulated fund the proposed manager must request the Authority's approval to act for the fund and certain information must be submitted for the Authority's consideration.

This is effectively a three stage process.

**Outline Stage**

This stage seeks the Authority's provisional consent to the manager acting as manager to the regulated fund. At this stage a regulated fund 'initial request' form should be submitted setting out the basic details of the fund's structure and objectives together with details of all parties involved.

Where the membership of the fund's governing body is known, personal questionnaire forms may also be submitted for the proposed members of governing body at this stage or as soon thereafter as possible.

After receipt of a completed regulated fund 'initial request' form, the Authority will consider the application in principle. This consideration may result in a provisional approval which is subject to the receipt of an acceptable regulated fund 'detailed request' form, any required additional information and a responsibility statement by the fund's governing body.

The regulated fund 'initial request' form, 'detailed request' form, personal questionnaire forms and responsibility statement must all be in the format and containing the information specified by the Authority.

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## Second Stage

The near final constitutional and offering documents must be submitted to the Authority together with a regulated fund 'detailed request' form containing a checklist of the disclosure requirements in the offering document and application form, supporting agreements and documents and an application fee. Where personal questionnaire forms have not been submitted for all **individual** members of the fund's governing body they must be submitted at this stage.

## Third Stage

Once the Authority has reviewed the draft constitutional offering documents and related forms, and has obtained satisfactory responses to its queries (if any), the filing of the final offering document and certified copies of constitutional documents and supporting agreements and documents are required.

This should be accompanied by the responsibility statement by the regulated fund's governing body. The granting of approval will then be considered by the Authority.

Delays in submitting forms and information may delay the Authority's final consideration of a request.

**If a proposed fund is at an advanced stage, an application may be processed more speedily by combining the Outline and Second stages, provided that both forms and relevant documents are filed together.**

## 2 CHANGES TO A REGULATED FUND

The manager of a fund must request the Authority's approval to continue to act for the fund where the fund proposes to –

- (a) appoint or remove –
  - i. a member or member(s) of the governing body;
  - ii. an administrator;
  - iii. a fiduciary custodian or trustee;
  - iv. a **custodian or** sub-custodian;
  - v. an asset manager or investment adviser, or

- 
- vi. promoter; or
  - (b) make a material alteration to the fund's constitutional or offering document.

To do this, the manager must complete and submit to the Authority:

- (a) a regulated fund detailed request form which clearly shows information that has changed, and
- (b) any additional information required as a result of responses to that form.

The regulated fund detailed request form and information should be submitted to the Authority as early as practicable. Where there has been a material alteration which requires a change to the fund's offering document, a responsibility statement by the regulated fund's governing body is also required.

Delays in submitting forms and information may delay the Authority's final determination of a request to continue to act as manager to a regulated fund.

### **3 APPOINTMENT OF A NEW MANAGER TO AN EXISTING REGULATED FUND**

Before being appointed as manager to an existing fund, a manager must complete and submit to the Authority:

- (a) a regulated fund detailed request form which clearly shows information that has changed;
- (b) any additional information required as a result of responses to that form, and (c) a responsibility statement signed by the regulated fund's governing body.

The above items must be submitted to the Authority as early as practicable. Delays in submitting forms and information may delay the Authority's final determination of a request to act as manager to a regulated fund.

**IMPORTANT NOTE**

**Under section 18 of the Collective Investment Schemes Act 2008, a person commits an offence if, for the purposes of or in connection with, any application under the Act, he furnishes information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular.**

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## APPENDIX D — DRAFT POSSIBLE AMENDMENTS TO THE FINANCIAL SERVICES (EXEMPTIONS) REGULATIONS

### CLASS 3 – SERVICES TO COLLECTIVE INVESTMENT SCHEMES

#### *Exempt managers, asset managers or investment advisers to specialist funds*

- 3.9 (1) In relation to an activity falling within paragraphs (1), (6) or (7) of Class 3, section 4 does not apply to the manager, asset manager or investment adviser (“the SF exempt person”) of or to a scheme which is a specialist fund within the meaning of the Collective Investment Schemes (Specialist Fund) Regulations 2010 where the conditions specified in sub-paragraph (2) are met.
- (2) The conditions referred to in sub-paragraph (1) are that—
- (a) the specialist fund to which the SF exempt person provides services must have an administrator who holds the requisite Class 3(2) license permission in relation to that fund (“the Isle of Man Administrator”);
- (b) the Isle of Man Administrator must—
- (i) provide administration services under a Class 3(9) permission to the SF exempt person, which must include the maintenance of the SF exempt person’s records, including in relation to their compliance with AML/CFT legislation;
- (ii) notify the Authority at least 20 business days prior to the commencement of services to each SF exempt person under (i) and confirm, as part of that notification, that it has considered and determined adequate and appropriate the SF exempt person’s systems and controls; and
- (iii) notify the Authority of any matter relating to the SF exempt person which may have a material impact on the

specialist fund to which the SF exempt person provides services;

- (c) arrangements for the provision of administration services must be in place between the specialist fund, the Isle of Man Administrator, and SF exempt person, and services must be provided in accordance with those arrangements;
- (d) a director, who is an individual, of the Isle of Man Administrator must also be a director of the SF exempt person;
- (e) no activity of the SF exempt person, other than the activities in paragraph (1), may be carried on by the SF exempt person in relation to the specialist fund to which the SF exempt person provides services, unless the prior written approval of the Isle of Man Administrator has been obtained; and
- (f) the specialist fund's minimum initial contribution is at least \$250,000 (or equivalent in any other currency).

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## APPENDIX E -DRAFT COLLECTIVE INVESTMENT SCHEMES (RECOGNISED SCHEMES) (IRELAND) ORDER

Statutory Document No. XX/20XX



*Collective Investment Schemes Act 2008*

## COLLECTIVE INVESTMENT SCHEMES (RECOGNISED SCHEMES) (IRELAND) ORDER 201X

*Approved by Tynwald:*

*Coming into Operation:*

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The Isle of Man Financial Services Authority makes the following Order under section 24(1) of the Collective Investment Schemes Act 2008 after carrying the consultation required by section 24(13) of that Act.

### 1 Title

This Order is the Collective Investment Schemes (Recognised Schemes) (Ireland) Order 201x.

### 2 Commencement

If approved by Tynwald, this Order comes into operation on xxxxxxxxxx.

### 3 Interpretation

In this Order –

“**the Act**” means the Collective Investment Schemes Act 2008<sup>11</sup>;

“**Central Bank**” means the Central Bank of Ireland;

“**UCITS Registers**” means lists published by the Central Bank listing the collective investment schemes which have been authorised by the Central Bank as UCITS under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011<sup>12</sup>;

“**UCITS**” means Undertakings for Collective Investment in Transferable Securities.

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<sup>11</sup> C.7

<sup>12</sup> Irish Statutory Instrument number 352/2011 (as amended)

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#### 4 Recognised Irish Schemes

- (1) The Republic of Ireland is designated for the purposes of paragraph 1 of Schedule 4 to the Act.
- (2) Collective investment schemes authorised in the Republic of Ireland by the Central Bank as UCITS are recognised schemes for the purposes of paragraph 1 of Schedule 4 to the Act.
- (3) Authorisation under (2) is evidenced by entry on the Central Bank's UCITS Registers.

#### 5 Revocation

The Collective Investment Schemes (Recognised Schemes) (Ireland) Order 2011<sup>13</sup> is revoked.

**MADE** \_\_\_\_\_

\_\_\_\_\_  
*Chief Executive of the Isle of Man Financial Services Authority*

\_\_\_\_\_  
*Member of the Isle of Man Financial Services Authority*

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<sup>13</sup> SD 358/11

*EXPLANATORY NOTE*

*(This note is not part of the Order)*

This Order designates the Republic of Ireland for the purposes of paragraph 1(1) of Schedule 4 to the Collective Investment Schemes Act 2008 in respect of collective investment schemes authorised as UCITS by the Central Bank of Ireland. It repeals and replaces the Collective Investment Schemes (Recognised Schemes) (Ireland) Order 2011.