



**SUMMARY OF PRIVATE SECTOR CONSULTATION AND FEEDBACK STATEMENT**

**Rule on Segregation of Assets – Regulated Mutual Funds**

<b>Rule</b>	<b>Comments from the Private Sector</b>	<b>Authority’s Response</b>	<b>Consequent Amendments to the Proposed Measure</b>
<b>SECTION-SPECIFIC COMMENTS</b>			
<p><b>1.1.</b></p> <p>These Rules are issued pursuant to section 34 of the Monetary Authority Law (2018 Revision) (“MAL”) which provides that the Cayman Islands Monetary Authority (the “Authority”) may, after private sector consultation, 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/</p>	<p><b>Typographical error noted by industry:</b></p> <p>These Rules are issued pursuant to section 34 of the Monetary Authority Law (<del>2018</del>2020 Revision) (“MAL”), .....</p>	<p>Typographical error is noted.</p>	<p>Amended.</p>
<p><b>3 - Scope</b></p>	<p><b>Industry Comment:</b></p> <p>Please include a provision in Section 3 of Appendix B giving existing funds time to comply with the New Segregation Rule.</p>	<p>The MFL Laws and Regulations do not allow for a transition arrangements.</p>	<p>No changes.</p>

	<p>The 2008 Rule relating to Segregation of Assets - Licenced Funds (the "<b>2008 Segregation Rule</b>") appears to grant some sort of transition period to funds existing at the time the 2008 Segregation Rule came into force. Since the New Segregation Rule applies to all existing regulated mutual funds, including section 4(3) funds, please include a provision in Section 3 of the New Segregation Rule giving existing funds time to comply with the New Segregation Rule. In light of the ability of CIMA to enforce breaches of the New Segregation Rule, and because compliance with the New Segregation Rule will, amongst other things, require Operators to establish strategies, policies, controls and procedures to ensure compliance with the New Segregation Rule, a transition period is critical.</p>		
	<p><b>Industry Commented:</b></p> <p>Please include a provision in Section 3 of Appendix B which expressly confirms whether Japanese Regulation funds are out of scope of the New Segregated Rule.</p>	<p>The requirement is applicable to all types of funds, including Japan Retail Funds.</p>	<p>No changes.</p>
	<p><b>Industry Commented:</b></p> <p>Licensed funds subject to the Japanese Regulations were excluded from having to comply with the 2008 Segregation Rule. Are licensed and/or other regulated mutual funds complying with the Japanese Regulations exempt from having to comply with the New Segregation Rule?</p>	<p>The funds should provide the information available at the time of registration, filing new supplements/additional information as/when changes are made.</p>	<p>No changes.</p>
<p><b>3.1.</b></p> <p>These Rules apply to all funds licensed or registered under section 4 of the Mutual Funds Law (2019 2020 Revision) ("MFL").</p>	<p><b>Typographical error noted by industry:</b></p> <p>These Rules apply to all funds licensed or registered under section 4 of the Mutual Funds Law (<del>2019</del><b>2020</b> Revision) ("MFL").</p>	<p>Typographical error is noted.</p>	<p>Amended</p>

<p><b>4. Definitions</b></p> <p><b>Section 4.1 is a new insertion which reflects the definition for "Control relationship".</b></p> <p>Section 4.1 defines "Control Relationship" as:</p> <p>"the relationship that exists between person("A") and the mutual fund's manager or Operator if –</p> <p>(a) A is a controller of the mutual fund's manager or Operator;</p> <p>(b) the mutual fund's manager or Operator is a Controller of A; or</p> <p>(c) a controller of A is also a controller of the mutual fund's manager or Operator".</p>	<p>Not applicable.</p>	<p>This section was added to provide to support Rule 5.8</p>	<p><b>Section 4.1 is a new insertion which reflects the definition for "Control relationship".</b></p> <p>Section 4.1 defines "Control Relationship" as:</p> <p><b>"the relationship that exists between person("A") and the mutual fund's manager or Operator if –</b></p> <p><b>(a) A is a controller of the mutual fund's manager or Operator;</b></p> <p><b>(b) the mutual fund's manager or Operator is a Controller of A; or</b></p> <p><b>(c) a controller of A is also a controller of the mutual fund's manager or Operator;"</b></p>
<p><b>4.5.</b></p> <p>Recognised Overseas Regulatory Authority means a regulatory authority included in the list issued and gazetted by the Authority as required by section 2 of the Securities</p>	<p><b>Typographical error noted by industry:</b></p> <p>Recognised Overseas Regulatory Authority means a regulatory authority included in the list issued and gazetted by the Authority as required by section 2 of the Securities Investments Business Law (<del>2019</del><b>2020</b> Revision).</p>	<p>Typographical error is noted.</p>	<p>Amended</p>

Investments Business Law (2019 Revision)			
<p><b>5.1</b></p> <p>A Fund shall appoint a Service Provider with regard to ensuring safekeeping of the Fund’s Portfolio.</p>	<p><b>Industry Commented</b></p> <p>Further guidance should be provided as what would constitute ‘safekeeping’, in particular for assets such as unlisted securities or investments in other investment funds that typically are not held through a custody provider.</p>	<p>Please refer to the Statement of Guidance - Client Assets, Money and Safekeeping – Securities Investment Business for additional guidance on what constitutes “safekeeping”.</p>	<p>No changes.</p>
<p><b>5.2</b></p> <p>The Portfolio excluding Cash shall be segregated and accounted for separately from any assets of any Service Provider.</p>	<p><b>Industry Commented:</b></p> <p>The exclusion of cash assets from the requirement to segregate and account, absent any good reason should be removed as cash assets are subject to a high risk of misappropriation.</p>	<p>The Authority will revise to read:</p> <p>“The portfolio should be segregated and accounted for separately from any assets of any Service Provider.”</p>	<p>Amended.</p>
<p><b>5.6.5</b></p> <p>Reflects the insertion of a new Rule which is documented in Rule 5.6.5</p> <p><b>Rule 5.6 :</b> For the purposes of Rule 5.5 the following shall not in itself, constitute the financing of the Service Providers <b>own operations:</b></p> <p><b>Rule 5.6.5:</b> “use or transfer of assets as consented to by or on behalf of the Fund, provided that</p>	<p>Not applicable</p>	<p>This addition was intended to clarify that rehypothecation is permissible.</p>	<p><b>6.5</b></p> <p>Reflects the insertion of a new Rule which is documented in Rule 5.6.5</p> <p><b>Rule 5.6 :</b> For the purposes of Rule 5.5 the following shall not in itself, constitute the financing of the Service Providers <b>own operations:</b></p> <p><b>Rule 5.6.5:</b></p>

<p>the possibility of use or transfer is disclosed in the offering document or otherwise disclosed to investors”.</p>			<p>“use or transfer of assets as consented to by or on behalf of the Fund, provided that the possibility of use or transfer is disclosed in the offering document or otherwise disclosed to investors”.</p>
<p><b>5.7</b></p> <p>The Operators of a Fund must establish, implement, and maintain, (or oversee the establishment, implementation, and maintenance of) strategies, policies, controls, and procedures to ensure compliance with these Rules, consistent with the Fund’s offering document and appropriate for the size, complexity, and nature of the Fund’s activities and investors</p>	<p><b>Industry Commented:</b></p> <p>With respect to Rule 5.7 of Appendix B, can Operators rely on another service provider for the strategies, policies, controls and procedures to ensure compliance with the New Segregation Rule or do Operators need to expressly adopt their own policies? When the New Segregation Rule say “...(or, oversee the establishment, implementation and maintenance of) strategies...” does this mean Operators can rely on strategies, policies, controls and procedures of a third party?</p>	<p>Operators can rely on the third party, noting that the requisite agreements should be in place.</p>	<p>No changes.</p>
<p><b>5.8</b></p> <p>The Operators of a Fund must ensure that the title verification function is independent from the portfolio management function or that potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the Fund.</p>	<p><b>Industry Commented:</b></p> <p>We recommend the deletion of Rule 5.8 in Appendix B.</p> <p>This rule appears to be imposing a requirement to verify title to the assets of a mutual fund that is not contained in the Mutual Funds Law (as opposed to Section 17 of the Private Funds Law which provides for such a verification obligation where the assets are not held by a custodian). Accordingly we recommend deleting the new proposed obligation which does not have the legislative basis in respect of mutual funds that it does in respect of private funds. In addition to the above, it has been noted that the fund's Operator</p>	<p>The Authority is of the view that this section is suitable to maintain segregation of assets and to require adequate independence of those functions. For clarity, the rules has been amended and amplified to read as follows :</p> <p><b>Rule 5.8:</b></p>	<p>Amended.</p>

	<p>may look to the Administrator to undertake such verification which it may or may not be in a position to do. If the Administrator were to be in a position to do so it would naturally drive up the costs of the fund to have to engage a service provider to undertake such verification.</p>	<p>"The Operators of a Fund must ensure that verification, based on information provided by the Fund and available external information, that the Fund holds title to Fund assets and maintenance of record of those Fund assets, is carried out by:</p> <p><b>Rule 5.8.1:</b> "an administrator or other independent third party; or</p> <p><b>Rule 5.8.2</b> "the manager, Operator or person who has a Control Relationship with the manager or Operator, provided that such information is carried out independently from the portfolio management function or that potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the Fund".</p>	
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