

## COLLECTIVE INVESTMENT SCHEMES ACT 2008

### COLLECTIVE INVESTMENT SCHEMES (EXPERIENCED INVESTOR FUND) REGULATIONS 2010

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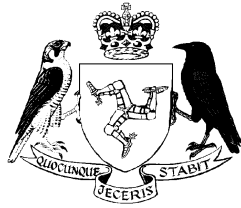
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## COLLECTIVE INVESTMENT SCHEMES ACT 2008

### COLLECTIVE INVESTMENT SCHEMES (EXPERIENCED INVESTOR FUND) REGULATIONS 2010

*Approved by Tynwald*

*20 April 2010*

*Coming into operation 1 May 2010, amendments 1 July 2011 and 1 November 2015*

The Financial Supervision Commission<sup>1</sup>, after consulting in accordance with section 24(13) of the Collective Investment Schemes Act 2008<sup>2</sup>, 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 (Experienced Investor Fund) Regulations 2010.

#### **2 Commencement**

These Regulations come into operation on 1 May 2010.

#### **3 Interpretation**

(1) In these Regulations —

“acceptable financial adviser” means a person (wherever located) who advises investors on the suitability of investing in a qualifying type EIF and who has terms of business under regulation 19 with a regulated promoter appointed under regulation 18;

“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 regulated promoters of

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<sup>1</sup> Isle of Man Financial Services Authority from 1 November 2015

<sup>2</sup> 2008 c.7

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qualifying type EIFs or appropriate auditors of experienced investor funds may be located, as the case may be;

“annual financial statements” means financial statements prepared in accordance with regulation 9;

“appropriate auditor” means a person who is covered by Professional Indemnity insurance of no less than £20 million and is independent of the fund, having regard to auditing standards and the code of ethics issued from time to time by the body of accountants of which it is a member, and fulfils the requirements of (a) or (b) below —

- (a) is qualified for appointment as auditor of a company under sections 14 to 14H of the Companies Act 1982<sup>3</sup> and has a permanent place of business on the Island;
- (b) in respect of a fund constituted under the laws of a jurisdiction other than the Isle of Man where —
  - (i) the laws of that jurisdiction require the audit of such a fund to be undertaken by a person or body corporate who has a permanent place of business in that jurisdiction;
  - (ii) the person or body corporate is qualified to act as auditor of the fund in accordance with the laws of that jurisdiction and has the necessary experience in auditing funds of this type; and
  - (iii) that jurisdiction is an acceptable jurisdiction;

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

**“the Authority”** means the [Isle of Man Financial Services Authority](#);

“closed experienced investor fund” is an experienced investor fund which complies with the requirements for a closed experienced investor fund set out in these Regulations and “closed EIF” shall be construed accordingly;

“experienced investor” in relation to —

- (a) a legacy EIF has the meaning given in Schedule 1 paragraph 2 and;
- (b) a closed EIF has the meaning given in Schedule 1 paragraph 3;

“experienced investor fund” means a collective investment scheme constituted in accordance with these Regulations which was an experienced

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<sup>3</sup> 1982 c.2

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investor fund under the Financial Supervision (Experienced Investor Fund) (Exemption) Order 1999<sup>4</sup>;

“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;

“legacy experienced investor fund” is an experienced investor fund which complies with the requirements for a legacy experienced investor fund in these Regulations and “legacy EIF” shall be construed accordingly;

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

“qualifying type experienced investor fund” is an experienced investor fund which complies with the requirements for a qualifying type experienced investor fund set out in these Regulations and “qualifying type EIF” shall be construed accordingly;

“regulated financial adviser” means a person who advises investors or potential investors on the suitability of investing in a qualifying type EIF fund and who meets the requirements of regulation 17;

“regulated promoter” means a promoter appointed by a qualifying type EIF under regulation 18; 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.

## **Regulations applicable to qualifying type EIFs, legacy EIFs and closed EIFs**

### **4 Duties of the governing body**

- (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;

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<sup>4</sup> SD 603/99 as amended by SD 407/00, 87/03, 347/03 and 806/07

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- (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 to 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 manager or administrator (as the case may be) 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 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 –
  - (i) the manager of a qualifying type EIF under regulation 14;
  - (ii) the administrator of a legacy EIF under regulation 23; and
  - (iii) the manager or administrator of a closed EIF under regulation 28,as the case may be, are discharged; and
- (j) in relation to a qualifying type EIF, a minimum subscription amount appropriate to the fund is determined jointly with the manager.

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\* Regulation 7(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 Part A or Part B of Schedule 5 to the Experienced Investor 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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- (2) The governing body must sign a statement of responsibility in the **format and containing the information specified by the Authority in relation to\*** any amended offering document. The governing body must submit the statement of responsibility to the **Authority** within 10 working days 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 –
  - (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) 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.

## **6 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 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.

## **7 The custodian**

- (1) The fund must appoint at least one custodian.

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- (2) A custodian must be a different person from the manager or administrator (as the case may be) and be an authorised person or be licensed to provide custody services to this type of fund type in a jurisdiction outside the Island.
- (3) Before making an appointment, and on an ongoing basis, the governing body must ensure that each appointed custodian is appropriately experienced in providing services to the class of assets for which it will provide such services.
- (4) When assessing a custodian under paragraph (3), the governing body must –
  - (a) consider the suitability of the domicile and the regulatory framework for the provision of custody services in the jurisdiction in which the custodian is regulated; and
  - (b) in respect of a qualifying type EIF, obtain the manager’s approval to the appointment.
- (5) In the case of a qualifying type EIF, the manager must notify the governing body without delay if it becomes aware of anything which it reasonably believes is relevant to assessing a custodian’s ongoing suitability under paragraph (3).

## **8 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;
  - (b) consider any guidance issued by the [Authority](#); and
  - (c) in respect of a qualifying type EIF, obtain the manager’s approval to the appointment.
- (4) In the case of a qualifying type EIF, the manager must notify the governing body without delay if it becomes aware of anything which it believes is relevant to an assessment of ongoing suitability under paragraph (2).



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## **9 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.

## **10 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.

## **11 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.

## **12 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.

## **Additional regulations applicable to qualifying type EIFs**

### **13 The manager of a qualifying type EIF**

- (1) A qualifying type EIF must have a manager who is –
  - (a) an authorised person; or
  - (b) is an exempt person under paragraph 3(3) of Schedule 1 to the Financial Services Exemption Regulations 2008<sup>6</sup>.
- (2) Where the manager appointed in sub-paragraph (1) is an exempt person, the administrator of the qualifying type EIF shall be responsible for the requirements in paragraph 14.

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<sup>6</sup> SD368/08

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## 14 Responsibilities of a manager of a qualifying type EIF

- (1) The manager of a qualifying type EIF must notify the Authority —
  - (a) without delay —
    - (i) if it determines that the fund has not been managed and operated in accordance with the provisions of the fund's constitutional and offering documents;
    - (ii) when it becomes aware that any of the requirements in regulations 7, 8 and 15 to 21 have not been complied with;
    - (iii) 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
    - (iv) when it becomes aware that the fund's auditor has been removed, resigned or not been reappointed at the end of its 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 11 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;
    - (iii) be signed by, or on behalf of, the manager; and
    - (iv) be accompanied by a copy of any shareholder communication on the delay, and if no shareholder communication has been issued, the reasons why a communication has not been issued.
- (2) The manager of a qualifying type EIF must –

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- (a) satisfy itself that the fund's investors have certified they are qualifying investors and, in the case of investors qualifying under Schedule 1 paragraph 1(h) that:
  - (i) the qualifying investor's status has been certified by a regulated or acceptable financial adviser, as appropriate; and
  - (ii) in relation to applications received in relation to regulated financial adviser distribution satisfy itself that the person who has signed the declaration in part 3 of Schedule 6 is a regulated financial adviser.
- (b) jointly with the governing body, determine the minimum subscription amount appropriate to the fund;
- (c) within 10 working days 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 [an experienced investor fund alteration form in the format and containing the information specified by the Authority\\*](#) to the [Authority](#).
- (d) complete and sign [the relevant part of the experienced investor fund annual compliance declaration in the format and containing the information specified by the Authority\\*](#). The full compliance declaration must be submitted to the [Authority](#) by the manager and governing body within 6 months of the first anniversary of the launch, within 6 months of the fund's financial year-end thereafter and immediately prior to the scheme ceasing to be a scheme.;
- (e) 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; and
- (f) where a regulated promoter has not been appointed, oversee the marketing of the fund by reviewing promotional and marketing materials and advertisements.

## **15 Investor certifications for a qualifying type EIF**

A qualifying type EIF must only accept investments from investors who have certified their status in the form set out in Schedule 6 Part A.

## **16 Distribution of a fund to investors who require a financial adviser to certify that they are qualifying investors**

- (1) A qualifying type EIF cannot accept an application to invest from a person who certifies that they are a qualifying investor under paragraph 1(h) of

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Schedule 1 unless that investor has been advised about the suitability of the investment by a financial adviser and that financial adviser has signed the declaration in Part 1 Section 3 of Schedule 6.

- (2) In relation to investors who qualify under paragraph 1(h) –
  - (a) where the fund only permits regulated financial advisers to advise such investors about the fund regulation 17 shall apply. This distribution method is known as regulated financial adviser distribution; and
  - (b) in all other cases regulations 18 to 19 shall apply. This distribution method is known as regulated promoter distribution.

#### **17 Regulated financial adviser distribution**

A qualifying type EIF must not treat a financial adviser as a regulated financial adviser unless —

- (a) they are regulated as a financial adviser; and
- (b) the scope of their regulatory permission is sufficiently broad to include advising on or selling this type of fund to this type of investor in the jurisdiction in which the advice is given; and
- (c) the regulatory regime under which they are regulated –
  - (i) includes a requirement they must be competent in relation to any product upon which they provide advice; and
  - (ii) requires them to provide advice to an investor or potential investor about the suitability of an investment based on that investor's requirements and attitude to risk.

#### **18 Regulated promoter distribution - the promoter**

- (1) A qualifying type EIF which allows regulated promoter distribution must appoint a regulated promoter who is an authorised person or who is regulated as a promoter in an acceptable jurisdiction.
- (2) Where a regulated promoter is appointed under paragraph (1), that promoter is responsible for overseeing the promotion and marketing of the fund by reviewing promotional and marketing materials and advertisements and considering whether they give a fair portrayal of the scheme and the risks attendant to it.

#### **19 Regulated promoter distribution – acceptable financial advisers**

- (1) A financial adviser must not be treated as acceptable until it has —
  - (a) been assessed as being acceptable by a regulated promoter; and

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- (b) entered into written terms of business with that regulated promoter.
- (2) When assessing whether a financial adviser is acceptable under paragraph (1), the regulated promoter must satisfy itself that the financial adviser —
  - (a) holds all necessary regulatory permissions and licences in each jurisdiction in or from which they will advise upon or sell the fund;
  - (b) can demonstrate appropriate competence in relation to advising upon or selling this type of fund. In making this assessment the regulated promoter must consider the financial adviser’s relevant qualifications and experience and the content of their standard client terms of business; and
  - (c) can demonstrate the continuing adequacy and appropriateness of its procedures, controls and investor records and how these ensure that the fund will only be distributed to qualifying investors.
- (3) Written terms of business referred to in paragraph (1) must require the financial adviser to —
  - (a) undertake customer due diligence on all applicants which they introduce to the fund. This assessment must include consideration of whether the customer meets the criteria to be a qualifying investor and whether the fund is suitable for the customer;
  - (b) maintain records of the assessment in sub paragraph (a) and provide those records to the regulated promoter without delay on request; and
  - (c) only sell the fund to investors that meet the definition of qualifying investor.
- (4) The regulated promoter is responsible for ensuring that a financial adviser with whom it has terms of business continues to be an acceptable financial adviser and must terminate terms of business as soon as it becomes aware that the financial adviser no longer meets the requirements.

## **20 Offering document of a qualifying type EIF**

- (1) A qualifying type EIF 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 a investor or potential investor for the purpose of making an informed judgement about whether to invest in the fund; and

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- (b) contains the matters set out in Schedule 5 Part A.
- (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.

## **21 Application form of a qualifying type EIF**

- (1) A qualifying type EIF's application form must contain the certifications set out in Schedule 6 Part A.
- (2) Before being accepted as an investor each applicant must complete the Part A Section 1 certification and, if applicable, the relevant Part A Section 2 certification. The Part A Section 3 certification must be completed by a financial adviser where required.

## **Additional regulations applicable to legacy EIFs**

### **22 The administrator of a legacy EIF**

A legacy EIF 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.

### **23 Responsibilities of an administrator of a legacy EIF**

- (1) The administrator of a legacy EIF must notify the [Authority](#) —
  - (a) without delay —
    - (i) when it becomes aware that any of the requirements in regulations 8, 24, 25 and 26 have not been complied with;
    - (iii) 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. The notification must be in writing and must state the reasons for the change in the governing body's membership; and
    - (iv) when it becomes aware that the fund's auditor has been removed, resigned or not been reappointed at the end of its term of office, of that fact;
  - (b) as soon as reasonably practicable after receiving an audit report that —
    - (i) has been qualified by the auditor; or

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- (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 11 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
  - (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 of a legacy EIF 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 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 [an experienced investor fund 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;

## **24 Investor certifications for a legacy EIF**

- (1) A legacy EIF 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 Part 2.

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## **25 Offering document of a legacy EIF**

- (1) A legacy EIF 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 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 Part B.
- (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.

## **26 Application form of a legacy EIF**

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

## **Additional regulations applicable to closed EIFs**

### **26A The governing body of a closed EIF**

The governing body of a closed EIF must ensure that

- (a) the fund does not accept any new investors nor any new subscriptions from existing investors with the exception of any dividends payable by the fund which may be reinvested on the instruction of existing investors; and
- (b) the fund is no longer being promoted and mechanisms are in place to ensure that no further applications to invest in the fund are accepted.

### **27 The administrator of a closed EIF**

A closed EIF must have an administrator who is an authorised person.

### **28 Responsibilities of the administrator of a closed EIF**

- (1) The administrator of a closed EIF must notify the Authority —
  - (a) without delay —



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- (i) when it becomes aware of any material changes to the circumstances of the closed EIF;
- (ii) when it becomes aware that any of the requirements in regulation 10 have not been complied with;
- (iii) 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
- (iv) when it becomes aware that the fund's auditor has been removed, resigned or not been reappointed at the end of its term of office, of that fact;

(b) as soon as reasonably practicable after receiving an audit report that —

- (i) has been qualified by the auditor; 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, administrator 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 11 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;
- (iii) be signed by, or on behalf of, the administrator; and
- (iv) be accompanied by a copy of any shareholder communication on the delay, and if no shareholder communication has been issued the reasons why a communication has not been issued.

(2) The administrator of a closed EIF must —

- (a) certify and submit [an experienced investor fund alteration form in the format and containing the information specified by the Authority\\*](#) to the [Authority](#) within 10 working days of —
  - (i) the fund becoming a closed EIF; or

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- (ii) becoming aware of a material alteration to the fund that would render any of the information in the last notification inaccurate, incomplete or misleading;
- (b) 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.

## General matters\*

### 29 Revocation

The Financial Supervision (Experienced Investor Fund) (Exemption) Order 2007<sup>7</sup> is revoked.

### 30 Transitional arrangements

- (1) A fund which at the date these Regulations come into effect, under the Financial Supervision (Experienced Investor Fund) (Exemption) Order 1999, was –
  - (a) a qualifying type experienced investor fund will be a qualifying type experienced investor fund under these Regulations;
  - (b) a legacy experienced investor fund will be a legacy experienced investor fund under these Regulations; and
  - (c) a closed experienced investor fund will be a closed experienced investor fund under these Regulations.
- (2) An investor who at the date these Regulations come into effect, under the Financial Supervision (Experienced Investor Fund) (Exemption) Order 1999, was –
  - (a) a qualifying investor continues to be a qualifying investor under these Regulations; and
  - (b) an experienced investor continues to be a experienced investor under these Regulations.

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<sup>7</sup> SD603/99 as amended by SD 407/00, 87/03, 347/03 and 806/07

\* SD 2015/0306: Regulation 7(2): “Notwithstanding (1), risk warnings in offering documents in existence at the operative date, and which comply with the provisions of paragraph 4 of Part A or Part B of Schedule 5 to the Experienced Investor 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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- (3) A fund which qualifies under paragraph (1)(a) or (b) 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 15<sup>th</sup> March 2010

*John Cashen*  
Commissioner

*John Aspden*  
Chief Executive

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## **Regulation 3(1)**

### **SCHEDULE 1**

#### **1 Meaning of qualifying investor**

A qualifying investor is a person or body who has certified that they are sufficiently experienced to understand the risks associated with an investment in that fund and who, 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 a qualifying type EIF or an associate of a functionary to a qualifying type EIF;
- (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; or
- (h) a person whose expertise, experience and knowledge to adequately appraise the investment is certified in accordance with Schedule 6 Part 3.

#### **2 Meaning of experienced investor for the purpose of a legacy EIF**

For the purpose of a legacy EIF, “experienced investor” means a person or body who has certified that they are sufficiently experienced to understand the risks associated with an investment in a legacy experienced investor fund, who invests an initial amount of at least

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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 legacy experienced investor 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.

### **3 Meaning of experienced investor for the purpose of a closed EIF**

For the purpose of a closed EIF, “experienced investor” means a person who is sufficiently experienced to understand the risks associated with an investment in that fund.

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**SCHEDULES 2, 3 and 4 are revoked.**

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## SCHEDULE 5\*

### Regulation 20

#### Part A Specific matters to be contained in a qualifying type EIF's offering document

1. The definition of qualifying 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 an amount jointly determined by the fund's governing body and manager;
  - (b) will only accept applications to invest in the fund or effect a transfer of an interest in the fund from qualifying investors who have signed the certification(s) required by regulation 15; 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 qualifying type EIF which is only suitable for "qualifying investors" as defined in the Collective Investment Schemes (Experienced Investor Fund) Regulations 2010 ("the Regulations")..

All qualifying type EIFs 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 provided by the fund's governing body filed in accordance with the Regulations. Details of registration will be available at [www.fsc.gov.im](http://www.fsc.gov.im).

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\* SD 2015/0306: Regulation 7(2): "Notwithstanding (1), risk warnings in offering documents in existence at the operative date, and which comply with the provisions of paragraph 4 of Part A or Part B of Schedule 5 to the Experienced Investor 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."

This version of the Collective Investment Schemes (Experienced Investor Fund) Regulations 2010 has been created by the Financial Supervision Commission (Isle of Man Financial Services Authority from 1 November 2015) to assist users of the legislation. No liability is accepted for its accuracy and the original legislation should be consulted for legal purposes. This is SD 164/10 as amended by SD 355/11 and SD 2015/0306

The fund's manager 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-qualifying investors do not apply to qualifying type EIFs. By signing the declaration at [ ] you confirm you are a "qualifying 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 qualifying type EIFs 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 qualifying investor who understands the risks associated with this type of investment."

Where the fund does not expressly prohibit 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 - "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 in this fund."

## **Regulation 25**

### **Part B Specific matters to be contained in a legacy EIF's offering document**

1. The definition of experienced investor in a prominent position, as set out in Schedule 1 paragraph 2.
2. A description of arrangements for –
  - (a) the management of the fund's assets; and



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(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 experienced 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 an experienced investor fund which is only suitable for "experienced investors" as defined in the Collective Investment Schemes (Experienced Investor Fund) Regulations 2010 ("the Regulations")..

All experienced investor 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 provided by the fund's governing body filed in accordance with the Regulations. Details of registration will be available at [www.fsc.gov.im](http://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-experienced investors do not apply to experienced investor funds. By signing the declaration at [ ] you confirm you are an "experienced investor" and accept the reduced requirements, or absence of requirements, accordingly.

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\* SD 2015/0306: Regulation 7(2): "Notwithstanding (1), risk warnings in offering documents in existence at the operative date, and which comply with the provisions of paragraph 4 of Part A or Part B of Schedule 5 to the Experienced Investor 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."

This version of the Collective Investment Schemes (Experienced Investor Fund) Regulations 2010 has been created by the Financial Supervision Commission (Isle of Man Financial Services Authority from 1 November 2015) to assist users of the legislation. No liability is accepted for its accuracy and the original legislation should be consulted for legal purposes. This is SD 164/10 as amended by SD 355/11 and SD 2015/0306

You are wholly responsible for ensuring that [this fund] is acceptable to you. Investment in experienced investor 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 the fund does not expressly prohibit 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 - "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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## SCHEDULE 6

### Regulation 21

#### Part A Certifications to be contained in the qualifying type EIF's application form

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

The Section 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.

**Section 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 qualifying 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]".

#### Section 2 Certification –

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

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

**Section 3 Certification** – This certification is to be completed by the financial adviser who has advised the investor where that investor qualifies as a qualifying investor only by virtue of Schedule 1 paragraph (h) —

“I confirm that —

- (a) I am the appointed financial adviser for the above named client; and
- (b) I have discussed the features and risks attendant to an investment in a non-regulated fund of this type with the client; and
- (c) I have discussed the specific risks attendant to an investment in the [name of qualifying fund] as set out in the offering document dated [ ] ; and

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- (d) the client has confirmed that they understand these risks and wish to proceed with the investment.

I am not aware of any information that would lead me to believe that the client does not understand and accept these risks.

[Signed]

[Dated]

[Business name]

[Regulated status]”

## Regulation 26

### Part B Certifications to be contained in the legacy EIF’s application form

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

The Section 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.

**Section 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 an experienced 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

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- (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]”.

## Section 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 [name of fund] on behalf of another person/ other persons and have certification(s) signed by such person to show that each such person/persons is an experienced investor and understands and accepts the 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]”

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**Explanatory Note**  
**(This note is not part of these Regulations)**

These Regulations set out the requirements for experienced investor funds, which are types of international collective investment scheme.

The Regulations were amended by SD 355/11 to clarify the requirements for closed experienced investor funds and make minor amendment to the definition of experienced investor in Schedule 1.

SD 355/11 changes are shown in blue font.

The Regulations were amended by SD 2015/0306 to replace 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.

SD2015/0306 changes are shown in purple font