



Statement of Guidance

Corporate Governance – Mutual Funds and Private Funds

XXXX 2022

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List of Acronyms

N/A

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Statement of Guidance Corporate Governance for Mutual Funds and Private Funds

1. Statement of Objectives

- 1.1 The purpose of this statement of guidance ('Statement of Guidance') is to provide the governing body of a regulated mutual fund or a regulated private fund ("Governing Body") and its operators ("Operators") with guidance on the minimum expectations for the sound and prudent governance of the regulated mutual fund or regulated private fund (collectively referred to as a 'regulated fund').
- 1.2 This Statement of Guidance sets out the key corporate governance principles pertaining to the Governing Body and Operators of a regulated fund and is not intended to be a prescriptive or exhaustive guide to the Authority's expectations with regard to governance.
- 1.3 The governance structure of a regulated fund must be appropriate and suitable to enable the effective oversight of the regulated fund. The size, nature and complexity of a regulated fund are fundamental factors in determining the adequacy and suitability of its governance framework. Factors determining the size, nature or complexity of the regulated fund could include, but are not limited to: assets under management, number of investors, complexity of the structure, nature of investment strategy, or nature of the operations.

2. Application

- 2.1 This Statement of Guidance applies to:
 - 2.1.1 all regulated mutual funds as defined by section 2 of the Mutual Funds Act (2021 Revision) (as amended) (the "Mutual Funds Act") and includes funds licensed or administered under section 4(1) or registered under section 4(3) of the Mutual Funds Act.
 - 2.1.2 all regulated private funds as defined by section 2 of the Private Funds Act (2021 Revision) (as amended) (the "Private Funds Act") and includes funds registered under section 6 of the Private Funds Act.

3. Definitions

- 3.1. The "**Governing Body**" of a regulated fund is the Board of Directors where the entity is a corporation, the General Partner where the entity is a partnership, the manager where the entity is a Limited Liability Company, the Board of Trustees where the entity is a trust business or the equivalent of such roles where the entity is another legal entity.
- 3.2. "**Operator**" has the meaning ascribed to it under the Mutual Funds Act and the Private Funds Act (as amended).
- 3.3. "**Service Provider**" means a third party (whether related or unrelated) that supplies services or facilities (excluding lease of business premises) pursuant to an outsourcing arrangement.

4. Oversight Function of the Governing Body

- 4.1 The Governing Body of a regulated fund has ultimate responsibility for effectively overseeing and supervising the activities and affairs of the regulated fund.
- 4.2 The Governing Body should have an appropriate number of individuals with a diversity of skills, background, experience and expertise that have been approved by the Authority to ensure that there is an overall adequate level of competence at the Governing Body.
- 4.3 The Governing Body should monitor, and regularly take steps to satisfy, that the regulated fund is conducting its affairs in accordance with all applicable laws, regulations, rules, statements of principles and statements of guidance, and requirements on the prevention and detection of money laundering, terrorist financing and proliferation financing, including those of the Cayman Islands and the Authority.
- 4.3.1 The Governing Body should regularly take steps to satisfy itself that the regulated fund's service providers ('Service Providers') are monitoring compliance with applicable laws, regulations, rules, statements of principles and statements of guidance, and requirements on the prevention and detection of money laundering, terrorist financing and proliferation financing.
- 4.3.2 The Governing Body should request appropriate information from the Service Providers and/or professional advisors of the regulated fund to enable it to satisfy itself regularly that the fund is operating in compliance with applicable laws, regulations, rules, statements of principles and statements of guidance, and requirements on the prevention and detection of money laundering, terrorist financing and proliferation financing.
- 4.4 Where required, the Governing Body shall provide appropriate directions to the Service Providers to rectify any non-compliance with the applicable laws, regulations, rules, statements of principles, statements of guidance and anti-money laundering or combating terrorist financing requirements.
- 4.5 The Governing Body should require regular reporting from the regulated fund's investment manager and other Service Providers to enable it to make informed decisions and to adequately oversee and supervise the regulated fund.

5. Conflicts of Interest

- 5.1 The Governing Body should have a formal written conflicts of interest policy appropriate to the size, nature and complexity of its business, and a process for ongoing implementation of the policy.
- 5.2 The Governing Body of the regulated fund and the Operators must suitably identify, disclose, monitor and manage all its conflicts of interest. Disclosures of conflicts of interest must be documented.

6. Governing Body Meetings

- 6.1 The Governing Body of the regulated fund should meet at least once a year in person or via a telephone or video conference call.
- 6.2 Where the circumstances of size, nature and complexity of the regulated fund necessitates it, the Governing Body should meet more frequently than suggested in paragraph 6.1 so as to enable it to fulfil its responsibilities effectively.
- 6.3 Where necessary, the Governing Body shall request the presence of its Service Provider(s) at its Governing Body meetings.

7. Duties of Operators

- 7.1 The Operators must be independent and exercise independent judgement, always acting in the best interests of the regulated fund and taking into consideration the interests of its investors as a whole and/or, where applicable, the creditors of the regulated fund¹.
- 7.2 The Operators must operate with due skill, care and diligence.
- 7.3 The Operators must make relevant enquires where issues are raised on matters fully within the scope of the Operator's responsibility and be satisfied that appropriate and timely course of action is being taken. Concerns raised and related corrective action should be documented.
- 7.4 The Operators should communicate adequate information to the regulated fund's investors where it is properly able to disclose.
- 7.5 The Operators should communicate material changes relating to investor rights to the investor(s) of the regulated fund at the time the changes are being made or on an ongoing basis.
- 7.6 The Operators must always act honestly and in good faith.
- 7.7 The Operators must have sufficient capacity to apply its mind to overseeing and supervising each regulated fund for which it functions and all matters falling within the scope of its related responsibilities. Consequently, before taking on any additional funds, the Operator should always ensure that it is able to perform its functions and duties in a responsible and effective manner in accordance with relevant laws, regulations, rules, statements of principles and the provisions of this Statement of Guidance.
- 7.8 Upon registration or licensing of a regulated fund with the Authority, and on a continuing basis, the Operators are responsible for:
 - 7.8.1 Ensuring or receiving confirmation that the constitutional and offering documents of the regulated fund comply with Cayman Islands law and

¹ The Authority recognizes that the Operators may consist of members from the parent company, group or business associates of the regulated entity, but expects all members to exercise independent judgement and objectivity in the decision making of the Operators.

- applicable regulatory instruments issued by the Authority from time to time;
- 7.8.2 Ensuring the investment strategy and conflicts of interests policy of the regulated fund are clearly described in the offering documents; and
- 7.8.3 Ensuring that the offering documents describe the equity interest in all material respects and contains such other information as is necessary to enable a prospective investor to make an informed decision as to whether or not to subscribe for or purchase the equity interest.
- 7.9 The Operators are responsible for approving the appointment and removal of the regulated fund's Service Providers and the terms of the contracts with each of its Service Providers. The Operators are responsible for ensuring that its investors and the Authority are notified of any changes to these appointments.
- 7.10 The Operators retain ultimate responsibility for functions delegated to Service Providers and should regularly monitor and supervise the delegated functions.
- 7.11 The Operators should review all of its Service Provider contracts to ensure roles and responsibilities are clearly defined and that the responsibilities are clearly divided between each Service Provider. The Operators should make sufficient enquiries to enable it to properly understand the scope and nature of the responsibilities of each Service Provider.
- 7.12 The Operators must satisfy itself that the various Service Providers to whom it has delegated a function(s) are performing their function(s) in accordance with the terms of their respective contracts.
- 7.13 Upon registration or licensing of the regulated fund with the Authority, and on a continuing basis, the Operators of the regulated fund is responsible for regularly assessing the suitability and capability of its Service Providers.
- 7.14 The Operators should regularly verify or seek confirmation from the Service Providers that they are acting in accordance with the regulated fund's constitutional and offering documents.
- 7.15 The Operators must regularly monitor whether the investment manager is performing in accordance with the defined investment criteria, investment strategy and restrictions.
- 7.16 The Operators should, as necessary, and at all material times inform itself of the regulated fund's investment activities, performance, and financial position.
- 7.17 The Operators should review and approve the regulated fund's financial results and audited financial statements.
- 7.18 The Operators should regularly monitor the regulated fund's net asset valuation policy and whether the calculation of its net asset value is being calculated in accordance with this policy.
- 7.19 An Operator should ensure that it has sufficient and relevant knowledge and experience to carry out its duties as an Operator.

- 7.20 Each Operator should assess whether it has, together with any other Operator(s) of the regulated fund, sufficient and relevant collective knowledge and experience to perform the duties imposed upon the Operators of the regulated fund.
- 7.21 Each Operator must perform its function with the care, skill and diligence that would be exercised by a reasonably diligent person with the general knowledge, skill and experience of such an Operator.

8. Documentation

- 8.1 The Operators are responsible for ensuring that a full, accurate and clear written record is kept of the Governing Body's meetings.
- 8.2 The records of the Governing Body meetings should include:
- 8.2.1 The agenda items and circulated documents;
 - 8.2.2 A list of attendees present at the meeting and whether that attendance was in person or via telephone or videoconference;
 - 8.2.3 The matters considered and decisions made; and
 - 8.2.4 The information requested from, and provided by, Service Providers and advisors.

9. Relations with the Authority

- 9.1 The Operators should conduct the regulated fund's affairs with the Authority in a transparent and honest manner always disclosing to the Authority:
- 9.1.1 any matter which could materially and adversely affect the financial soundness of the regulated fund; and
 - 9.1.2 any non-compliance with the laws, regulations, rules and statements of principles, statements of guidance and anti-money laundering or combating terrorist requirements applicable, including those of the Cayman Islands and the Authority.
- 9.2 Where the Operator is uncertain whether to communicate information in accordance with paragraph 9.1 above to the Authority, it should be prudent and diligent and communicate the information.

10. Risk Management

- 10.1 The Operators should ensure it provides suitable oversight of the risk management of the regulated fund, ensuring the fund's risks are always appropriately managed and mitigated, with material risks being discussed at the Governing Body meeting and the Governing Body taking appropriate action where necessary.



SIX, Cricket Square
PO Box 10052
Grand Cayman KY1 - 1001
CAYMAN ISLANDS

General Office: 345-949-7089

www.cima.ky