

CAYMAN ISLANDS



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**THE MUTUAL FUNDS LAW
(2009 REVISION)**

**THE RETAIL MUTUAL FUNDS (JAPAN) (AMENDMENT)
REGULATIONS, 2012**

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**THE RETAIL MUTUAL FUNDS (JAPAN) (AMENDMENT)
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In exercise of the powers conferred by section 39 of the Mutual Funds Law (2009 Revision), the Governor in Cabinet makes the following Regulations -

1. These Regulations may be cited as the Retail Mutual Funds (Japan) (Amendment) Regulations, 2012. Citation

2. The Retail Mutual Funds (Japan) Regulations (2007 Revision), in these Regulations referred to as the “principal Regulations”, are amended in regulation 2 as follows - Amendment of regulation 2 of the Retail Mutual Funds (Japan) Regulations (2007 Revision) - definitions

(a) by deleting the definition of the words “investment adviser” and substituting the following definition -

““investment adviser” means the person appointed by or on behalf of a retail mutual fund under regulation 19 to render investment management services, in connection with the investment activities of a retail mutual fund but does not include a sub-adviser appointed pursuant to regulation 22;”;

(b) by inserting, after the definition of the words “investment adviser”, the following definition -

“investment company” means a company, the principal objective of which is to acquire, hold, manage and dispose of investments;

“investment management services” includes activities set out in paragraph 3 of the Schedule 2 of the Securities Investment Business Law (2011 Revision);”;

(c) by deleting the definition of the words “retail mutual fund ” and substituting the following definition -

“retail mutual fund” means a mutual fund licensed under section 4(1)(a) of the Law which has made or intends to make a public offering of its securities in Japan, except that -

- (a) a mutual fund which has made a public offering of its securities in Japan and -
 - (i) was in existence at 17th November, 2003; or
 - (ii) was in existence at 17th November, 2003 and established any sub-trust thereof after 17th November, 2003;

shall not be regarded as a retail mutual fund for the purposes of these Regulations;

- (b) notwithstanding sub-paragraph (a), a mutual fund falling under sub-paragraph (a) shall be regarded as a retail mutual fund for the purposes of these regulations where it has made an irrevocable election in writing to the Authority specifying that these regulations shall apply to it;”.

Amendment of regulation
20 - changes in
investment adviser

3. The principal Regulations are amended in regulation 20 by repealing subregulation (2) and substituting the following subregulations -

“ (2) An investment adviser shall not make any change to its directors without the prior approval of the operator of each retail mutual fund it manages.

(3) The operator of each retail mutual fund shall give notice in writing to the Authority of any proposed change to the Board of Directors of the investment manager of the relevant retail mutual fund not less than one month prior to such change.”.

Amendment of regulation
21 - functions of
investment adviser

4. The principal Regulations are amended in regulation 21 as follows -

- (a) by repealing subregulation (4) and substituting the following subregulation -

“ (4) Subject to subregulation (6), an investment adviser of a retail mutual fund which is a unit trust shall not on behalf of such retail mutual fund -

- (a) sell any securities short if, as a result of such short sale, the total value of all securities sold short on behalf of such retail mutual fund would immediately following such short sale exceed the value of its net assets;

- (b) borrow money if, as a result of such borrowing, the aggregate amount of outstanding borrowings effected on behalf of such mutual fund would immediately following such borrowing exceed ten per cent of the value of its net assets, except that -
 - (i) the limitation on borrowing referred to in this sub-paragraph may be exceeded for a period not exceeding twelve months in special situations including, without limitation, a merger of the retail mutual fund with another mutual fund, investment fund or other type of collective investment scheme; and
 - (ii) the limitation on borrowing referred to in this paragraph may be exceeded if -
 - (A) the objective of such retail mutual fund is to invest all, or substantially all, of the proceeds of the issue of its securities in real property, including interests in real property; and
 - (B) the investment adviser considers that any borrowing in excess of such limitation is necessary to ensure the sound management of the assets of such retail mutual fund or to protect the interests of the investors in such retail mutual fund;
- (c) acquire the shares of any one company which is not an investment company if, as a result of such acquisition, the total number of shares of such company carrying voting rights held by all mutual funds managed by the investment adviser would exceed fifty per cent of the total number of all issued and outstanding shares of such company carrying voting rights;
- (d) acquire any investment which is not listed on an exchange or which is not readily realizable if, as a result thereof, the total value of all such investments held by such retail mutual fund would immediately following such acquisition exceed fifteen per cent of the value of its net assets, but the investment adviser shall not be

- restricted from acquiring any investment where the method of valuation of such investment is clearly disclosed in such retail mutual fund's prospectus;
 - (e) enter into any transactions which are detrimental to the interests of such retail mutual fund's investors or which are contrary to the proper management of the assets of such retail mutual fund including, without limitation, transactions which are intended to benefit the investment adviser or third parties other than the investors in such retail mutual fund; or
 - (f) enter into any transactions with itself or any directors as principal.”;
- (b) by repealing subregulation (5) and substituting the following subregulation -
- “ (5) Subject to subregulation (6), an investment adviser of a retail mutual fund which is a company shall not on behalf of such retail mutual fund -
- (a) acquire the shares of any one company which is not an investment company if, as a result of such acquisition, the total number of shares of such company carrying voting rights held by such retail mutual fund would exceed fifty per cent of the total number of all issued and outstanding shares of such company carrying voting rights;
 - (b) acquire any securities issued by such retail mutual fund; or
 - (c) enter into any transactions which are detrimental to the interests of such retail mutual fund's investors or which are contrary to the proper management of the assets of such retail mutual fund including, without limitation, transactions which are intended to benefit the investment adviser or third parties other than the investors in such retail mutual fund.”; and
- (c) by inserting after subregulation (5) the following subregulation -
- “ (6) Nothing in subregulation (4) or (5) shall prevent an investment adviser on behalf of a retail mutual fund from acquiring all or any shares, securities, interests or other

investments in any company, unit trust, partnership or other person where such company, unit trust, partnership or other person -

- (a) is a mutual fund, investment fund, fund of funds or other type of collective investment scheme;
- (b) forms part of a master fund or feeder fund or other similar structure or group of companies or entities; or
- (c) is a special purpose entity which directly facilitates the investment objective or strategy, in whole or in part, of the retail mutual fund.

(7) It shall be a condition of the licence of a retail mutual fund that the contract of engagement of the investment adviser shall include the obligations specified in subregulation (1)(a) to(e).”.

5. (1) A licence that is in force immediately before the date of the commencement of these Regulations -

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- (a) shall have effect as from that date as if granted under the new Regulations; and
- (b) in the case of a licence for a specified period, shall remain in force, subject to the provisions of the new Regulations, for so much of that period as falls after that date.

(2) In this regulation -

“licence” means a licence of a retail mutual fund;

“new Regulations” means the principal Regulations as amended by these Regulations; and

“retail mutual fund” has the meaning assigned to that expression in the principal Regulations in force immediately before the date of the commencement of these Regulations.

Made in Cabinet the 21st day of August, 2012.

Kim Bullings

Clerk of the Cabinet.