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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 audit requirements.

2. Introduction

- 2.1. Pursuant to section 8(1) of the Mutual Funds Law (2015 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”.
- 2.4. This document establishes the Regulatory Policy on Exemption from Audit Requirement for Regulated Mutual Fund. Where a fund is seeking an audit waiver in conjunction with an application for de-registration, this Regulatory Policy should be read in conjunction with the Rule on Cancellation of Licence or Certificate of Registration of Regulated Mutual Funds and 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.

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.



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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 may consider extending the fund's first 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.
- 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;
 - 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;
 - f) a fund is being liquidated and a third party liquidator has been appointed under terms that require a review of the period since the last audit;
 - g) a fund is transferring to another jurisdiction within six (6) months of its last filed audit; or
 - h) a fund is dissolving by way of a merger within six (6) months of last its filed audit.

The Authority may also in other exceptional circumstances and with absolute supervisory discretion grant an exemption from the audit requirement, upon the submission of information as requested by the Authority and necessary to support the request.

- 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



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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-registered¹, 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; and
- b) confirmation by an approved service provider that 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 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 procedures referred to in subsection a) above.

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



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- 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 compulsory liquidation, the Authority will receive agreed upon procedures and liquidators' reports in lieu of the normal audited accounts.
- 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;
 - 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.
- 5.1.6 Where a fund is transferring to another jurisdiction within six (6) 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.
- 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 dissolving fund for the duration of its operation during the audit period.

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



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accepted in lieu of audited accounts as required under the Law. The Authority may require additional evidence to be provided.

- 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.

FOR CONSULTATION