Cayman Islands Monetary Authority

SUMMARY OF PRIVATE SECTOR CONSULTATION AND FEEDBACK STATEMENT

EXEMPTION FROM AUDIT REQUIREMENT FOR A REGULATED MUTUAL FUND

Regulatory Policy: Exemption from Audit Requirement for a Regulated Mutual Fund

Section of proposed Regulatory Policy	Industry Comment	Authority's response	Consequent amendments to the draft Regulatory Policy
General Comments			
General	Audit requirements for a registered mutual fund should mirror the requirements of the United States SEC in order to align the local regulatory regime with the largest onshore market for Cayman registered funds. Mandating liquidation audits is crucial. These audits provide the investors, and other stakeholders, in the fund structure with assurance over the completeness and accuracy of the portfolio in liquidation and redemption amounts distributed to investors. Exempting this requirement exposes the investors and Cayman to the risks that errors or intentional misstatements will go undetected.	The Authority fully acknowledges the importance of the audit process and the practices of other jurisdictional counterparts (including the SEC) in this regard. Notwithstanding, it must be acknowledged that the Authority holds absolute discretion in granting audit exemptions and will not grant an exemption under any circumstance which will put investors or other stakeholders in undue risk. Through the implementation of this Regulatory Policy, the protection of investors and creditors will be paramount. Paragraph 4.1. of the Policy states: "*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*	None.

		document, or prejudice the fund's investors and creditors". Notwithstanding the Authority's ability to waive audits for Cayman domiciled funds, the Authority requires that funds comply with the laws of all jurisdictions in which they market. As such, if an audit is required by the SEC, the fund cannot rely on a waiver of audit granted by the Authority to avoid the SEC requirement.	
	Under the current regime, there is no requirement for regulated entities to be wound up by a qualified Cayman Islands Insolvency Practitioner. Effectively, this means that the director or registered office provider can, and in very many cases does, act as liquidator. Consequently, there is no provision of any independent oversight through the period from the date of the final audit to the winding up and dissolution of the entity. The lack of appropriate qualification requirements for liquidators of regulated entities represents a wider regulatory issue, which merits further consideration.	Though the Authority acknowledges the concerns expressed, as is known, under Cayman Islands law a voluntary liquidator does not have to hold any specific professional qualifications. However, where liquidation is brought under a Court's supervision, as a result of the inability of the liquidator to file signed declarations of solvency of each of the fund's directors, the Court will appoint an independent professional with the requisite qualifications as liquidator. Consequently, it is outside the scope of this Regulatory Policy to prescribe qualification requirements for liquidators.	None.
	There are various references to "third party" in the document. It would greatly assist if clarification was provided on whether a third party means someone other than the directors or service providers of the fund.	References to "third party liquidator" mean individuals, serving as liquidators in the voluntary liquidation of a fund, who are not operators or currently engaged service providers (excluding an Auditor) of the fund.	None.
	"The Regulatory Procedure on Cancellation of Licences issued pursuant to Section 5 and Certificates of Registration issued pursuant to Section 4(3), and 4(1)(b) of the Mutual Funds Law" provides that the last audit of a fund should cover the period from the date of the last financial year end (for which audited statements have been filed) to either: (a) the date of the commencement of the winding up where a third party liquidator has been appointed; or (b) the date of the final distribution if no third party liquidator has been appointed. The circumstances set out in (b) may result in	The Authority is aware that in some situations the full final distribution will not have been made and therefore what is referenced in the subsequent events notes will not account for the entire amount. In such instances, the Authority would expect that the remaining amount is limited to only remaining expenses to wind down the structure and that the audited financial statements clearly outline in the accounts payable section and other financial information that there is a relatively small	None.

	circularity, as the audit end date cannot be determined until the final distribution is made and the final distribution cannot typically be made until the audit is complete. We should be grateful if the Authority would consider this and provide guidance.	final distribution remaining. Additionally, other regulatory requirements for de-registration will also have to be met, inclusive of an affidavit confirming that all investors have been properly and completely redeemed out the fund.	
	We should be grateful for additional guidance (and details in the Amended Regulatory Policy) on the requirements for requesting exemptions for the filing of audited accounts in relation to the termination of segregated portfolios and sub-trusts, where the segregated portfolio company or umbrella trust is not being de-registered as a mutual fund under the Law. In these cases, the regulated entity would continue to be regulated and continue to be subject to its audit obligations to the Authority. By analogy, if the fund had not been structured as an umbrella fund and had, instead, simply redeemed a particular class of shares, we would not expect the Authority to require an audit of the particular class prior to the class being terminated.	The requirements for requesting a waiver will be dependent on whether or not the SP or sub-trust produces accounts on a stand-alone or consolidated basis. In the case of consolidated accounts, if the SP or sub-trust has traded/operated for a portion of its current financial year, the SPC or Trust (as the legal entity) will have to submit a request on behalf of the SP/sub-trust for the partial year audit to be waived, with the period of the SP's/sub-trust's operations covered in the consolidated accounts. For stand-alone filings, accounts covering the period of operation will be required.	None.
4. Conditions for Exemption			
Paragraph 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.	Given generic statements in offering documents which can often make reference to audits being carried out (without detailing the circumstances in which the operators might consider it in the best interests of the fund not to do so), we would request that the words "and its offering document" be deleted. Operators will need to consider their duties and also comply with the fund's constitutive documents when considering making an application for an audit waiver. These aspects are addressed by the remaining wording.	This paragraph outlines the basis upon which the Authority will consider granting an audit waiver. The offering document is fundamental to the formation and ongoing operations of a fund and must be considered when deciding whether to approve an audit waiver request. The offering document forms the basis of an investors' understanding of the operations and obligations of the fund. Investors are entitled to rely on the statements regarding audits included in the offering document.	None.
Paragraph 4.2. – The Authority may consider extending the fund's first	Under various accounting frameworks, including US GAAP, the reporting cycle for an entity is considered to be annually (or less if commencing operations)	The Authority's current practice for granting audit extensions is based on a pragmatic approach. Each fund's unique situation is	None.

year's audit period for a maximum of 18 months. Consideration may also be given to extending the fund's last audit period for a maximum of 18 months from the date of the last audit conducted.	unless its own business cycle extends beyond 12 months. While CIMA has, for years, accepted extended reporting periods for first audits after a fund launches, this practice diverges from the SEC's policy which generally requires a stub audit to be completed. For periods beyond 12 months, GAAP would look to whether the two periods to be combined into one period exceeding 12 months were not materially different as compared to the 12 month period. Granting up to an 18-month final audit in certain circumstances (and not obtaining its regular annual audit) creates audit issues at the investor level. This applies to both first year end exemptions and liquidation audit exemptions. It is also important to note that for many funds the annual year-end is also the tax year end for investors. Fund and investor level tax returns are ordinarily submitted on the basis of the audited financial statements.	assessed to ensure no undue risk exists for investors. Notwithstanding the granting of audit extensions by the Authority, it is expected that all funds, and its individual or institutional investors, will be aware of and compliant with all statutory and regulatory obligations within and outside the Cayman Islands.	
	In relation to a fund's first audit period, we note the deletion from the first sentence of section 4.2 of the words "from the date of registration". We would suggest including a start date for the calculation of the 18 month period and would suggest that the start date be the later of: (i) the date of registration; or (ii) the date upon which the fund first admits investors (as defined in the Law).	Noted. The words "from the date of registration" will be inserted.	To be amended.
	Up to 18 month final audit period: The possibility of extending the final audit period to cover a period of up to 18 months is welcomed. We should be grateful for the Authority's guidance and clarification on the following: (a) Will a fund have 6 months from the extended end date to file the audited accounts with the Authority? For example, if a fund's normal year end is 31 December 2016 and the fund wishes to extend the period to 30 June 2017, does this mean that the fund has until 31 December 2017 to file the extended period 18 month final	Noted. Section 8(2) of the Mutual Fund Law will also relate to audit periods extended by the Authority. Therefore, audited accounts for an extended period will need to be filed within six (6) months of the end of that particular period.	None.

	audited accounts? (b) When can this extension be applied for? Does it need to be applied for at the time of the filing of the core de-registration documents, at the time of confirmation that all investors have been repaid in full / that the formal liquidation has commenced, or can it be made at any time? (c) What if circumstances change and the originally anticipated date for the completion of the soft wind down of the fund and surrender ends up being more than 18 months?	Requests for audit extensions should be made at the earlier of, filing core de-registration documents or when a resolution has been made. Consideration of such instances will only be given in extenuating circumstances determined on a case by case basis. The Authority maintains absolute discretion in granting audit extensions. In absence of an audit exemption, the fund will need to provide audited results for the extended period for which it operates.	
	Use of notes to the financial statements regarding events after the reporting period ("subsequent event notes"): Please confirm in the Amended Regulatory Policy if, in addition to the possible extension of the final audit period for up to 18 months, the Authority would accept the preparation of a final 12 month audit (or longer period) and permit the use of subsequent event notes to cover the fund's activities for the stub period. This approach would be strongly welcomed by industry as being potentially more cost efficient than conducting an 18 month audit (or, indeed, having to conduct two separate audits), and would still be a means of providing the Authority with information regarding the fund's activities in the relevant stub period. This would also allow certain funds that cannot vary from a 12 month audit period (due to onshore regulatory requirements upon their investment managers) to provide the Authority with information in a more cost efficient manner for the	The Authority will not accept the use of subsequent event notes under circumstances described. Six (6) months is a significant amount of time in which a fund may have several events in its operations that have material financial implications. An attempt to capture and effectively communicate this information solely through subsequent event notes, particularly where the extent of the need for disclosure is great, is not practical. Additionally, achieving consistency amongst these disclosures in lieu of an audit will pose substantial challenge.	None.

	fund's investors. If subsequent event notes covering material activity in the stub period would be sufficient, please confirm whether an audit waiver request would still need to be submitted.		
	The Authority has been willing to agree to vary / extend audit periods during the life of a fund (for example, in the context of changing a fund's financial year end), following receipt of a letter from the auditor and the payment of a fee. We should be grateful for the Authority's confirmation that this will remain available.	The Authority will continue to give consideration, with absolute discretion and adequate supporting grounds, to such circumstances on a case by case basis.	None.
Paragraph 4.3. (And related Paragraph 5.1.) – 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: …	We should be grateful if the Authority would consider adding the following additional circumstance at section 4.3: "all investors that were invested in the fund during a part-period have agreed to forego the audit of that part-period". This would allow the Authority to expressly recognise the preferences of investors, where all relevant investors do not wish for the fund to incur the costs of a stub-audit and where they are agreeable to the waiver. An affidavit from an operator could be provided to the Authority confirming whether the relevant investors have agreed to waive the stub-audit.	The Authority acknowledges the rationale for supervisory consideration of this particular circumstance and accepted the recommendation for this new circumstance, under specific conditions. Consequently, consideration for audit waiver under this circumstance will be given where all investors of a fund have agreed to forego the audit for a part of a financial year (of not more than six (6) months). The Authority's consideration of audit exemption requests in such cases will only be given where no more than ten (10) investors existed at any time during the part-period. In support of this request for exemption, the requestor is required to submit: a) an affidavit from an operator of the fund confirming that no more than ten (10) investors existed at any time during the part-period and that each remaining investor has resolved to waive the audit for the given part-period; and b) a resolution signed by each investor confirming their agreement to a waiver of the audit. Submitted resolutions must explicitly outline the acknowledgement and acceptance of all inherent risks	To be amended.

		involved in not conducting a financial audit for the given part-period.	
Paragraph 4.3. a) through c) (And related Paragraphs 5.1.1., 5.1.2. and 5.1.3) – 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: …	We should be grateful for guidance as to the Authority's interpretation of the word "launched". We would suggest that this word be defined or the wording clarified. We interpret and understand "launched" to mean that the fund has accepted subscriptions from investors, admitted the investors and commenced trading with their subscription monies. Using our interpretation of "launched" in sections 4.3 and 5 creates some confusion/uncertainty as to the differences between the situations and documents required, which we have highlighted below. Once the Authority has clarified its interpretation of "launched", we should be grateful for another opportunity to reassess these circumstances and the related documents required by the Authority.	The Authority confirms that the term "launched" means where a fund has accepted subscriptions from investors, admitted the investors and commenced trading with their subscription monies. A footnote will be inserted for clarification.	To be amended.
Paragraph 4.3. b) (And related Paragraph 5.1.2.) – … a fund has not launched and is being liquidated or wounded up.	There may be instances where a fund will want to de-register with the Authority but will remain in existence, rather than proceeding to be dissolved (for example, the fund may intend becoming a single investor fund or to launch and fall within an exemption under section 4(4) of the Law or may simply want to wait and re-register with the Authority at some point in the future). Accordingly, we suggest that this section be rephrased to say "a fund has not launched and wishes to be de-registered".	The de-registration of a fund, despite the intentions for an alternative structure and operations, will have to abide by the issued *Regulatory Cancellation of Licence for Mutual Funds (particularly paragraph 6.7)*. Consequently, in absence of an approved audit waiver, audit requirements will need to be met to ensure good standing of the particular fund. Request for audit waivers in these circumstances may be considered on a case by case basis.	None.
Paragraph 4.3. c) (And related Paragraph 5.1.3.) – … a fund has launched but has been unsuccessful in raising the appropriate seed capital for sustainability.	We would suggest that this situation be rephrased to state: "a fund has admitted investors and commenced trading but has been unsuccessful in raising sufficient capital for sustainability". It is not clear why the word "seed" is necessary. We assume the intention is that the fund has not obtained sufficient investor capital from any source. We assume that it will be for the	Clarification of the word "launch" provided. See comment at 4.3. a) through c) above. The word "seed" will be removed.	To be amended.

	operator(s)/promoter to determine whether the fund has raised sufficient capital, but should be grateful for the Authority's confirmation. We think that this circumstance may be particularly welcomed by start-up managers, who may have personally invested in a fund and/or attracted "friends and family money" but failed to attract sufficient support from other investors to gain sufficient critical mass to bear the on-going expenses of running the structure. Allowing a fund to de-register and return capital in a cost efficient manner, within a reasonable period of time from launch, may help encourage more start-up funds to seek to register with the Authority. There are also other circumstances where allowing an efficient return of capital without the costs of an audit might be beneficial to investors in circumstances where a fund has failed to become viable.	Noted.	
	We should also be grateful for clarification/guidance on whether there is any time limit in which the operator(s)/promoter might make such a determination. In some cases a fund might "launch" (in the sense of admitting investors and beginning trading with their subscription proceeds) in the hope of achieving a particular scale within a particular time, but ultimately being unsuccessful in achieving the desired scale. If the Authority's interpretation of "launched" is different to our view noted above, we should be grateful if the Authority would expand this circumstance, or add an additional circumstance, to expressly permit consideration of a waiver where the fund has admitted investors and commenced trading but determined that it has not raised sufficient capital for sustainability within a six month period of launch.	The operator(s) of a fund should communicate this determination within the first financial year of operations, before the first audit is due.	None.
Paragraph 4.3. f) through h) – In determining whether an exemption should be	All of these scenarios expose investors and Cayman to the risks of not having a financial statement audit during a period when active trading is occurring.	Through the implementation of this Regulatory Policy, the protection of investors and creditors will be paramount. Paragraph 4.1. of the Policy states:	None.

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: …		"*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*". This explicit ground for Authority consideration extends to all exemptible circumstances including those expressed in Paragraph 4.3. f) through h).	
Paragraph 4.3. f) – … a fund is being liquidated and a third party liquidator has been appointed under terms that require a review of the period since last audit.	"Third-party liquidators" do not have standardized 'review procedures'. They take over from management rather than specifically providing consistently applied review or assurance services. In addition and as above, some persons appointed as voluntary liquidators will be qualified insolvency practitioners, and other will not be. An auditor performs standard procedures in accordance with a specific established framework and produces a standard report, which is recognized and understood by all parties, including investors. Auditors, in contrast to other "third-party liquidators", through audit of normal operating activity during the stub periods affords the best protection to investors' interests. The period covered by a "stub audit" may often be the highest risk throughout the life of a fund, particularly in the context of performance fees in an underperforming strategy.	Noted. However, under Cayman Islands law a voluntary liquidator does not have to hold any specific professional qualifications. Where liquidation is brought under a Court's supervision, as a result of the inability of the liquidator to file signed declarations of solvency of each of the fund's directors, the Court will appoint an independent professional with the requisite qualifications as liquidator. Consequently, it is outside the scope of this Regulatory Policy to prescribe qualification requirements for liquidators.	None.
Paragraph 4.3. f) (And related Paragraph 5.1.5.)	Please clarify the meaning of "third party liquidator". Would a third party liquidator be anyone other than the promoter/investment manager? We appreciate that this may not be straightforward and, given that it might depend on the particular circumstances of the fund, we have suggested adopting similar wording to that at section 4.3(e) (i.e. that the Authority would need to be satisfied with the particular appointed liquidator in the	References to "third party liquidator" mean individuals, serving as liquidators in the voluntary liquidation of a fund, who are not operators or currently engaged service providers of the fund. A footnote will be inserted for clarification.	To be amended.

	circumstances). Any general guidance would be appreciated.		
	Guidance would also be appreciated with respect to what would likely be within the "scope" of any such liquidator's review, and what form the review should take.	Kindly refer to Paragraph 5.1.5. of the Regulatory Policy. This section of the Policy states the necessary inclusions for liquidator's reports. These include: a) review of subscriptions and redemptions; b) reconciliations to bank accounts/statements; c) agreement of shareholder registers with net asset value statements; d) recalculation of performance and management fees; e) review of creditors and accruals; f) review for solvency; and g) report on matters relating to compliance with laws and regulations.	None.
	With respect to section 4.3(e), we should be grateful for confirmation of the Authority's interpretation of "compulsory liquidation" (we have assumed that this is intended to refer to an involuntary official liquidation).	The Authority confirms that "Compulsory liquidation" refers to involuntary official liquidation. A footnote will be inserted for clarification.	To be amended.
Paragraph 4.3. g) – … a fund is transferring to another jurisdiction within six (6) months of its last filed audit.	When a fund transfers domiciles, a period of exposure for Cayman occurs if the audit is not conducted as of the date of transfer and operations have occurred between the prior financial statement date audited and the transfer date. This should not be a criterion for exemption from a final audit.	Please refer to response for Paragraph 4.3. f) through h) above.	None.
Paragraph 4.3. g) (And related Paragraph 5.1.6.)	The possibility of obtaining an audit waiver when a fund is transferring to another jurisdiction is welcomed, given the practical difficulties or impossibilities in managing the timing of such a transfer with the preparation of audited financials up to the date of the transfer.	Noted.	None.

	These timing difficulties do not cease after the first 6 months of the financial year. In order to accommodate the practical issues that arise with a transfer of a fund, and not to have all transferring funds having to seek to transfer within only the first 6 months of their financial year, we would suggest removing the 6 month limitation. If a time period is required, it is not clear when the current six month period commences – is it immediately following the last financial year end or from the date on which those audited accounts were actually filed with the Authority? If a time period is required, please consider whether other assurances can be provided to the Authority to overcome this, such as a confirmation from an operator that audited financials for the full period will be provided to investors in due course. If a fund transfers to another jurisdiction where it is required to, or undertakes to, prepare audit accounts for the full period, investors should not be prejudiced.	Removing this time limitation creates an indefinite circumstance which would result in significant uncertainty and expose stakeholders to undue risk. The Authority will not waive audits beyond six (6) months. This will prompt transferring funds to be timely and proactive in planning its transfer. The six (6) month period will commence after the last financial year end for which an audit has been filed, or is due to be filed, with the Authority. "within six (6) months of its last filed audit" will be removed and replaced with "within six (6) months of its last financial year end for which an audit has been filed, or is due to be filed." Noted.	To be amended.
Paragraph 4.3. h) – … a fund is dissolving by way of a merger within six (6) months of its last filed audit.	In the case of a merger with another registered fund, the financial statements of the continuing fund will be audited to a different materiality that will be higher and will not focus on the balance sheet at the date of the merger, which is when the acquired fund's investors will be crystallizing their value for investment in the merged fund or otherwise redeeming. This should not be a criterion for exemption from a final audit.	The issued *Regulatory Procedure on the Cancellation of Licence for Mutual Funds* requires the submission of various documents to substantiate dissolving a fund by way of merger. These requirements provide necessary protection for all stakeholders.	None.
Paragraph 4.3. h) (And related Paragraph 5.1.7.)	The possibility of obtaining an audit waiver where a fund is dissolving by way of merger is also welcomed. Similar comments to those made above, with respect of the practicalities of synchronising the event with the timing of the stub-audit, apply.	Refer to comment at 4.3 g) above.	None.

	Likewise, we would suggest the removal of the 6 month limitation and the other clarifications as set forth above.		
Paragraph 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.	Remove final sentence in its entirety. There are numerous examples of a promoter who has formed and registered a Mutual Fund but then decided not to launch it as originally planned. Having occurred, the sizable initial expense in legal fees, etc., the promoter may wish to maintain the Mutual Fund as dormant (but registered) entity until such time as more propitious circumstances allow its launch. Instances where the promoter is prepared to wait for more than three years before raising money for the Mutual Fund. Under such circumstances, it would seem reasonable for the Authority to continue to grant audit waivers beyond a three-year horizon, unless there are reasons other than the length of time for which the Mutual Fund has remained dormant.	Agreed. "The Authority will generally not consider applications for an exemption for three consecutive years" will be removed.	To be amended.
5. Documents/Information to be submitted			
Paragraph 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.	We note the use of the different words "stating" and "attesting" when referring to affidavits. We have suggested amending these to "explaining" (where a reason is required) and to "confirming" (where a confirmation is required). This may also help clarify that the actual wording of the affidavit does not need to strictly match the particular language set out in the Amended Regulatory Policy.	Noted. The words "stating" and "attesting" will be replaced with "explaining" and "confirming" in line with suggested uses.	To be amended.
	Depending on the Authority's interpretation of the meaning of the word "launched', we have sought to clarify the difference between: (i) receiving subscription materials and monies from an investor; and (ii) actually accepting their subscription materials and monies, admitting them as an investor and trading with the subscription proceeds.	The Authority confirms that the term "launched" means where a fund has accepted subscriptions from investors, admitted the investors and commenced trading with their subscription monies.	None.
Paragraph 5.1.1 (c) –	We should be grateful if the Authority would	Noted.	To be amended.

Where a fund has not launched but does not wish to be de-registered, the requestor should submit an affidavit from the operator(s) of the fund stating that the fund has not received subscriptions from third parties.	confirm what "third parties" is intended to mean – should this be "investors" (as defined under the Law)?	The word "third parties" will be changed to "investors".	
Paragraph 5.1.2 (b) – Where a fund has not launched and is being liquidated or wound up, the requestor should submit confirmation by an approved service provider that procedures have been carried out that substantiate that no subscriptions have been received from investors.	We should be grateful if the Authority would clarify the meaning of "an approved service provider". Is there a particular type of service provider or list of service providers that can fulfil this role? In addition, please clarify what is meant by "procedures have been carried out to substantiate…" Is the intention for the fund to simply provide confirmation to the Authority in writing from, for example, the administrator of the fund, that no subscriptions were accepted? If so, please amend to state: "confirmation in writing from the fund's administrator, registrar and transfer agent or other service provider from whom the Authority would be willing to accept confirmation, that no subscriptions have been accepted from investors".	As suggested, the paragraph will be amended to state "Where a fund is being liquidated or wound up, the requestor should submit confirmation in writing from the fund's administrator, registrar, liquidator, transfer agent or other service provider from whom the Authority would be willing to accept confirmation, that no subscriptions have been accepted from investors."	To be amended.
Paragraph 5.1.3 (a) – Where a fund has launched but has been unsuccessful in raising the appropriate seed capital for sustainability, the requestor should submit an affidavit from the operator(s) attesting that procedures have been carried out that substantiate either that	Similar to the above, we should be grateful if the Authority would clarify the meaning of "procedures have been carried out to substantiate...". Is the intention for an operator to simply confirm the relevant matters in an affidavit? If so, we should be grateful if the Authority would amend accordingly.	The paragraph will be amended to state "Where a fund has launched but has been unsuccessful in raising sufficient capital for sustainability, the requestor should submit an affidavit from an operator of the fund confirming that the fund has not raised sufficient capital for sustainability, no further subscriptions are being accepted from investors and all subscription monies received from investors have been returned."	To be amended.

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.			
	The request for an affidavit relating to no subscriptions seems to be same as that requested under section 5.1.2(b). This may cause confusion as to which situation might apply in a given circumstance. Once the Authority clarifies its interpretation of the word "launched", this may help to resolve this (and may require further amendment to this section).	Paragraph 5.1.2 (a) and 5.1.3 (b) are similar but relate to two separate circumstances as stated respectively.	None.
	We should be grateful if the Authority would provide guidance on what it means by "all subscriptions received from investors are segregated and accounted for separately from any other assets". We have suggested amending this section based on our understanding of the meaning of the word "launched".	In this circumstance the fund would have received subscriptions from investors, though unable to sustain operations. It is important that these subscriptions are not used outside of the intended purpose and should be accounted for separately from other assets to ensure that this is so. The Rule on Segregation of Assets, while mandatory for licensed funds only, nevertheless explains the concept of segregation, which is applicable to all funds.	None.
Paragraph 5.1.3 (b) – Where a fund has launched but has been unsuccessful in raising the appropriate seed capital for sustainability, the requestor should submit a copy of the procedures referred to in subsection a) above.	Please clarify what is meant by "a copy of the procedures referred to above" and what document(s) the Authority is expecting to receive? Would the affidavit at section 5.1.3(a) not be sufficient?	A copy of procedures will serve to substantiate an affidavit provided by the operator(s) of a fund. The specific procedures will vary from fund to fund but will need to demonstrate that actions taken by the operator(s) to provide the assurances listed in 5.1.3(a).	None.
Paragraph 5.1.4 – Where a fund is unable	Suggest that the reference to "agreed upon procedures" be changed to "specified procedures".	Agreed upon procedures, in this situation, relate to specific established parameters of	None.

to obtain audited accounts due to events such as bankruptcy proceedings, legal or regulatory enforcement actions, or where the fund has been placed in compulsory liquidation, the Authority will receive agreed upon procedures and liquidators' reports in lieu of the normal audited accounts.	(Agreed upon procedures has a connotation as a specific type of report that is not appropriate in this circumstance).	the particular proceeding (as outlined in the paragraph). This will the agreed upon by the operator(s) of the fund and the enforcers of the proceeding (usually the Courts).	
	It is unclear as to whether agreed upon procedures and a liquidators report is needed in all instances, or whether for example in the instance of a compulsory liquidation, the Authority would accept only the liquidators report.	See comment above. Consequently, the Authority will need to be advised of the parameters and provided with a liquidators report.	None.
	We should be grateful if the Authority would confirm by whom the "agreed upon procedures" should be provided and provide guidance as to the expected procedures.	The referenced procedures should be provided by the operator(s) of the fund and will be specific to the type of proceeding (bankruptcy, legal or regulatory enforcement actions or compulsory liquidation) and the particular circumstances of each situation.	None.
Paragraph 5.1.5 – Where a fund is being voluntarily liquidated and a third party liquidator has been appointed, the fund must submit a third party liquidator's report covering the period since the last issued audited financial statements, which should include a: a) Review of subscriptions and redemptions; b) Reconciliations to bank accounts/statements;	Voluntary liquidators of regulated entities may or may not be qualified insolvency practitioners under the current regulatory framework in the Cayman Islands. In addition, in the Cayman Islands, voluntary liquidators may or may not be independent of the entity being liquidated. Finally, liquidators do not have prescribed or standardized 'review procedures'. Individually some will consistently apply adequate procedures but others may not, hence while mandating that certain key procedures must be performed and reported on is a step in the right direction, in our view this still does not represent a sufficient alternative to a final stub period financial statement audit.	Though the Authority acknowledges the concerns expressed, as is known, under Cayman Islands law a voluntary liquidator does not have to hold any specific professional qualifications. However, where liquidation is brought under a Court's supervision, as a result of the inability of the liquidator to file signed declarations of solvency of each of the fund's directors, the Court will appoint an independent professional with the requisite qualifications as liquidator. Consequently, it is outside the scope of this Regulatory Policy to prescribe qualification requirements for liquidators.	None.

c) Agreement of shareholder registers with net asset value statements; d) Recalculation of performance and management fees; e) Review of creditors and accruals; f) Review for solvency; and g) Report on matters relating to compliance with laws and regulations.			
	There is no restriction on any person or entity, resident or non-resident that can be appointed a voluntary liquidator of a solvent Cayman Islands fund. Consider if the preparation of review reports should be restricted to resident CIMA-regulated service providers. This would ensure that a similar standard is being met as for audited financials, which for CIMA, regulated entities, require signoff from CIMA approved Cayman resident auditors. This would allow CIMA to rely on their regulated service providers when considering audit waiver.	See comment above.	
	Is the end date for the review the date of appointment of the liquidator or the date of the final distribution? Given that clause 4.3 f) only applies where a third party liquidator has been appointed, the period end date would presumably be the date of appointment, in line with the audit requirement in 7.1 of the Regulatory Procedure dated March 2015. However, given that the information is to be added to the voluntary liquidators report, perhaps the period end date is that of the voluntary liquidators' report, which is the date of the Final General Meeting.	In line with paragraph 7.1 of the *Regulatory Procedure on Cancellation of Licence for Mutual Funds,* the end date of the review will be the date of the commencement of the winding up. Noted. However, the end date of the "commencement of the winding up" does not preclude the necessary inclusions and preparation of the liquidator's report. The liquidator will determine the specific end date based on the successful completion of the winding up.	None.

	Further, per paragraph 7.1 of the Regulatory procedure, the period end date for the stub audit can be the date of the final distribution if no third party liquidator is appointed. The period end date should be consistent as an audit requirement regardless of who is appointed as liquidator.		
	Should a legal confirmation be obtained from fund's counsel confirming there is no on-going litigation or alternatively should a confirmation be requested from the operators of the fund? Similar to audits it should be clarified that only material issues need to be highlighted in the review report to CIMA.	It is expected that disclosure of any on-going litigation would be made in the liquidator's report and would be a material consideration in the liquidation process. This is already a well-established expectation.	None.
	The procedures outlined are not described in sufficient detail to assist. Some of the procedures will be practically difficult to perform as the documents the Voluntary Liquidator ("VL") has access to will not be sufficient, and in other instances the reason for performing the said procedure is not clear. It is the understanding that the primary reason for conducting any procedures for the stub period are directed to ascertaining whether the creditors and investors were prejudiced during the stub period. Also, the VL's role is not to investigate the affairs of the company as prescribed in compulsory liquidations. As such, as a starting point the VL has to rely upon the previous audit. Therefore in order to assess whether creditors and investors have been prejudiced, the work should probably be directed to: • Reviewing subscriptions and redemptions during the stub period to see that they are conducted at the NAV reported by the fund; • Reviewing management and performance fees, and all fess to service providers to assess whether they were calculated according to	Noted. The suggested inclusions for the liquidator's report mirrors, in more detail, those already included in the Regulatory Policy. The Authority has sought to broadly establish its inclusions to allow flexibility in application based on the specific circumstance of each fund.	None.

	contract; • Reviewing the NAV during the period and assessing whether any material changes in the NAV since the last audit is due to market conditions or other reasonable explanation; • To the extent the VL realizes assets and distributes them to investors, whether the value of those differ materially from the last NAV reported by the fund.		
	We should be grateful if the Authority would provide some guidance/clarification as to the level of detail expected to be included in the liquidators' report. For example, would a basic statement from the liquidators that a review had been carried out and that no material issues were identified be sufficient?	As outlined in paragraph 5.1.5 of the Regulatory Procedure, the liquidator's report should contain the outlined inclusions. The detail of this inclusion will differ on a case by case basis but should be substantial enough to communicate all material aspects to facilitate a concrete foundation for the Authority's determination. A basic statement from the liquidators that a review had been carried out and that no material issues were identified would not be sufficient.	None.
Paragraph 5.1.5 g) (See above)	It should be clarified that the "laws and regulations" refers to Cayman Islands laws and regulations only.	The Authority acknowledges that funds may also have legal and regulatory obligations outside of the Cayman Islands. In this regard, the liquidator should report on compliance with all related legal and regulatory obligations of the fund and its operator(s) in and outside the Cayman Islands.	None.
	We should also be grateful for guidance on what might be sought by the Authority under section 5.1.5(g) with respect to a "report on matters relating to compliance with laws and regulations". We should be grateful for clarification as to the nature and scope of such a report, the time period that it should cover and clarification as to what is meant by "compliance with laws and regulations" (e.g. which are the relevant jurisdictions for such a report to cover).	It is expected that the liquidator's report will include any material disclosures related to the legal and regulatory obligations of the fund. This will largely relate to any infringements, whether actual or alleged, of any law or regulation in any jurisdiction which the fund is obligated to observe.	None.
Paragraph 5.1.6 – Where a fund is transferring to another jurisdiction within six (6)	Removed as we do not believe a transfer of domiciles is appropriate criterion to exempt a final audit.	Through the implementation of this Regulatory Policy, the protection of investors and creditors will be paramount. Paragraph 4.1. of the Policy states:	None.

months of its last filed audit, the fund shall provide to the Authority the information as set out in the Regulatory Procedure – Cancellation of Licences issued pursuant to Section 5 and Certificates of Registration issued pursuant to Section 4(3), and 4 (1) (b) of the Mutual Funds Law.		"*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*". This explicit ground for Authority consideration extends to all exemptible circumstances.	
	See also our comments at Paragraph 4.3. g) (And related Section 5.1.6.)	See comment above.	None.
Paragraph 5.1.7 – Where a fund is dissolving by way of merger within six (6) months of its last filed audit: a) The terminating or dissolving fund shall provide to the Authority the information as set out in the Regulatory Procedure; b) The surviving fund, where regulated, shall provide to the Authority the information as set out in the Regulatory Procedure as well as an audited statement, as at its next audit period, which includes the financial information of the terminating or	Removed as we do not believe a transfer of domiciles is appropriate criterion to exempt a final audit.	See comment above.	None.

dissolving fund for the duration of its operation during the audit period.			
Paragraph 5.1.7 (b) – See above.	It is not clear why, if the surviving fund is regulated by the Authority, the surviving fund needs to specifically provide information set out in Regulatory Procedure on Cancellation of Licences issued pursuant to Section 5 and Certificates of Registration issued pursuant to Section 4 (3), and 4 (1) (b) of the Mutual Funds Law) in respect of the dissolving fund? We should be grateful if the Authority would consider and provide some clarification on this point. If the reference to the "Regulatory Procedure" in section 5.1.7(b) is incorrect, section 5.1.7(b) could be amended to read: "The surviving or consolidated fund, where regulated by the Authority, shall provide the Authority in its next audited accounts financial information that includes the financial information in respect of the dissolving fund for the duration of its operation during the audit period".	Paragraph 5.1.7 does not specify the jurisdictional regulation of the fund. It is possible that the surviving fund will not be regulated in the Cayman Islands. Nevertheless, the Authority needs to be fully advised of all material aspects of the merger, both from the dissolved and surviving fund.	None.
Paragraph 5.3. – For funds seeking an audit waiver in conjunction with an application for de-registration, the documents and fee as outlined in the relevant sections of the Regulatory Procedure on Cancellation of Licences and Certificates of Registration issued pursuant to Section 4 (3), and 4 (1) (b) of the Mutual Funds Law must also be submitted.	This section only refers to applications for an audit waiver in connection with funds that are de-registering. We should be grateful if the Authority would also address the fees for funds applying for an audit waiver not in connection with a surrender or de-registration under the Law (for example, in the circumstances set out in Sections 4.3(a) and 4.3(d) of the Amended Regulatory Policy).	Noted. The fees levied by the Authority for applications for audit waivers in all circumstances are outlined in Schedule 2 of the Monetary Authority Law.	None.