



SUMMARY OF PRIVATE SECTOR CONSULTATION AND FEEDBACK STATEMENT

Rule on Segregation of Accounts – Registered Private Funds

Section	Comments from the Private Sector	Authority's Response	Consequent Amendments to the Proposed Measure
SECTION-SPECIFIC COMMENTS			
1.1 Statutory Authority	<p>Typographical error noted by industry:</p> <p>These Rules are issued pursuant to section 34 of the Monetary Authority Law (20182020 Revision) ("MAL")</p>	Typographical error is noted.	Amended.
3 - Scope	<p>Industry Commented:</p> <p>Since the New Segregation Rule applies to all existing private funds, please include a provision in Section 3 of Appendix E giving existing funds time to comply with the New Segregation Rule.</p> <p>The 2008 Rule relating to Segregation of Assets - Licenced Funds (the "2008 Segregation Rule") appears to grant some sort of transition period to funds existing at the time the 2008 Segregation Rule came into force. 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>	Please see Private Funds (Savings and Transitional Provisions) Regulations 2020 – Section 2	No changes.

<p>5.1</p> <p>The Portfolio excluding Cash shall be segregated and accounted for separately from any assets of the Manager or Operator(s) or any Section 17 Person.</p>	<p>Industry Commented:</p> <p>The terms Manager or Operator should include other service providers, and a service provider definition be included in the Rule.</p>	<p>The Authority notes this comment and has amended Section 5.1 to incorporate the suggestion.</p>	<p>The Authority has amended Rule 5.1 to read:</p> <p>"The Portfolio must be segregated and accounted for separately from any assets of the Manager or Operator(s) or any Section 17 Person".</p>
	<p>Industry Commented:</p> <p>Please include the following additional text in Rule 5.1 of Appendix E - "The Authority acknowledges that, as a matter of law, the general partner of an exempted limited partnership may hold assets in its name as an asset of the exempted limited partnership in accordance with the terms of its partnership agreement. Such arrangement satisfies the segregation requirements under this Rule".</p> <p>The Portfolio excluding Cash shall be segregated and accounted for separately from any assets of the manager or operator(s) of any Section 17 Person. The Authority acknowledges that, as a matter of law, the general partner of an exempted limited partnership may hold assets in its name as an asset of the exempted limited partnership in accordance with the terms of its partnership agreement. Such arrangement satisfies the segregation requirements under this Rule.</p>	<p>The Rules form a part of the legislative framework related to economic substance, in particular, collective investment vehicles, which seeks to satisfy the Cayman Islands Commitment to the European Union's Code of Conduct Group and have largely received a positive assessment by the European Commission.</p>	<p>No changes.</p>

<p>5.3</p> <p>The overriding requirement of Rule 5.1 is that a Fund must ensure that no Manager, Operator or Section 17 Person uses the Portfolio to finance its own or any other operations in any way.</p>	<p>Industry Commented:</p> <p>The terms Manager or Operator should include other service providers and a service provider definition be included in the Rule.</p>	<p>The Authority is of the view that this is not necessary as all capitalized terms have been defined in the rules or the Private Funds Law.</p>	<p>No changes.</p>
<p>5.4 – reflects the insertion of a new Rule which is documented as Rule 5.4.5.</p> <p>Rule 5.4: For the purposes of Rule 5.3 the following shall not in itself, constitute the financing of the operations of a Manager, Operator or Section 17 Person:</p> <p>Rule 5.4.5: “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 documents or otherwise disclosed to investors”.</p>	<p>Not applicable.</p>	<p>This is section was amended to clarify that rehypothecation is permissible.</p>	<p>Amended:</p> <p>5.4 – reflects the insertion of a new Rule which is documented as Rule 5.4.5.</p> <p>Rule 5.4: For the purposes of Rule 5.3 the following shall not in itself, constitute the financing of the operations of a Manager, Operator or Section 17 Person:</p> <p>Rule 5.4.5: “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 documents or otherwise disclosed to investors”.</p>

<p>5.5</p> <p>The Operator(s) 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 Marketing Material and appropriate for the size, complexity and nature of the Fund’s activities and investors.</p>	<p>Industry Commented:</p> <p>With respect to Rule 5.5 of Appendix E, can Operators rely on another fund service provider's 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 says "...(<i>or, oversee the establishment, implementation and maintenance of</i>) 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>
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