



## COLLECTIVE INVESTMENT SCHEMES (RECOGNISED SCHEMES) REGULATIONS 2015

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Statutory Document No. 2015/0404



*Collective Investment Schemes Act 2008*

## COLLECTIVE INVESTMENT SCHEMES (RECOGNISED SCHEMES) REGULATIONS 2015

*Approved by Tynwald:* 19 January 2016  
*Coming into Operation:* 1 February 2016

The Isle of Man Financial Services Authority makes the following Regulations under section 24 of the Collective Investment Schemes Act 2008<sup>1</sup>, after carrying out the consultations required by section 24(13) of that Act.

### 1 Title

These Regulations are the Collective Investment Schemes (Recognised Schemes) Regulations 2015.

### 2 Commencement

If approved by Tynwald these Regulations come into operation on 1 February 2016.

### 3 Application

Unless otherwise indicated, these Regulations apply to —

- (a) recognised schemes authorised in a designated country; and
- (b) individually recognised schemes.

### 4 Interpretation

In these Regulations —

“**the Act**” means the Collective Investment Schemes Act 2008;

“**home regulator**” means the regulator with primary responsibility for approval or oversight of a recognised scheme;

“**individually recognised scheme**” means a scheme under paragraph 2 of Schedule 4 to the Act;

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<sup>1</sup> AT 7

**“IOM offering document”** is an offering document that contains all the information required by regulation 11 and Schedules 2 and 3 in either, or a combination of, the offering document or an addendum thereto;

**“marketing”**, in relation to a recognised scheme, means —

- (a) issuing or causing to be issued in the Isle of Man advertisements that —
  - (i) invite persons to become, or offer to become, participants in that scheme; or
  - (ii) contain information intended to lead directly or indirectly to persons becoming, or offering to become, participants in that scheme; or
- (b) advising or procuring any person in the Isle of Man to become a participant in that scheme;

**“recognised scheme authorised in a designated country”** means a scheme under paragraph 1 of Schedule 4 to the Act; and

**“representative of an individually recognised scheme”** means the person in the Island required by paragraph 2(8) of Schedule 4 to the Act.

## 5 Initial recognition

- (1) Where the governing body of a scheme authorised in a designated country gives notice under paragraph 1(4) of Schedule 4 to the Act, that notice must contain or be accompanied by the information and documents specified in Parts I and II of Schedule 1.
- (2) Where the governing body of a scheme applies for the scheme to become an individually recognised scheme, the application submitted under paragraph 2 of Schedule 4 to the Act must contain or be accompanied by the information and documents specified in Parts I and II of Schedule 1.
- (3) The period prescribed for the notice in paragraph 1(4)(b) of Schedule 4 to the Act is two months from receipt of all the information and documents required by Schedule 1.

## 6 Ongoing requirements

- (1) If any information or document provided under regulation 5 and Schedule 1 has changed since it was provided, the recognised scheme’s governing body must ensure that any revised information or document is submitted to the Authority in English within one month of the change being approved by the scheme’s home regulator.
- (2) Submission to the Authority of revised information or documents in accordance with paragraph (1) constitutes notification to it of a change.

- (3) For the avoidance of doubt, paragraph (1) applies to all recognised schemes and is additional to the requirements set out at paragraph 3 of Schedule 4 to the Act in respect of changes to individually recognised schemes.

## **7 Facilities for the public**

- (1) Despite any availability of the following documents on a website associated with a recognised scheme, the governing body of a recognised scheme must also maintain facilities in the Island where the following documents are available for inspection by the public —
- (a) the scheme's constitutional documents;
  - (b) any instrument amending the scheme's constitutional documents;
  - (c) the scheme's most recent IoM offering document; and
  - (d) the scheme's most recent published annual and half-yearly reports.
- (2) In respect of the documents in (1) —
- (a) they must be in English;
  - (b) there must be no charge for inspecting them;
  - (c) copies must be available at a reasonable charge; and
  - (d) they must be available for the duration of the scheme.

## **8 Facilities for participants**

- (1) The governing body of a recognised scheme must maintain facilities in the Island where a participant may —
- (a) redeem or arrange to redeem units in the scheme and receive dividend and redemption payments;
  - (b) obtain oral and written information in English about the scheme's most recently published unit prices for subscriptions and redemptions; and
  - (c) inspect and obtain free of charge details or copies of any notices that have been given or sent to participants in the scheme.
- (2) The facilities need not be maintained in the Island with respect to the matters in paragraphs (1)(a) and (b) if —
- (a) participants are able to sell their units on an investment exchange at a price related to the net asset value of the property to which the units relate, or at a price not significantly different from that price; or
  - (b) if the recognised scheme is authorised in a designated country and those facilities are available in that country.

## 9 Facilities for complaints

Despite any availability to do so using a website associated with a recognised scheme, the scheme's governing body must also maintain facilities in the Island where any person may submit a complaint about the operation of the scheme in writing for transmission to the head office of the scheme's manager.

## 10 Address at which facilities to be maintained

Subject to regulation 8(2), the facilities referred to in regulations 7 to 9 must be maintained at an address identified for that purpose in the IoM offering document most recently prepared by the governing body and –

- (a) in respect of a recognised scheme authorised in a designated country, must be –
  - (i) the address of the principal place of business of the governing body in the Island; or
  - (ii) if the governing body has no place of business in the Island, at such address as the governing body determines;
- (b) in respect of an individually recognised scheme, the address must be –
  - (i) either of the addresses specified in (a) if the governing body is an authorised person; or
  - (ii) if the governing body is not an authorised person, at the principal place of business in the Island of the authorised person who is the representative of the governing body under paragraph 2 (8) of Schedule 4 to the Act.

## 11 Preparation of an IoM offering document

- (1) An IoM offering document must be prepared for the purpose of marketing units of a recognised scheme in the Island.
- (2) The manager and the governing body of the recognised scheme must each ensure that the IoM offering document –
  - (a) is published in English by the manager;
  - (b) is approved by the governing body if the scheme is established as an open-ended investment company;
  - (c) contains the information required by –
    - (i) paragraph (3) if the scheme is an individually recognised scheme; and
    - (ii) paragraph (4) if the scheme is a recognised scheme authorised in a designated country;
  - (d) does not contain any provision that is unfairly prejudicial to the interests of participants generally, nor to participants in any class of units;
  - (e) does not contain any provision that conflicts with any provision in these Regulations; and

- (f) is kept up-to-date and that material or significant revisions are made to it, immediately.
- (3) The IoM offering document of an individually recognised scheme must contain —
  - (a) the information specified in Schedule 3; and
  - (b) the information specified in Appendix 2 of the Schedule to the Authorised Collective Investment Schemes Regulations 2010<sup>2</sup>.
- (4) The IoM offering document of a recognised scheme authorised in a designated country must contain —
  - (a) the information specified in Schedule 2; and
  - (b) the relevant information specified in Appendix 2 of the Schedule to the Authorised Collective Investment Schemes Regulations 2010.
- (5) The IoM offering document must meet the requirements of this regulation at all times. If revision to the IoM offering document is necessary, this may be made either by an addendum or by a full replacement.

## **12 Publication of an IoM offering document**

- (1) The manager and governing body of a recognised scheme must not market units in the scheme in the Island unless —
  - (a) the IoM offering document has been prepared in accordance with regulation 11; and
  - (b) a copy of that IoM offering document has been submitted —
    - (i) to the Authority; and
    - (ii) to the scheme's trustee or fiduciary custodian (if any).
- (2) Any copy of an IoM offering document, or amended offering document, that is submitted to the Authority must be certified by the manager or home regulator of the recognised scheme as being a true copy of the original.
- (3) The manager or governing body of a recognised scheme must not effect any sale of units in the scheme to any person in the Island until it has offered that person a copy of the IoM offering document free of charge.

## **13 Compensation for false or misleading IoM offering documents**

- (1) The manager and the governing body of a recognised scheme authorised in a designated country, or the representative of an individually recognised scheme, as appropriate, must ensure that the IoM offering document of the scheme does not —
  - (a) contain any untrue or misleading statement; nor

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<sup>2</sup> SD 682/10

- (b) omit any matter required to be included in it by these Regulations.
- (2) The persons in paragraph (1) are jointly and severally liable to pay compensation to any participant who has acquired units in the recognised scheme and suffered loss as a result of any such mis-statement or omission. This liability is in addition to any liability incurred apart from under this paragraph.
- (3) If these Regulations require an IoM offering document to include certain information only if it is relevant to the recognised scheme, the fact that information is not included will be treated as a statement that there is no relevant information to disclose.

#### **14 Exemption from liability to pay compensation**

- (1) A person is not liable to pay compensation under regulation 13 if it satisfies the court that, at the time when the IoM offering document was prepared or ought to have been revised, the person reasonably believed, having made reasonable enquiries, that the statements in the IoM offering document were true and not misleading, or that any information that was not disclosed and which caused the loss was properly omitted; and that —
  - (a) it continued in that belief until the time when the units were acquired;
  - (b) the units were acquired before it was reasonably practicable to bring any correction to the attention of prospective participants;
  - (c) before the units were acquired it had taken all reasonable steps to bring a required correction to the attention of prospective participants; or
  - (d) a participant was not influenced to any material extent by a mis-statement, or by an omission, in making its decision to acquire those units.
- (2) Despite paragraph (1), a person is not liable under regulation 13 if it satisfies the court —
  - (a) that before the units were acquired a correction had been published in a manner reasonably intended to bring it to the attention of prospective participants; or
  - (b) that it took all reasonable steps to publish the correction and reasonably believed that it had been published before the units were acquired.
- (3) A person is not liable under regulation 13 if it satisfies the court that the participant suffering the loss acquired the units with knowledge that the statement was false or misleading, or that information was omitted, as the case may be.
- (4) A person is not liable under regulation 13 for failure to prepare a revised IoM offering document if it satisfies the court that it reasonably believed



that the issue did not necessitate a revision to the offering document as required by regulation 11(5).

- (5) For the purposes of this regulation and regulation 13 a revised IoM offering document will be treated as a different IoM offering document from the original.
- (6) In this regulation and in regulation 13, references to acquiring units include contracting to acquire them.

## 15 Revocation

The following Regulations are revoked –

Collective Investment Schemes (Recognised Schemes) (Facilities in the Island) Regulations 2010<sup>3</sup>;

Collective Investment Schemes (Recognised Schemes) (Notification) Regulations 2010<sup>4</sup>; and

Collective Investment Schemes (Recognised Schemes) (Offering Document) Regulations 2011<sup>5</sup>.

MADE 4 DECEMBER 2015

K.M. BADGEROW

*Chief Executive of the Isle of Man Financial Services Authority*

G.F. KARRAN

*Member of the Isle of Man Financial Services Authority*

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<sup>3</sup> SD 168/10

<sup>4</sup> SD 167/10

<sup>5</sup> SD 356/11



Regulation 5

SCHEDULE 1

NOTICE OF, OR APPLICATION TO BECOME, A RECOGNISED SCHEME

**PART I – Information required in a notification of a scheme authorised in a designated country or an application for an individually recognised scheme**

- (1) Name of scheme.
- (2) Legal form of scheme.
- (3) Details of the relevant designation order under the Act (*not applicable for individually recognised scheme applications*).
- (4) Class of scheme (*not applicable for individually recognised scheme applications*).
- (5) Details of the nature of the scheme including investment objectives, asset categories, hedging etc.
- (6) The name and address of one or more persons in the Island authorised to accept on behalf of the governing body any process or any notices or other documents required or authorised to be served on it under the Act (*not applicable for individually recognised scheme applications*).
- (7) The name and address of a representative in the Island who is an authorised person and has power to act generally for the governing body of the scheme and to accept service of notices and other documents on its behalf in accordance with paragraph 2(8) of Schedule 4 to the Act (*not applicable for notifications to become a recognised scheme authorised in a designated country*).
- (8) The address of the place in the Isle of Man where facilities for the public will be maintained, as well as the address of any website associated with the scheme for this purpose.
- (9) The address of the place in the Isle of Man where facilities for participants will be maintained, as well as the address of any website associated with the scheme for this purpose.
- (10) The address of the place in the Isle of Man where facilities for complaints will be maintained, as well as the address of any website associated with the scheme for this purpose.
- (11) Name and address of the most senior individual responsible for compliance in respect of the scheme's operations in the Isle of Man.
- (12) Details of the scheme's governing body, its structure and the individual members of that body.
- (13) Details of the trustee or fiduciary custodian.
- (14) Details of the trustee, fiduciary custodian and scheme manager's charges.

- (15) Details of the scheme's manager, auditor, promoter, sponsor, legal adviser and other functionaries.
- (16) Name and address of any supervisory authority or authorities to which any functionaries are subject.
- (17) The arrangements for marketing units in the Isle of Man, including the —
  - (a) proposed commencement date;
  - (b) details of any person or persons through whom the units will be sold; and
  - (c) details of how and where the scheme will be promoted.
- (18) Details of any restrictions on the availability of units.
- (19) Details of the scheme's—
  - (a) fees and charges;
  - (b) the initial price of units;
  - (c) any minimum holding size in the scheme; and
  - (d) any minimum transaction size.
- (20) Details of any remuneration which may be paid to authorised persons in relation to sales of units.
- (21) Any other relevant matter concerning the marketing or pricing of the units.
- (22) Details of the arrangements, if any, that have been made for participation in a compensation scheme for investors.

**PART II – Documents to accompany a notification of a scheme authorised in a designated country or an application for an individually recognised scheme**

- (1) A copy of any relevant authorisation order or certificate issued by the authority in the country or territory in which the scheme is authorised.
- (2) A statement from the authority in the country or territory in which the scheme is authorised that the scheme is of a class specified by the designation order mentioned at item 3 of Part I (*not applicable for individually recognised scheme applications*).
- (3) A copy of the scheme's rules or instruments of incorporation or other documents constituting the scheme.
- (4) A copy of the IoM offering document or any similar document giving details of the scheme.
- (5) A copy of the scheme's latest annual report and any subsequent half-yearly report.
- (6) A copy of any other document affecting the rights of participants in the scheme.

Regulation 11

**SCHEDULE 2**

**INFORMATION REQUIRED IN AN IOM OFFERING DOCUMENT FOR A  
RECOGNISED SCHEME AUTHORISED IN A DESIGNATED COUNTRY**

- (1) The address in the Island at which facilities for the public, facilities for participants, and facilities for complaints will be maintained.
- (2) The name and address in the Island of the person authorised to accept on behalf of the governing body any process or any notices, or other documents required or authorised to be served in accordance with paragraph 1(5)(a) of Schedule 4 to the Act.
- (3) A statement that the scheme is a recognised scheme in the Island under paragraph 1 of Schedule 4 to the Act.
- (4) A prominent statement that the document is the IoM offering document prepared in accordance with these Regulations and containing the relevant information specified in Appendix 2 of the Schedule to the Authorised Collective Investment Schemes Regulations 2010.
- (5) A prominent statement that indicates –
  - (a) the country or territory under whose law the scheme is both constituted and authorised; and
  - (b) whether or not Isle of Man participants in the scheme are protected by statutory arrangements, and if so, particulars sufficient to identify compensation arrangements.

Regulation 11

**SCHEDULE 3**

**INFORMATION REQUIRED IN AN IOM OFFERING DOCUMENT FOR AN  
INDIVIDUALLY RECOGNISED SCHEME**

- (1) The address in the Island at which facilities for the public, facilities for participants, and facilities for complaints will be maintained.
- (2) The name and address of a representative in the Isle of Man who is an authorised person and has power to act generally for the governing body of the scheme and to accept service of notices and other documents on its behalf in accordance with paragraph 2(8) of Schedule 4 to the Act.
- (3) A statement that the scheme is a recognised scheme in the Island under paragraph 2 of Schedule 4 to the Act.
- (4) A prominent statement that the document is the IoM offering document prepared in accordance with these Regulations and containing the relevant information specified in Appendix 2 of the Schedule to the Authorised Collective Investment Schemes Regulations 2010.
- (5) A prominent statement that indicates both —
  - (a) the country or territory under whose law the scheme is both constituted and authorised; and
  - (b) whether or not Isle of Man participants in the scheme are protected by statutory arrangements, and if so, particulars sufficient to identify compensation arrangements.

*EXPLANATORY NOTE*

*(This note is not part of the Regulations)*

These Regulations —

- Set out the requirements for Isle of Man offering documents of recognised collective investment schemes.
- Require the governing bodies of schemes recognised under Schedule 4 paragraphs 1 and 2 to the Collective Investment Schemes Act 2008 to maintain at an address in the Island the facilities specified in these Regulations.
- Specify the information and documents that must be provided by the governing body of a scheme when giving written notice to the Authority that it wishes it to be a recognised scheme in the Island, or applying to become individually recognised; and specify that the Authority has a period of two months to notify the governing body of a scheme if the scheme will not be recognised.