

COLLECTIVE INVESTMENT SCHEMES ACT 2008

COLLECTIVE INVESTMENT SCHEMES (SPECIALIST FUND) REGULATIONS 2010

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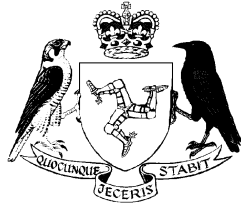
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COLLECTIVE INVESTMENT SCHEMES ACT 2008

COLLECTIVE INVESTMENT SCHEMES (SPECIALIST FUND) REGULATIONS 2010

Approved by Tynwald

20 April 2010

Coming into operation 1 May 2010, amendments 1 November 2015

The Financial Supervision Commission¹, after consulting in accordance with section 24(13) of the Collective Investment Schemes Act 2008², makes these Regulations under section 24(1) of and Schedule 2 paragraph 4 to that Act.

1 Title

These Regulations are the Collective Investment Schemes (Specialist Fund) Regulations 2010.

2 Commencement

These Regulations come into operation on 1 May 2010.

3 Interpretation

(1) In these Regulations —

"the Act" is the Collective Investment Schemes Act 2008;

"acceptable jurisdiction" means a jurisdiction accepted by the Authority as applying appropriate standards of regulation to overseas administrators of this type of fund;

"administrator" has the meaning given in the Act and means the person appointed in accordance with regulation 8;

"annual financial statements" are financial statements prepared in accordance with regulation 14;

¹ Isle of Man Financial Services Authority from 1 November 2015

² 2008 c.7

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“appropriate auditor” is a person that is qualified for appointment as auditor of a company under sections 14 to 14H of the Companies Act 1982³, and –

- (a) has a permanent place of business on the Island;
- (b) is covered by Professional Indemnity insurance of at least £20 million;
- (c) is independent of the scheme, having regard to auditing standards and the code of ethics of the body of accountants of which he is a member;

“authorised person” has the meaning given in the Act;

“the Authority” means the Isle of Man Financial Services Authority

“establishment capital” means the initial sum invested in the fund by the founders;

“founder” means the members of the governing body, the sponsor or any entity ultimately owned by the sponsor;

“functionary” includes the governing body, a member of the governing body and a person appointed under a contract to provide services to the fund, including (without limitation) an administrator, manager, custodian, asset manager, investment adviser, promoter or sponsor;

“generally accepted accounting principles or practice” has the same meaning as in section 3A of the Companies Act 1982;

“Isle of Man administrator” means an administrator appointed under regulation 8(a);

“launch date” means the date of publication of the fund’s initial offering document and, unless the contrary is proved, will be the date of that offering document;

“overseas administrator” means an administrator appointed under regulation 8(b);

“specialist investor” has the meaning given in Schedule 1;

“specialist fund” means a collective investment scheme constituted in accordance with these Regulations and “fund” will be construed accordingly; and

“sponsor” means the person or persons responsible for arranging the establishment of the fund.

- (2) A reference to “US\$” is to United States Dollars and its equivalent in any other currency and a figure expressed in United States Dollars includes its equivalent value in that currency.

4 Duties of the governing body

³ 1982 c.2

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- (1) The governing body of a fund is responsible for ensuring that —
 - (a) these Regulations are complied with;
 - (b) the fund's offering document and relevant constitutional documents comply with the Act and these Regulations;
 - (c) the fund is and continues to be managed and operated in accordance with the fund's constitutional documents and offering document;
 - (d) the fund's offering document accurately sets out all material information which, at the date of the offering document, is known by the governing body (or which any member of the governing body would have obtained by making reasonable enquiries at that time) and which is relevant an investor or potential investor making an informed judgement about whether to invest in the fund;
 - (e) no offering document is issued to investors or potential investors unless, at the date it is issued to such persons, it is up to date in accordance with sub-paragraph (d);
 - (f) the administrator of the fund is notified of all material changes to the fund and provided with a copy of all amended offering and constitutional documents without delay;
 - (g) investors in the fund are informed in a timely manner of material changes to the fund and the anticipated impact of such changes;
 - (h) within 6 months of the first anniversary of the launch of the fund, within 6 months of the fund's financial year-end thereafter and immediately prior to the scheme ceasing to be a scheme, an annual compliance declaration in the [format and containing the information specified by the Authority](#) is signed by the governing body and submitted to the [Authority](#); and
 - (i) the responsibilities imposed upon the administrator under regulation 9 are discharged.
- (2) The governing body must sign a statement of responsibility in the [format and containing the information specified by the Authority](#) in relation to the initial, and any amended, offering documents. The governing body must submit the statement of responsibility to the [Authority](#) within 10 working days of the fund's launch date (in relation to the initial offering document) or of the issue of an amended offering document.

5 **Composition of the governing body**

- (1) With the exception of funds constituted as unit trusts, a fund's governing body must include at least one natural person who –

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- (a) holds that office in a non-executive capacity; and
- (b) is independent of –
 - (i) the scheme’s promoter; and
 - (ii) any body corporate that is a subsidiary of the scheme’s promoter; or
 - (iii) a subsidiary of any holding company of the scheme’s promoter.
- (2) Under paragraph (1), where a fund has appointed an overseas administrator the governing body must include at least one Isle of Man resident individual who is an authorised person or whose services are provided to the fund as client of an authorised person.
- (3) The same individual can act under paragraphs (1) and (2).
- (4) Subject to paragraph (5), the governing body of a fund constituted as a unit trust must be a different person from the administrator and be —
 - (a) an authorised person;
 - (b) licensed to act as trustee of this type of scheme in an acceptable jurisdiction;
 - (c) a corporate trustee acting with an Isle of Man resident individual co-trustee; or
 - (d) a corporate trustee whose board includes a non executive who is an Isle of Man resident individual.
- (5) Where a fund constituted as a unit trust has appointed an overseas administrator the governing body must be an authorised person.

6 Responsibilities of an Isle of Man member of the governing body where an overseas administrator is appointed

Where a fund has an overseas administrator the natural person required under regulation 5(2) or the authorised person required under regulation 5(5) must notify the [Authority](#) without delay upon becoming aware that—

- (a) the governing body has not fulfilled its obligations under these Regulations; or
- (b) the requirements of regulation 9 have not been complied with.

7 Ceasing to be a member of the governing body

- (1) Where a member of the governing body is removed, resigns or is not reappointed at the end of their term of office, that member must notify the [Authority](#) without delay, stating the reasons for the change in the governing

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body's membership.

- (2) The notice in paragraph (1) can initially be made by any reasonable means however verbal notification must be followed up by letter or email within 5 working days.

8 The administrator

The fund must have an administrator who —

- (a) is an authorised person; or
- (b) is licensed to act as administrator of this type of fund in an acceptable jurisdiction.

9 Responsibilities of an administrator

- (1) The administrator must notify the Authority —
 - (a) without delay —
 - (i) when it becomes aware that any of the requirements in regulations 10, 11, 12 and 13 have not been complied with;
 - (ii) when it becomes aware that a member of the governing body has been removed, resigned or not reappointed at the end of their term of office; and
 - (iii) when it becomes aware that the fund's auditor has been removed, resigned or not been reappointed at the end of their term of office, of that fact;
 - (b) as soon as reasonably practicable after receiving an audit report that —
 - (i) has been qualified by the auditors; or
 - (ii) contains an emphasis of matter.

Notifications in accordance with sub-paragraphs (i) and (ii) must be accompanied by a copy of the audit report, together with details of any remedial action that the governing body, manager or any other party intends to take;

- (c) within 10 working days where the fund's audited annual financial statements have not been distributed in accordance with regulation 16 of that fact, and every three months thereafter until they have been issued and distributed. Each notification must —
 - (i) give details of the issues giving rise to the delay;
 - (ii) contain a revised timetable for distribution of the audited annual financial statements; and

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- (iii) be signed by, or on behalf of, the administrator; and
 - (iv) be accompanied by a copy of any shareholder communication regarding the delay, and if no shareholder communication has been issued, the reasons why a communication has not been issued.
- (2) The administrator must –
- (a) satisfy itself that the fund’s investors have certified they are specialist investors and have made an initial investment of at least US\$100,000;
 - (b) within 10 working days of –
 - (i) the fund’s launch date, or
 - (ii) becoming aware of a material alteration to the fund’s constitutional or offering documents that would render any of the information in the last notification inaccurate, incomplete or misleading,certify and submit a [specialist fund notification and alteration form in the format and containing the information specified by the Authority](#) to the [Authority](#); and
 - (c) supply the statistical information [in the format and containing the information specified by the Authority](#) to the [Authority](#) within 15 working days of each calendar quarter end;
- (3) Where the fund has an overseas administrator, it may discharge its duties under this regulation by ensuring that mechanisms are in place to meet the requirements of paragraphs (1) and (2), and by monitoring the operation of those mechanisms to ensure that the requirements are met.

10 Asset management

- (1) The fund must ensure that it receives relevant advisory or discretionary management services, whether directly or indirectly, in relation to the investment and re-investment of its assets.
- (2) Before making an appointment, and on an ongoing basis, the governing body must ensure that any proposed or appointed asset manager or investment adviser is suitable to act in that capacity.
- (3) In making the assessment in paragraph (2), the governing body must –
 - (a) take account of the regulatory status of the asset manager or investment adviser and of any person providing investment services to the asset manager or investment adviser; and
 - (b) consider any guidance issued by the [Authority](#).

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11 Investor certifications

- (1) The fund must—
 - (a) have a minimum initial subscription level of at least US\$100,000; and
 - (b) only accept investments from investors who have certified their status in the form set out in Schedule 6.
- (2) Paragraph (1) does not apply to establishment capital paid by the founders where such capital has been provided for the sole purpose of establishing the fund.

12 Offering document*

- (1) The fund must have an offering document that —
 - (a) accurately sets out all material information which, at the date of the offering document, is known to the governing body (or which the governing body would have obtained by making reasonable enquiries) and which is relevant to an investor or potential investor for the purpose of making an informed judgement about whether to invest in the fund; and
 - (b) contains the matters set out in Schedule 5.
- (2) A revision of the offering document may take the form of a new offering document or of a supplement to the existing offering document; whichever method is chosen the date on which the revision was made must be prominently displayed in the document.

13 Application form

- (1) The fund's application form must contain the certifications set out in Schedule 6.
- (2) Before being accepted as an investor each applicant must complete the Part 1 certification and, if applicable, the relevant Part 2 certification.

14 Financial statements

- (1) The fund must ensure that financial statements are prepared annually in respect of each accounting period ending on its financial year-end date.
- (2) The fund's annual financial statements must be prepared in accordance with generally accepted accounting principles or practice.

* Regulation 6(2) of SD 2015/0306 says: "Notwithstanding (1), risk warnings in offering documents in existence at the operative date, and which comply with the provisions of paragraph 4 of Schedule 5 to the Specialist Fund Regulations before the operative date, may continue to be used in unamended form until the offering documents are otherwise next updated, or for 3 years from the operative date, whichever is the sooner."

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15 Audit of financial statements

- (1) The fund must appoint an appropriate auditor.
- (2) The appropriate auditor must audit the fund's annual financial statements in accordance with internationally accepted auditing standards and practices and issue an audit report in relation to the audit.

16 Distribution of financial statements

The fund's audited annual financial statements must be distributed to investors no later than 6 months after the fund's financial year-end or within the timescales set out in the offering document if earlier.

17 Removal of, resignation of or failure to reappoint an auditor

Where the scheme's auditor, is removed, resigns or is not reappointed at the end of its term of office, the auditor must supply a signed statement direct to the **Authority**

–

- (a) stating whether there are any circumstances connected with it ceasing to hold office which should be brought to the **Authority's** attention; and
- (b) providing full details of those circumstances which it considers should be brought to the **Authority's** attention.

18 Revocation

The Financial Supervision (Specialist Fund) (Exemption) Order 2007⁴ is revoked.

19 Transitional arrangements

- (1) A fund which was a specialist fund under the Financial Supervision (Specialist Fund) (Exemption) Order 2007 at the date these Regulations come into effect will be a specialist fund under these Regulations and an investor who was a specialist investor under that Order continues to be a specialist investor under these Regulations.
- (2) A fund which qualifies under paragraph (1) must update its offering and constitutional documents to bring them into full compliance with these Regulations on the next occasion when they are updated.

MADE 15th March 2010

John Cashen
Commissioner

John Aspden
Chief Executive

⁴ SD807/07

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Regulation 3(1)

SCHEDULE 1

Meaning of specialist investor

A specialist investor is a person or body who has certified that they are sufficiently experienced to understand the risks associated with an investment in a specialist fund, who invests an initial amount of at least US\$100,000 and that, at the time of the initial investment in that fund falls into one of the following categories –

- (a) a person, body corporate, partnership, trust or other unincorporated association whose ordinary business or professional activity includes acquiring, underwriting, managing, holding or disposing of investments, whether as principal or agent, or giving advice about investments;
- (b) any director or partner of, or consultant to, a person referred to in paragraph (a);
- (c) a functionary to, or an associate of, a functionary to a specialist fund;
- (d) an employee, director or shareholder of, or consultant to a person in (c), who is acquiring the investment as part of his remuneration or an incentive arrangement or by way of co-investment;
- (e) a trustee of a family trust settled by or for the benefit of, one or more persons referred to in paragraphs (c) or (d);
- (f) a trustee or operator of any employment benefit or executive incentive scheme, or trust established for the benefit of persons referred to in paragraphs (c) or (d), or their dependants;
- (g) a government, local authority, public authority or supra-national body in the Isle of Man or elsewhere;
- (h) a company, partnership, trust or other association of persons –
 - (i) which has (or which is a wholly-owned subsidiary of a body corporate which has) assets of at least US\$1,000,000 available for investment; or
 - (ii) every member, partner or beneficiary of which falls within the definition of specialist investor; or
- (i) an individual with a net worth, or joint net worth with their spouse, greater than US\$1,000,000 excluding their principal place of residence.

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SCHEDULES 2, 3 and 4 are revoked

Regulation 12

SCHEDULE 5

Specific matters to be contained in a specialist fund's offering document –

1. The definition of specialist investor in a prominent position, as set out in Schedule 1.
2. A description of arrangements for –
 - (a) the management of the fund's assets; and
 - (b) custody of the fund's assets including the extent to which any underlying investments, including any assets held within special purpose vehicles, are not held or controlled by an appointed custodian.
3. Statements that the fund –
 - (a) will only accept initial investment amounts from investors which are not less than a specified minimum (which is at least US\$100,000);
 - (b) will only accept applications to invest in the fund or effect a transfer of an interest in the fund from specialist investors who have signed the certification(s) required by regulation 13; and
 - (c) must issue audited annual financial statements to investors within six months from the end of each financial period of the fund, or within the timescales prescribed in the offering document (if earlier).
4. The following risk warning in a prominent position* —

"[This fund] is a specialist fund which is only suitable for "specialist investors" as defined in the Collective Investment Schemes (Specialist Fund) Regulations 2010 ("the Regulations").

All specialist funds are required to register with the [Isle of Man Financial Services Authority](#) ("the Authority"). Accordingly, the Fund must be registered with the Authority in accordance with the Regulations. In granting registration, the Authority has not reviewed this document but has relied upon the statement of compliance

* Regulation 6(2) of SD 2015/0306 says: "Notwithstanding (1), risk warnings in offering documents in existence at the operative date, and which comply with the provisions of paragraph 4 of Schedule 5 to the Specialist Fund Regulations before the operative date, may continue to be used in unamended form until the offering documents are otherwise next updated, or for 3 years from the operative date, whichever is the sooner."

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provided by the fund's governing body filed in accordance with the Regulations. Details of registration will be available at www.fsc.gov.im.

The Fund's administrator and its governing body are subject to ongoing filing and reporting obligations in accordance with the Regulations.

Investors are not protected by statutory compensation arrangements and the Authority does not vouch for the financial soundness of the fund or for the accuracy of statements made or opinions expressed about it.

Requirements which may be deemed necessary to protect retail or non-specialist investors do not apply to specialist funds. By signing the declaration at [] you confirm you are a "specialist investor" and accept the reduced requirements, or absence of requirements, accordingly.

You are wholly responsible for ensuring that [this fund] is acceptable to you. Investment in specialist funds may involve special risks that could lead to a loss of all or a substantial portion of the investment. Unless you fully understand and accept the nature of [this fund] and the potential risks inherent in [this fund] you should not invest in [this fund]."

Where the fund does not expressly prohibit an investor from investing on behalf of another person – "If you are investing on behalf of someone else, the Authority expects you to be satisfied that person is a specialist investor who understands the risks associated with this type of investment."

Where investment by a life assurance company is not expressly prohibited by the scheme - "If you are a life assurance company investing assets within your long-term business fund, the Authority expects that relevant policyholders have had the opportunity to read the fund's offering document and as such to have information about risks associated with an investment this fund."

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Regulation 13

SCHEDULE 6

Certifications to be contained in the specialist fund's application form

The Part 2 Certification (1) may be omitted where the fund expressly prohibits an investor from investing on behalf of another person.

The Part 2 Certification (2) may be omitted where the fund expressly prohibits a life assurance company from investing assets comprised within its long term business fund in circumstances where the fund has been selected by the policyholder of a particular policy as the basis for determining the benefit of that policy.

Part 1 Certification - This certification is to be completed by all applicants. The investor confirmations (a) to (d) apply to all applicants. The investor confirmation (e) applies to all applicants except those who are signing a Part 2 certification.

"I/we confirm that —

- (a) I am/we are a specialist investor as defined on page [] of the offering document of [name of fund] dated []; and
- (b) I am/we are sufficiently experienced to understand the features and risks associated with an unauthorised and unapproved fund of this type; and
- (c) I/we have read and fully understood the offering document, including in particular the information on the risks associated with the fund (contained on pages [X – X] of the offering document), before deciding to invest in the fund; and
- (d) I/we confirm that, where appropriate, I/we have taken independent advice on the suitability of this investment within my/our overall investment portfolio; and
- (e) I/we personally accept all the risks associated with this investment and particularly that my/our investment in the [name of fund] involves risks that could result in a loss of a significant proportion or all of the sum invested.

[Signed]

[Dated]".

Part 2 Certification –

- (1) The following certification is to be completed by any investor who is investing on behalf of another person.

"I/We confirm that I am/we are investing in the specialist fund on behalf of another person/ other persons and have certification(s) signed by such person to show that each such person/persons is a specialist investor and understands and accepts the

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risks associated with this type of investment.

[Signed] [Dated]”.

- (2) The following certification is to be completed by an investor who is a life assurance company investing assets comprised within its long term business fund where the [XYZ fund] has been selected by the policyholder of a particular policy as the basis for determining the benefit of that policy (as appropriate).

“We confirm that we are investing assets comprised within our long term business fund and—

- (a) we have procedures and controls in place to obtain client declarations from our policyholders which include confirmation from the policy holder to the effect that —
- (i) the policyholder has the opportunity to read the offering documents for funds of this nature, where they wish to do so, and as such has information about and accepts the levels of risks associated with this type of investment; and
 - (ii) the policyholder, where necessary, meets the minimum criteria of a class of investor in a fund of this nature;
- (b) we confirm no investment in this type of fund is made without a client declaration being obtained from relevant policyholders.

[Signed] [Dated]”

Explanatory Note

(This note is not part of these Regulations)

These Regulations set out the requirements for a type of international collective investment scheme which is available only to specialist investors, known as the specialist fund. These Regulations define a specialist investor for the purposes of these Regulations and require certain disclosures to be made in the fund’s documentation.

SD 2015/0306 replaces references to the Financial Supervision Commission with references to its replacement statutory board: the Isle of Man Financial Services Authority in various Regulations made under the Collective Investment Schemes Act 2008. The Regulations also:

- remove the detailed content of form information from the Regulations (because this material may now be specified by the Authority outside of legislation); and
- make transitional provisions in relation to changes to offering documents to ensure a practical period for change is provided.