

APPENDIX 3

CAYMAN ISLANDS MONETARY AUTHORITY

SUMMARY OF PRIVATE SECTOR CONSULTATION AND FEEDBACK STATEMENT



CANCELLATION OF LICENCE OR CERTIFICATE OF REGISTRATION OF REGULATED MUTUAL FUNDS

Rule: Cancellation of Licence or Certificate of Registration of Regulated Mutual Funds

Section of Proposed Rule	Industry Comment	Authority's response	Consequent amendments to the draft Rule
General	The RPy – Waiver of Audit (August 2008) should be revised to be in accordance with this rule for an accurate reflection of the entire deregistration process.	When the Authority reviews the Regulatory Policy ("RPy") – 'Exemption from Audit Requirement for a Regulated Mutual Fund' in the future, this matter will be considered at that time.	None
	It is proposed that in order to prevent the deregistration process from becoming unduly burdensome in light of the various affidavit requirements, a form similar in style to the current Form MF1 be created.	In each case, usually only one affidavit is required to be submitted by the regulated mutual fund ("fund") when requesting cancellation of licence or de-registration.	None
	It is unclear why a delay in a mutual fund applying to the Authority for deregistration would cause administrative costs to the Authority as such a delay may result in continued payment of full or half year annual fees.	Where there is a delay in submitting the cancellation or de-registration documents, the Authority has to follow up with the failed funds for proper cancellation / de-registration. In case of persistent failure to properly cancel or de-register, the Authority has	None

		to take enforcement actions.	
4.1	The rule should be amended to include reference to the cancellation of a license of certificate of registration in circumstances where a fund has never carried on business. This circumstance is referenced in the draft RPr.	Agree	A section has been included to capture funds that have never carried on business.
4.1 & 4.2	The rule should be amended to establish that a fund that has never carried on business shall make an application to the Authority for the cancellation of a license or certificate of registration within 21 days from the date of a resolution of the operators or the participating investors wherein it is acknowledged that the fund has never carried on business and it is resolved that the fund no longer has an intention to commence to carry on business.	Agree	Amended accordingly.
	The "ceases to carry on business" wording in the rule should be defined in order to remove ambiguity in the application of the rule.	Ceasing to carry on business has been defined in the proposed RPr and the proposed Rule should be read in conjunction with the proposed RPr.	None
	Concerned with common scenarios where the fund becomes dormant for certain period (e.g. in anticipation of further subscriptions) without making application for cancellation or registration after the fund ceases to carry on business.	Where a fund intends to become dormant for a certain period, it can notify the same to the Authority.	None
4.2	The words "or no resolution has been passed or filed with the Authority" should be deleted as every application for cancellation will require a resolution be filed with the Authority.	Despite the requirement to pass and submit the resolution, some funds may fail to do so for various reasons. Therefore, section 4.2 aims to capture those funds that fail to pass and submit resolutions.	None

Regulatory Procedure (“RPr”): Cancellation of Licences issued pursuant to section 5 and Certificate of Registration issued pursuant to sections 4(3), and 4 (1) (b) of the Mutual Funds Law (“MFL”)

Section	Industry Comment	Authority’s response	Consequent amendments to the proposed RPr
4.	The RPr should clearly define “outstanding queries” to reduce the element of uncertainty.	Where the Authority has questions with respect to a fund, the Authority will request information or documentation from the fund. Outstanding queries are any requested documents or information that is due to CIMA.	None
5.	Delete “...or Licence Under Liquidation (“LUL”) status” as the requirement in 5.3 will not necessarily be able to be achieved in LUL. The decision to commence liquidation is made by voting shareholders only (which does not necessarily include participating investors) and not management.	The Authority expects a resolution from the operators, shareholders or unit holders indicating the date on which the fund ceases to carry on business.	Wording of 5.3 has been amended by removing the words “participating investors”.
5.	Move the last sentence (i.e., “if the fund is placed under LUL status, annual fees will not accrue) to another location in the RPr where it best fits.	Agree	The fee part of section 5 has been moved to section 3 (“Fees”) of RPr.
5.1	Insert “(or a copy of the electronic certificate if obtained through CIMA Connect).”	To cancel the licence or to de-register a fund, CIMA requires the fund to return the original licence or certificate of registration, where issued. CIMA does not require the fund to return the electronic certificate or licence for cancellation.	None
5.3, 6.8.2.2 and 6.8.2.3	Delete the word “certified”.	CIMA requires certified copies of original documents.	None

6.	Delete the last sentence (i.e., "the documents listed below shall be submitted in addition to the core requirements") as the suggested changes (with respect to funds under liquidation) makes this sentence superfluous.	This sentence provides clarity with respect to required documentation.	None
6.1	Delete "Winding up of a Fund" in the heading and "or the winding up of the legal entity" in the first paragraph as technically speaking "winding up" is same as "liquidation" under the Companies Law. This will avoid confusion with the sections concerning Voluntary Liquidation (6.2) and Court Supervised Liquidation (6.3).	Agree	Amended accordingly.
	Insert a new 6.1.1 with the wording "The documents required under 5.1, 5.2 and 5.3 above: and".	Last sentence of section 6 clearly states that the core requirements listed under section 5 are required to be submitted.	None
6.1.1.1	Delete "...or winding up of the fund" to avoid redundancy.	Agree	Amended accordingly.
6.1.1.4	Amend this sentence to read "That the affairs and operations of the Fund have not been or are not being wound down in a manner that is prejudicial to its investors and creditors." The amendment will avoid any confusion with the term "wound up" as in the Companies Law.	Agree	Amended accordingly. In addition, to avoid ambiguity, 6.1.1.5 has been amended to require the fund to confirm whether the fund intends to continue as a legal entity in the Cayman Islands or be struck-off from the Companies Registry.
6.1.1.3, 6.7.1.1.2, and	The RPr should reconsider this requirement. It may prohibit submission of an application for	The Authority expects confirmation of complete redemption of assets	None

6.9.1.1.4	cancellation because of a cessation of business or a winding up in circumstances where an audit hold-back has been taken.	including the audit hold-back.	
6.2	Amend to include these words at the end of the sentence "...in order to place the Fund in Licence Under Liquidation ("LUL") status:"	Section 6.2.2 specifies the requirements.	None
	Insert a new 6.2.1 with the wording "The documents required under 5.1 and 5.2 above; and".	See comments under section 5 and amendments with respect to section 6.	None
6.2.1.2	Insert new sentence at the end of this subsection "If the Fund is placed under LUL status, annual fees will not accrue."	See comments and amendments with respect to sections 3 and 5 of the RPr.	None
6.2.2	Redraft the sentence to read "The following must be provided to the Authority in cases of the cancellation of a licence or certificate of registration by a Fund due to the voluntary liquidation of the Fund where the Fund is not in a good standing:" This redrafting will allow for the deregistration to be completed by the Liquidator in one filing if need be (that is, not go into LUL status) and to make the requirement to provide the documents mandatory as opposed to optional to give certainty.	Funds can provide all the required documentation at one time and de-register without being placed under LUL status. Wording of 6.2.2 will not restrict the fund from doing so.	None
	Insert a 6.2.3 which reads "The documents required under 6.2.1 and 6.2.2 above; and".	Sections 6.2.1 and 6.2.2 lists all the required documentation.	None
6.2.2.1	Amend this sentence to add "Voluntary" before the word "Liquidator(s)".	Agree	Amended accordingly.
6.2.2.1.1	It should be noted that the reason for the liquidation is not always in the knowledge of the	The liquidator(s) will usually be aware of the reason for the liquidation	None

	liquidator. The decision to liquidate is made by the voting shareholders only.	or can obtain the information.	
6.2.2.1.2	Amend this sentence to read "The period/s covered by the Voluntary's Liquidator's report/s:" as the liquidator may be appointed over a number of years.	Agree	Amended accordingly.
6.2.2.1.4	<p>1. The affirmation under 6.2.2.1.4 may also be appropriate for other contexts (for example, dissolution by way of merger).</p> <p>2. Conversely, comfort given by the paragraph 6.2.2.1.7 may render the paragraph 6.2.2.1.4 superfluous.</p>	<p>1. Section 6.2.2.1.4 of the RPr speaks about the findings of the liquidator during the liquidation period. Therefore a similar affirmation is not appropriate for dissolutions by way of mergers.</p> <p>2. As mentioned above, section 6.2.2.1.4 speaks about the findings of the liquidator with respect to the operations of the fund, whereas 6.2.2.1.7 speaks about the manner of winding up of the fund.</p>	None
6.2.2.1.5	It may be useful to note that it is possible that creditors are not paid in full in a voluntary liquidation – for example, if something unexpected happens to the assets of the Fund during the course of the liquidation.	Unless the creditors are paid in full the liquidation will not be considered as a voluntary liquidation.	None
6.2.2.1.6	Redraft this sentence to read "That the investors have been distributed the assets of the Fund according to their rights and interests in the Fund:" This wording reflects section 140(1) of the Companies Law as it applies to shareholders.	Agree	Amended accordingly.
6.2.2.1.7	Add the word "Voluntary" to the sentence so it reads "Voluntary Liquidator(s)".	Agree	Amended accordingly.
6.3	Insert a new 6.3.1 which reads	See comments under	None

	"The documents under 5.1 and 5.2 above..".	sections 6 and 6.1.	
	Insert this sentence at the end of 6.3 "If the Fund is in court supervised or appointed liquidation, annual fees will not accrue."	Amendments were made to section 3 of RPr as noted above.	None
6.3.1	Amend this sentence to read "The supervision/winding up order issued by the Grand Court of the Cayman Islands in respect of the Fund; and". This amendment is to ensure both supervision orders and winding up orders are covered.	Agree	Amended to cover both supervision and winding up orders.
6.3.2	Insert "Official Liquidator(s)" this sentence.	Agree	Amended accordingly.
6.4.1.1	The first part of the paragraph should read "A copy of the memorandum and articles of association, partnership agreement, declaration of trust or other constitutional document..." The rest of the paragraph should be reworded for the following reasons: a) "...and a copy of the offering document or supplement to the offering document..." should be changed, as an unregulated fund it would no longer have a requirement for an offering document. This requirement may be replaced with a notice to or consent of investors; b) "...the equity interests are held by not more than fifteen investors...". Please note that the constitutional document would not typically state the number of investors. c) "...and that a majority of those (change this to "the") investors are capable of appointing or removing the operator of the fund; and..."	The Authority requires the prescribed documentation along with the affidavit. In the absence of prescribed documentation funds can liaise with the Authority for guidance/alternatives.	None

	It is suggested to remove the requirement to submit documents to the Authority and deal with the required confirmations in the affidavit in 6.4.1.2.		
6.4.1.2.2 and 6.9.2.1.4	Delete the word "shareholders" and replace with "investors".	Agree	Amended accordingly.
6.5.2	This section does not appear to be necessary. It is understood that this is currently required for all mutual funds, it is assumed therefore that this is a change to the current requirement so that only licenced mutual funds and not all regulated mutual funds must provide this.	This section is written as intended. Licenced funds are required to provide confirmation as stated.	None
6.6.2	There should be some guidance as to what the letter should say (for verifying that the fund has never carried on business) as administrators/auditors often are not sure.	Letter should confirm that Fund has never carried on business as a Fund. Funds that have never carried on business can be defined as a "A fund that has never accepted subscriptions; or one that has launched but has been unsuccessful in raising the appropriate seed capital for sustainability and all subscriptions received from investors have been returned".	A foot note has been included to explain/define a fund that has never carried on business.
6.7.1.1.1	Replace the word "for" with "to" so the sentence reads "...and that investor has agreed to the cancellation..."	Agree	Amended accordingly.
6.7.2	This sentence should read "Where a Fund no longer meets the definition of a mutual fund because the equity interests are not redeemable at the option of the investors..."	Agree	Amended accordingly.
6.7.2.1	Reword this section because as an unregulated fund it would	In the absence of an offering document,	Amended accordingly.

	no longer have a requirement for an offering document. The document may be replaced with a consent of investors. "An updated offering document or supplement to the offering document evidencing that the Fund is closed-ended and does not meet the definition of a mutual fund in the MFL."	consent from the investors will be accepted.	
6.7.2.2	Reword this section to read "A copy of the memorandum and articles of association, partnership agreement, declaration of trust or other constitutional document outlining the restriction on the redemption rights of the closed-ended shares;" In addition, the RPr should remove the requirement for the constitutional document as they may not evidence this if flexibly drafted and rely instead on the offering document or investor consent.	The Authority requires the prescribed documents to satisfy itself about the Fund's status.	None
	The Authority should consider removing requirement to submit documents to the Authority and deal with the required confirmations in the affidavit outlined in 6.7.2.3.	See response above.	None
6.7.2.3.3	The RPr should remove the requirement for "all" participating investors as this decision is governed by the fund's offering document and constitutive documents. The words "and cancellation of its license or registration with the Authority" should be deleted.	Agree	Amended the wording to reflect that the conversion is being done in accordance with the offering and constitutive documents. Removed the words "and cancellation....."
6.9.1	The first part of this section should read "...when applying to cancel a certificate of registration as a Master	A master fund is a regulated mutual fund.	None

	Fund..."		
6.9.1.2	Delete "...or will be..."	Agree	Amended accordingly.
6.9.2	Expand this section to cover all components of master fund definition. The first part of this section should read "...when applying to cancel the certificate of registration on the basis that a Master Fund does...". This sentence should be added to the end of this section "...or hold investments and conducts trading activities for the principal purpose of implementing the overall investment strategy of the regulated feeder fund."	To cover all the components of the master fund definition, a reference will be made to the definition provided under the MFL.	For clarity 6.9.2.1.1 and last sentence of 6.9.2 were amended. A reference is made to the definition of master fund as per the MFL.
	Clarification is needed as it pertains to the last paragraph of this section. 1) that a master fund can apply for LUT/LUL at the same time as the regulated feeder fund. 2) if a master fund can apply for full deregistration at the same time as the regulated feeder fund (even though technically the statement in the affidavit that it does not have one or more regulated feeder funds would not yet be true until the regulated feeder fund has received confirmation of deregistration).	Master fund will not be de-registered until the feeder funds have been de-registered.	None
6.9.2.1.1	Expand this section to cover all components of master fund definition. "The master fund does not have one or more regulated feeder funds or the Master Fund does not hold investments or conducts trading activities for the principal purpose of implementing the overall investment strategy of the regulated feeder fund."	See comments under 6.9.2	Amended as stated in 6.9.2
6.9.2.1.2	Delete the words "...articles and..." so the first part of the	Agree	Amended to read "articles

	section reads "...operated in accordance with its constitutive documents..."		and other constitutive documents"
6.9.3	Insert section 6.9.3 to read "Master Fund that does not meet the definition of a master fund but intends to continue as an exempted mutual fund." Alternatively, it can be clarified that this is covered under 6.4.	According to section 4 (4A) of the MFL, section 4 (4)(a) is not applicable to master funds.	None
6.10	The Authority should insert this new section "Continuation as a registered mutual fund" and include the requirements as is currently set out in the SOG for s. 4(1)(b) funds.	This situation does not fall under the reasons for cancellation or de-registration.	None
6.11	The Authority should insert this new section "Continuation as an administered mutual" and include the requirements for a fund that was previously a registered mutual fund and wishes to continue as an administered mutual fund.	This situation does not fall under the reasons for cancellation or de-registration.	None