



August 2008

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## Regulatory Policy

### Exemption from Audit Requirement for a Regulated Mutual Fund

#### 1. Statement of Objectives

To set out conditions where the Authority may exempt a regulated mutual fund (“the fund”) from the annual audit requirement.

#### 2. Introduction

- 2.1. Pursuant to section 8(1) of the Mutual Funds Law (2007 Revision) (“the Law”), “a regulated mutual fund shall have its accounts audited annually...”
- 2.2. Section 8(2) of the Law requires a regulated mutual fund to “send its audited accounts in respect of a financial year of the fund to the Authority within six months of the end of that financial year or within such extension of that period as the Authority may allow.”
- 2.3. Section 8(4) of the Law further provides that “the Authority may, in relation to the whole or part of the financial year of the fund, exempt a regulated mutual fund from the requirements of this section either absolutely or subject to such conditions as the Authority may think fit to impose”.

#### 3. Definitions

The Law defines a regulated mutual fund as a fund that is carrying on or attempting to carry on a business in or from the Islands and is doing so in compliance with section 4(1) or (3) of the Law.

#### 4. Conditions for Exemption

- 4.1. In considering whether to exempt a regulated mutual fund from the annual audit requirement, the Authority must be satisfied that the exemption will not contravene any terms of the fund’s articles or other constitutive documents and its offering document, or prejudice the fund’s investors and creditors.
- 4.2. The Authority will usually consider extending the fund’s first year’s audit period for a maximum of 18 months from the date of registration, where the



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fund does not commence operations immediately after registration. In such cases the fund may seek an exemption pursuant to section 8(4) of the Law.

4.3. In determining whether an exemption should be granted, the Authority shall assess each fund's request on a case by case basis, and after such assessment may consider an exemption in the following circumstances:

- a) a fund has not launched but does not wish to be de-registered;
- b) a fund has not launched and is being liquidated or wound up;
- c) a fund has launched but has been unsuccessful in raising the appropriate seed capital for sustainability;
- d) a fund is unable to obtain audited accounts due to events such as bankruptcy proceedings, legal or regulatory enforcement actions; or
- e) a fund has been placed in compulsory liquidation and the Authority is satisfied with the appointment of the liquidator and the scope of review.

4.4. If a fund applies for an exemption for two consecutive years, the Authority may ask for additional information from the fund's operator or administrator about the reasons for the fund's inability to produce audited accounts. The Authority will generally not consider applications for an exemption for three consecutive years.

## 5. Documents/Information to be submitted

5.1. The subsequent paragraphs outline the relevant information and documents that should be submitted to the Authority in support of a request for an exemption from the annual audit requirement in each of the circumstances listed in subsection 4.3.

5.1.1 Where a fund has not launched but does not wish to be de-registered<sup>1</sup>, the requestor should submit an affidavit from the operator(s) of the fund stating:

- a) the reason for the fund not being launched;
- b) the reason for the fund not wishing to be de-registered; and
- c) that the fund has not received subscriptions from third parties.

5.1.2 Where a fund has not launched and is being liquidated or wound up, the requestor should submit:

- a) an affidavit from the operator(s) of the mutual fund attesting as to the reason why the Fund has never carried on business as a mutual fund;

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<sup>1</sup> In such cases, the Authority will encourage the fund to deregister until it is ready to commence operations.



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and

- b) confirmation by an approved service provider that agreed upon procedures have been carried out that substantiate that no subscriptions have been received from investors.

5.1.3 Where a fund has launched but has been unsuccessful in raising the appropriate seed capital for sustainability, the requestor should submit:

- a) an affidavit from the operator(s) attesting that agreed upon procedures have been carried out that substantiate either that no subscriptions have been received from investors, that all subscriptions received from investors have been returned to the investors or that all subscriptions received from investors are segregated and accounted for separately from any other assets; and
- b) a copy of the agreed upon procedures referred to in subsection a) above.

5.1.4 Where a fund is unable to obtain audited accounts due to events such as bankruptcy proceedings, legal or regulatory enforcement actions, or where the fund has been placed in voluntary liquidation, the Authority will receive agreed upon procedures and liquidators' reports in lieu of the normal audited accounts. In cases of compulsory liquidation, the Authority will receive reports required under the court order.

5.2 In such cases where affidavits are submitted, the Authority will satisfy itself as to whether the contents therein are sufficient and whether the affidavit may be accepted in lieu of audited accounts as required under the Law. The Authority may require additional evidence to be provided.