

CAYMAN ISLANDS MONETARY AUTHORITY

PRIVATE SECTOR CONSULTATION



RULE AND REGULATORY PROCEDURE ON CANCELLATION OF LICENCE OR CERTIFICATE OF REGISTRATION OF REGULATED MUTUAL FUNDS

A. INTRODUCTION

1. Section 34(1)(a) of the Monetary Authority Law (2013 Revision) (as amended) ("MAL") states that –

After private sector consultation and consultation with the Financial Secretary, the Authority may –

- (a) *issue or amend rules or statements of principle or guidance concerning the conduct of licensees and their officers and employees, and any other persons to whom and to the extent that the regulatory laws may apply;*

2. Requirements specific to the private sector consultation are outlined in section 4(1) of the MAL as follows:

When this Law requires private sector consultation in relation to a proposed measure –

- (a) *the Authority shall give to each private sector association a draft of the proposed measure, together with –*

- i. *an explanation of the purpose of the proposed measure;*
- ii. *an explanation of the Authority's reasons for believing that the proposed measure is compatible with the Authority's functions and duties under section 6;*
- iii. *an explanation of the extent to which a corresponding measure has been adopted in a country or territory outside the Islands;*
- iv. *an estimate of any significant costs of the proposed measure, together with an analysis of the benefits that will arise if the proposed measure is adopted; and*
- v. *notice that representations about the proposed measure may be made to the Authority within a period specified in the notice (not being less than thirty days or such shorter period as may be permitted by subsection (3));and*

- (b) *before proceeding with the proposed measure, the Authority shall have regard to any representations made by the private sector associations, and shall give a written response, which shall be copied to all the private sector associations.*

3. The Authority proposes to issue a Regulatory Procedure and a new Rule to provide transparency, certainty and enhanced guidance to regulated mutual funds on the requirements for the cancellation of a licence or certificate of registration.

4. The Cayman Islands Monetary Authority ("Authority" or "CIMA") seeks consultation and comment from the private sector associations concerning the following:
 - a. Issuance of a draft Rule on the Cancellation of a Licence or Certificate of Registration of regulated mutual funds; and
 - b. Replacement of the below listed existing Statements of Guidance ("SOGs") with a draft Regulatory Procedure on the Cancellation of a Licence or Certificate of Registration of regulated mutual funds:
 - i. Statement of Guidance on "Cancellation of Mutual Fund Licences issued pursuant to Section 5 of the Mutual Funds Law";
 - ii. Statement of Guidance on "Cancellation of Certificates of Registration (held by mutual funds registered pursuant to Section 4(3) of the Mutual Funds Law i.e., a "registered mutual fund")";
 - iii. Statement of Guidance on "Cancellation of Certificates of Registration (held by mutual funds registered pursuant to Section 4(1) (b) of the Mutual Funds Law i.e., a "administered mutual fund")".
5. The proposed Rule and Regulatory Procedure are attached.

B. BACKGROUND

6. In 2004, the Authority issued the above listed SOGs in relation to the Cancellation of a Licence or Certificate of Registration of regulated mutual funds. Since the issuance of these SOGs there have been various developments to the regulatory landscape. The Mutual Funds Law ("MFL") and the Monetary Authority Law ("MAL") were amended. In addition to the other amendments, the MFL has defined new funds such as master funds and the MAL has amended fees for the surrender of licence/certificate of registration in its recent revisions. Moreover, the current SOGs did not address, among other things, situations such as mergers, or funds that do not meet the definition of a mutual fund.
7. Notwithstanding the fact that the requirements for cancellation of licenced, registered and administered funds are almost similar, currently there are three SOGs to guide the licenced, registered and administered funds each separately. It is proposed that all the three SOGs be consolidated into a single measure (Regulatory Procedure) for all the regulated mutual funds.
8. Furthermore, currently some regulated mutual funds are not applying to the Authority to cancel their licence or registration when they cease to carry on business which leads to administrative costs to CIMA.
9. In addition, persistent failure to request proper cancellation of a licence or registration could lead to adverse findings as to the fitness and propriety of the operators of the regulated mutual fund and could jeopardize their ability to serve as fund operators in future.
10. Hence, issuing a Rule to require regulated mutual funds to properly cancel their licence or registration will help to systematize the cancellation process.

C. PURPOSE OF PROPOSED RULE AND REPLACEMENT OF EXISTING SOGS WITH PROPOSED REGULATORY PROCEDURE

11. The purpose for the replacement of the current SOGs with the proposed Regulatory Procedure is to conform with changes to the relevant laws, regulatory requirements and developments in industry practices. The proposed Procedure aims to provide more clarity and certainty to regulated mutual funds on what the Authority expects when applying to cancel a licence or certificate of registration.
12. The proposed Rule is designed to streamline the cancellation of a licence or registration of regulated mutual funds, reduce the administrative burden of the Authority and to protect the interests of investors and creditors. The proposed Rule requires regulated mutual funds to apply to the Authority to cancel their license or registration when they cease to carry on business.
13. Both the above proposals are aimed to satisfy the Authority’s regulatory and co-operative functions as stipulated in section 6 (3) (a) of the Monetary authority Law.
14. section 6(3) the MAL states that

In performing its regulatory functions and its co-operative functions, the Authority shall, in addition to complying with the requirements of subsection (2):

(a) endeavour to promote and enhance market confidence, consumer protection and the reputation of the Islands as a financial centre;

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D. IMPLEMENTATION IN OTHER JURISDICTIONS

15. Cancellation provisions in the below competitor jurisdictions are similar to the legal provisions in the Cayman Islands.

Jurisdiction	Legislation (to empower the regulatory authority to cancel a licence or registration)	Guidance (on required documentation for cancellation of licence or registration)
BVI	X	X
Bermuda	X	
Jersey	X	
Guernsey	X	

E. SIGNIFICANT COSTS AND BENEFITS

16. The table below shows the costs and benefits of the proposed Rule and Regulatory Procedure.

	Costs	Benefits
CIMA	Costs of issuing the new measures	<ul style="list-style-type: none"> • Systematized cancellation process • Decrease in number of regulated mutual funds that fail to properly cancel their licence or registration • Less administrative burden
Cayman Islands	No significant costs	<ul style="list-style-type: none"> • Streamlining of cancellation process will allow the Authority to protect the interests of investors and creditors • Less reputational risk
Regulated Mutual Funds	<ul style="list-style-type: none"> • No additional costs for regulated mutual funds that already properly cancel their licence • Regulated mutual funds may accrue penalties for failing to apply to the Authority to cancel their licence or registration when they cease to carry on business 	<ul style="list-style-type: none"> • Clarity and certainty on the cancellation process • Enhanced guidance on the requirements for cancellation of licence or registration • Slighter possibility of adverse findings as to the fitness and propriety of the operators or directors of the regulated mutual funds as a result of a decrease in number of regulated mutual funds that fail to cancel their licence or registration

F. COMMENTS AND CONSULTATION

17. The Authority seeks consultation through written comments and representations from the private sector associations concerning the:

- Draft Rule on Cancellation of Licence or Certificate of Registration of regulated mutual funds; and
- Draft Regulatory Procedure on Cancellation of Licence or Certificate of Registration of regulated mutual funds.

18. The Authority must receive representations by **1700hrs on December 19, 2014.**

19. Comments and representations must be addressed to

The Managing Director
Cayman Islands Monetary Authority
P.O. Box 10052
80e Shedden Road
Elizabethan Square
Grand Cayman KY1-1001
Cayman Islands
Tel: 345-949-7089
Fax: 345-946-5611

Email: Consultation@cimoney.com.ky
and copied to J.Myles@cimoney.com.ky

20. The Authority shall have due regard to any representation made by the private sector associations and industry stakeholders. The Authority shall provide a written response collating the feedback received and the Authority's position on this feedback. This response shall be copied to all relevant private sector associations only.