

**A Consultative Paper  
Specialist and Qualifying Investment Funds**

**1<sup>st</sup> August 2007**



**Financial Supervision Commission Barrantee Oaseirys**

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## ***SECTION I - INTRODUCTION***

### ***1.1 Background***

In March 2007, in an initiative sponsored by Isle of Man Treasury, the Funds Review Group (“FRG”) published a report which looked at the future opportunities for the Island’s funds industry. Amongst its recommendations, the FRG advocated the introduction of a new fund type targeted at the institutional funds market and an “International B” fund type (the Qualifying Investment Fund”) aimed at non retail investors.

The Commission, which was represented on the FRG Committee, was tasked with reviewing the regulatory implications of the FRG recommendations and addressing the required legislative changes.

In developing the proposed regulatory framework, the Commission has been mindful that the licenceholders on the Island have existing business established under the current regulatory regime. Maintaining existing quality business without unnecessary disruption has therefore been an important consideration when assessing the necessary changes, as has the need to address regulatory and reputational risk.

This consultative paper sets out three draft Orders which have been prepared to introduce Specialist Investment and Qualifying Investment Funds and an Order which will allow existing Experienced Investor Funds to continue as Specialist Type or Qualifying Type Experienced Investor Funds. The Matrix at Appendix A sets out the key features of each fund type. Draft Orders are included in Appendices B, C and D respectively.

### ***1.2 Cost and Impact***

In formulating their recommendations, the FRG considered the Island’s fund offering in comparison to those available in other jurisdictions. In the light of the work done by the FRG, the Commission has not undertaken a detailed cost benefit analysis of the new fund structures. However, the Commission is mindful of potential costs to individual businesses and funds and seeks feedback about the effect and practical impact of the proposals.

### ***1.3 Consultation***

The Commission views open dialogue with Industry as an essential element in developing an optimal regulatory framework. The Commission therefore appreciates the time that respondents will spend in reading and commenting upon these proposals.

The FRG proposes to launch the new fund structures early in the autumn and the FRG, industry representatives and the Commission have been working in close cooperation to achieve this timeframe.

The closing date for comments is **31<sup>st</sup> August 2007**. Due to pressures in bringing the Orders to Tynwald in October, we would be most grateful if comments could be received by, or before, this date.

#### Responses to:

Claire Whitelegg - *Senior Adviser - Policy & Legal Unit*  
Financial Supervision Commission  
PO Box 58, Finch Hill House  
Bucks Road, Douglas IM99 1 BT

Tel: (01624) 689332  
E-mail: [claire.whitelegg@fsc.gov.im](mailto:claire.whitelegg@fsc.gov.im)

## ***SECTION 2 - FUNDS REVIEW GROUP PROPOSALS***

### **2.1 The FRG Report**

In September 2006 the Funds Review Group (“FRG”) was established under the auspices of the Isle of Man Finance Steering Group. The Terms of Reference approved by the Treasury for the group were:

*“To review the Isle of Man’s investment funds industry in the context of the international investment funds arena and to identify reforms and enhancements which will secure the future growth and development of the industry.”*

In March 2007 the FRG published its conclusions in the “Smith Report” which states that:

*“The vision of the Isle of Man Funds Review Group is that by 2010, the Isle of Man funds industry will have \$100 billion of funds under administration and \$50 billion of funds under management on the Island. A significant increase over today’s levels but an attainable target if the recommendations contained within this report are adopted.”*

The FRG aims to position the Isle of Man as a premier location for the domiciliation of specialist institutional funds and to be a preferred location for the establishment of front and middle office operations for global asset managers. If achieved, this will secure the sector’s long term prospects by capitalising on market opportunities in the international investment funds arena, particularly in the alternative and institutional sectors.

To achieve these aims, the FRG recommended amongst other things that:

- (a) A new specialist investment fund (the SIF) be created targeting institutional investors with a minimum investment of US\$100,000;
- (b) A new type B International Scheme – the qualifying investment fund (the QIF) be created targeting non retail investors;
- (c) Existing EIFs should convert to a SIF or a QIF, redomicile or close;
- (d) A new Schemes Bill be introduced which modernises the legislation and provides the Commission with appropriate regulatory powers; and
- (e) Appropriate licensing is introduced for functionaries acting for the new scheme types.

This paper sets out proposals for introducing the new scheme types (a) to (c) under powers contained in the Financial Supervision Act 1988. It should be noted that since the FRG recommendations were issued, further work has indicated that it may be more appropriate to make changes to the current EIF, as described in 2.2.

You should note that the new Collective Investment Schemes Bill (d), which streamlines and modernises the Schemes legislation will be consulted upon in the near future. Once this becomes law all of the existing scheme types will be moved underneath this modern flexible umbrella.

Finally, the Commission and the FRG are currently considering the licensing requirements for the new categories of licence identified by the FRG in their report (e). This will be the subject of a separate consultation.

The FRG report can be found at:

<http://www.gov.im/lib/docs/iomfinance/reports/isleofmanfundsreviewreportmar0.pdf>

## **2.2 Industry feedback to date**

Whilst many in the industry are generally supportive of a new specialist fund offering, certain practitioners have sought to explore ways in which the regulatory issues concerning EIFs may be addressed without the need for transitioning into a new scheme type. Concerns focus on the view that a rigid transitioning of existing EIFs could lead to a loss of existing good quality EIF business. At the same time it is recognised that the “do nothing” approach leaves the Island exposed to regulatory risk and international criticism.

As a result of these concerns, the Commission’s Executive has met with representatives of the Fund Management Association to identify how EIF transitioning can be achieved in a commercially sensitive way without compromising regulatory imperatives.

The resultant proposal is that the existing EIF Order should be amended so that it is closed to new EIFs and existing EIFs will have 6 months to resolve whether they will take on the characteristics of a specialist or a qualifying investment fund, whilst continuing as an EIF. They will then have a further 6 months to implement any required changes. The new style EIFs would continue to be open to new business. Any scheme that does not make a resolution or change in the required timeframe would cease to be an EIF.

## ***SECTION 3 - THE NEW SCHEME TYPES***

The detailed proposals for a SIF (Appendix B), QIF (Appendix C) and continuing EIFs (SIF type and QIF type) (Appendix D) are set out in the draft Orders attached to this paper. Appendix A is a matrix of key features for each of the fund types which you may find useful when reviewing these proposals.

The following comments are intended to highlight certain matters for explanatory purposes only and are not an exhaustive recitation of the proposals.

### **3.1 Structure of the Orders**

You will notice that the Orders all follow a very similar structure. This structure is intended to provide a very clear expression of the requirements for each scheme type and the obligations and responsibilities of each of the parties involved. We believe that this clarity will help to avoid ambiguity and duplication and will promote an easily explained modern structure.

In particular, clear definitions and roles are set out for the governing body and manager or administrator (as relevant). In our discussions with industry this clarity of function and responsibility was seen as a key benefit.

You will also note that the Orders contain responsibility statements, notification forms for launch and update of offering documents, a proforma for annual compliance declarations and details of statistical information that the Commission requires.

### **3.2 Investor entry criteria**

Schedule I of each of the Orders set out clear definitions of “specialist” and “qualifying” investors as relevant. This is in line with competitor jurisdictions and means that when a potential investor is certifying their status they have a clear benchmark against which they can judge their eligibility. These criteria, combined with improved risk warnings and investor certifications (Part 1 certifications) are designed to ensure that only suitable investors are able to invest in the fund structures.

There are requirements for Part 2 certifications to be given where investment is made on behalf of another or where a life company is investing. In relation to the life company declaration, the current wording is dependent on the outcome of current discussions between the Insurance and Pensions Authority and the insurance industry about the introduction of regulatory requirements for specific investor declarations. If this cannot be addressed contemporaneously with the Orders a more specific Part 2 certification may be required.

Finally, you will note that in relation to the QIF there is a requirement for a Part 3 certification by a regulated financial adviser in certain circumstances. The requirements for certification by a regulated financial adviser were proposed by the FRG and are the subject of ongoing discussion with the industry.

### **3.3 Notification requirements**

All of the fund structures rely upon regulatory notifications from the governing body and key functionaries. The requirements are clearly stated in each of the Orders.

### **3.4 Promoter**

Under the QIF (and qualifying type EIF) there is a requirement for a regulated promoter. The legislative arrangements to facilitate this regulated activity in advance of the Financial Services Bill being enacted are being considered.

### **3.5 Overseas Administrator**

You will notice that the SIF allows the appointment of an overseas administrator who is regulated in an acceptable jurisdiction. As an additional protection, where an overseas administrator is appointed the fund is required to have an Isle of Man fiduciary as a member of the governing body. This party has additional responsibilities for ensuring that required regulatory notifications are made.

### **3.6 Acceptable jurisdictions**

The basis on which a jurisdiction may be deemed as “acceptable” under the Orders will be further addressed.

### **3.7 Accounts and Audit**

Each of the new fund types requires the fund to have a qualifying Isle of Man auditor. There are requirements for regulatory notifications to the Commission in a number of instances including where an audit is qualified, accounts are not distributed within the prescribed timetables or where an auditor is removed.

### **3.8 Fees**

Whilst there are currently no fees attached to the draft Orders it should be noted that the Commission intend to levy fees once the regime moves underneath the auspices of the new Schemes Bill. The levying of fees on such funds is in line with the approach in competitor jurisdictions and is designed to contribute to the costs of regulatory oversight.

### **3.9 The transitional arrangements for Experienced Investor Funds**

As noted in Section 2, certain practitioners have sought to explore ways in which the regulatory issues concerning EIFs may be addressed without the need for transitioning into a new scheme type.

The resultant proposal is that the existing EIF Order is amended so that it is closed to new EIFs and existing EIFs will have 6 months to resolve whether they will take on characteristics of a SIF or a QIF whilst continuing as an EIF. They will then have a further 6 months to implement any required changes. The continuing EIFs will be open to new business. Any scheme that does not make a resolution or change in the required timeframe will cease to be an EIF.

The detailed requirements for continuing EIFs are similar but not identical to the requirements for SIFs and QIFs.

The Commission believes that this approach offers a practical workable solution.

### **3.10 The transitional arrangements for Professional Investor Funds**

Both the specialist investment fund and the qualifying investment fund have provisions allowing Professional Investor Funds (“PIFs”) to smoothly transition. The ongoing status of the PIF Order will be subject to review at some point in the future.

### **3.11 Domicile**

Under the Schemes Bill it is the intention that the new types of funds will be required to be constituted as Isle of Man vehicles. This is in line with the FRG report. There will be arrangements to allow funds that are constituted in another jurisdiction and that are already an EIF, PIF, SIF or QIF at the date the Schemes Bill is enacted to continue. The Commission would expect that only Isle of Man domiciled funds are established under the SIF and QIF Orders in this interim period.



## Appendix A

### PROPOSED KEY FEATURES MATRIX:

- The Specialist Investor Fund,
- The Qualifying Investor Fund and
- The Continuing EIFs (Specialist and Qualifying Type)

**Proposed Key Features of Specialist Investment Funds, Qualifying Investment Funds and Continuing EIFs (Specialist and Qualifying Type)**

	<b>Specialist Investment Fund</b>	<b>Qualifying Investment Fund</b>	<b>Continuing EIF (Specialist Type)</b>	<b>Continuing EIF (Qualifying Type)</b>
<b>GENERAL MATTERS</b>				
<b>Minimum investment</b>	US\$100,000	Each fund to agree between manager and governing body	US\$100,000 for all new investors	Each fund to agree between manager and governing body for new investors
<b>Entrant criteria</b>	Specialist Investor entrant criteria	Qualifying Investor entrant criteria	Existing – experienced investors New investors - Specialist Investor entrant criteria	Existing – experienced investors New investors - Qualifying Investor entrant criteria
<b>Annual audited financial statements</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>FUNCTIONARIES</b>				
<b>Governing body (<i>directors/ trustee/ general partner</i>) signs statement of responsibility (initial and ongoing)</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>IOM resident natural person on Governing Body (ie director etc)</b>	<b>Yes</b> if “Overseas” administrator appointed must be an IOM Fiduciary licenceholder (or through one) and has extra notification obligations	<b>Yes</b>	<b>No</b> Not required	<b>No</b> Not required
<b>Manager or Administrator</b>	<b>Administrator</b> IOM licenceholder or licensed in an “acceptable jurisdiction”	<b>Manager</b> IOM licenceholder	<b>Administrator</b> IOM licenceholder	<b>Manager</b> IOM licenceholder or an exempt person administered by an IOM licenceholder

	<b>Specialist Investment Fund</b>	<b>Qualifying Investment Fund</b>	<b>Continuing EIF (Specialist Type)</b>	<b>Continuing EIF (Qualifying Type)</b>
<b>Custodian</b>	Not required – custody arrangements disclosed in Offering Document	Regulated in IOM or acceptable jurisdiction	If no regulated custodian, must get shareholder approval.	Regulated in IOM or regulated in acceptable jurisdiction
<b>Promoter</b>	No specific requirements	“Regulated”	No specific requirements	To have regulated promoter by 1 Nov 2008
<b>Regulated Financial Adviser</b>	<b>No</b>	<b>Yes</b>	<b>No</b>	<b>Yes</b>
<b>Qualifying auditor</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>RESPONSIBILITIES ON THE MANAGER/ ADMINISTRATOR</b>				
Determining whether the fund is and continues to be managed and operated in accordance with the fund’s constitutional documents.	<b>No</b> (responsibility of Governing Body)	<b>Yes</b>	<b>No</b> (responsibility of Governing Body)	<b>Yes</b>
Notify FSC if aware a member of the governing body or the qualifying auditor is removed from such office, resigns or is not reappointed	<b>Yes</b> (also individual director and qualifying auditor to notify with reasons etc)	<b>Yes</b> (also individual director and qualifying auditor to notify with reasons etc)	<b>Yes</b> (also individual director and qualifying auditor to notify with reasons etc)	<b>Yes</b> (also individual director and qualifying auditor to notify with reasons etc)
Satisfy itself about investor’s status on basis of declarations	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
Submit notifications to Commission on Launch or alternation	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
In conjunction with Governing Body submit the annual compliance declaration to FSC	<b>No</b> Governing Body only	<b>Yes</b>	<b>No</b> Governing Body only	<b>Yes</b>
Quarterly statistical information to FSC	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
Report to FSC if aware that requirements re offering document declarations or fund accounting not	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>

	Specialist Investment Fund	Qualifying Investment Fund	Continuing EIF (Specialist Type)	Continuing EIF (Qualifying Type)
complied with.				
Notify FSC if aware that audit report is qualified and/or a management letter is issued by the auditors in relation thereto. (with copy of report and an action plan)	Yes	Yes	Yes	Yes
Notify FSC if audited annual financial statements are late (with reasons, timetable for distribution, joint signature with auditor).	Yes	Yes	Yes	Yes
<b>NOTE</b>	<b>Overseas administrator of Specialist Investment Funds</b> may discharge its duties by ensuring that mechanisms are in place to meet the requirements, and by monitoring the operation of those mechanisms to ensure that the requirements are met.			
<b>OFFERING DOCUMENT</b>				
Required to include all material information relevant to an informed judgement about the merits of participating in the fund	Yes	Yes	Yes	Yes
Prescribed information and risk warnings must be contained	Yes	Yes	Yes	Yes
<b>APPLICATION FORM CERTIFICATIONS</b>				
Investor declaration	Yes	Yes	Yes	Yes
Declaration if investing on behalf of another & life company declaration	Yes	Yes	Yes	Yes
Regulated financial adviser confirmation if individual investor	No	Yes	No	Yes

## **Appendix B**

### **THE FINANCIAL SUPERVISION (SPECIALIST INVESTOR FUND) (EXEMPTION) ORDER 2007**



**(SPIF ORDER FSC V6 30 July) FINANCIAL SUPERVISION ACT 1988  
FINANCIAL SUPERVISION (SPECIALIST INVESTMENT FUND) (EXEMPTION)  
ORDER 2007**

*Approved by Tynwald  
Coming into operation*

In exercise of the powers conferred on the Treasury by section 11(11) of the Financial Supervision Act 1988<sup>1</sup>, and of all other enabling powers, the following Order is hereby made:—

**Citation and commencement**

1. This Order may be cited as the Financial Supervision (Specialist Investment Fund) (Exemption) Order 2007 and shall come into operation on the [1<sup>st</sup> November 2007].

**Interpretation**

2(1) In this Order -

"Act" means the Financial Supervision Act 1988;

"acceptable jurisdiction" means a jurisdiction accepted by the Financial Supervision Commission as a jurisdiction in which overseas administrators of specialist investment funds are subject to an appropriate standard of regulation;

"administrator" means a person who is appointed by the governing body of a scheme who is responsible for the conduct of substantially all of the administration of the scheme;

"administration" includes the following functions in relation to a scheme (insofar as they are relevant thereto) –

- (a) accounting services;
- (b) handling of administrative enquiries from participants;
- (c) valuation of assets and pricing of units;
- (d) maintenance of the register of unit-holders;
- (e) distribution of income;
- (f) issues, transfers and redemptions of units; and
- (g) record keeping;

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<sup>1</sup> 1988 c. 16.

“annual financial statements” means, in relation to a specialist investment fund, financial statements prepared in accordance with article 14;

“associate” means –

- (a) in relation to an individual –
  - (i) the father, mother, wife, husband, son, stepson, daughter, stepdaughter, brother or sister of the individual;
  - (ii) a body corporate of which that individual is a director; and
  - (iii) a partner or employee of that individual;
- (b) in relation to a body corporate –
  - (i) a subsidiary of that body corporate; and
  - (ii) an employee of any such subsidiary;

“asset manager” means a person appointed by the governing body of a scheme who is responsible for investment management decisions in accordance with the investment objectives and policy of the scheme;

“functionary” means, in relation to a specialist investment fund, the governing body of the fund (or any member thereof) or any person appointed for the time being to provide services to the fund under a contract for services, including (without limitation) any administrator, manager or promoter;

“governing body” means the person or body of persons for the time being responsible for the general supervision of the affairs of a scheme and –

- (a) where the scheme is a unit trust scheme and the trustee of that scheme is a body corporate, shall mean the director(s) of that body corporate;
- (b) where the scheme is an open-ended investment company, shall mean the director(s) of that open-ended investment company;
- (c) where the scheme is a limited partnership and the general partner is a body corporate, shall mean the director(s) of that body corporate;

“investment adviser” means a person appointed by the governing body of a scheme who is responsible for advising the governing body about investments in the scheme in accordance with the investment objectives and policy of the scheme;

“Isle of Man administrator” means an administrator appointed in relation to a specialist investment fund in accordance with article 8(a);

“launch date” means, in relation to a specialist investment fund, the date of publication of its initial offering document and, unless the contrary is proved, that date shall be taken to be the date of such offering document;

“overseas administrator” means an administrator appointed in relation to a specialist investment fund in accordance with article 8(b);

“promoter” means a person (wherever located) who prepares or distributes, or who causes the preparation or distribution of, an offering document or associated marketing material, but does not include a professional adviser acting for or on behalf of that person;

“qualifying auditor” means a person or body corporate who has a permanent place of business on the Island, 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 he is a member and:

- (a) is a member of one of the following bodies of accountants-
  - (i) The Institute of Chartered Accountants in England and Wales;
  - (ii) The Institute of Chartered Accountants of Scotland;
  - (iii) The Institute of Chartered Accountants in Ireland;
  - (iv) The Chartered Association of Certified Accountants;
  - (v) The Chartered Institute of Public Finance and Accountancy;
  - (vi) The Association of Authorised Public Accountants; or

(b) is a member firm of one of the bodies referred to in (a).

"specialist investor" has the meaning ascribed thereto in Schedule 1;

"specialist investment fund" means a scheme which complies with the conditions set out in this Order and "fund" shall be construed accordingly; and

"subsidiary" and "holding company" shall be construed in accordance with section 1 of the Companies Act 1974<sup>2</sup>.

(2) In this Order, any reference to "US\$" is to United States Dollars, the lawful currency of the United States of America, and any figure expressed in United States Dollars shall be taken as including its equivalent in any other currency.

#### **Exemptions from the requirements of the Act**

3(1) A specialist investment fund shall be exempt from subsections (1), (2)(b) and subsections (7) to (10) (inclusive) of section 11 of the Act.

(2) Subsection (4) of section 11 of the Act shall apply to a specialist investment fund as if the following words had been deleted therefrom, namely "6, 7(1) (with the omission of the requirement relating to the advocate's certificate) and (2), 10,".

#### **Duties of the governing body of a specialist investment fund**

4(1) The governing body of a specialist investment fund shall, in addition to (and without derogating from) any other duties or responsibilities imposed under any applicable law, be responsible for ensuring that-

- (a) the requirements set out in articles 5, 8 and 10 are complied with;
- (b) the offering document and relevant constitutional documents of the fund are accurate and comply in all respects with the requirements of the Act and this Order;
- (c) the fund is and continues to be managed and operated in accordance with the fund's constitutional documents and offering document;
- (d) the offering document of the fund accurately sets out all material information which, at the date of the offering document, is within the knowledge of the governing body (or which any member of the governing body would have been able to obtain at that time by making reasonable enquiries) which is relevant for

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<sup>2</sup> 1974 c. 30



the purpose of making an informed judgement about the merits of participating in the fund; and

- (e) the offering document is amended to reflect any material changes to the fund or its circumstances in a timely manner and that the administrator of the fund is notified of such change(s) and provided with a copy of the amended offering document forthwith;
- (f) within 6 months of the fund's financial year-end, an annual compliance declaration in the form set out at Schedule 3 to this Order is signed by each member of the governing body and submitted to the Commission; and
- (g) the responsibilities imposed upon the administrator under article 9 are discharged.

(2) Each member of the governing body of a specialist investment fund or proposed specialist investment fund shall sign a statement of responsibility in the form set out in Schedule 2 Part A in relation to the initial offering document of the fund and any amended offering document of the fund. Each statement of responsibility shall be submitted to the Commission by the governing body within 10 working days of the launch date of the fund (in the case of the initial offering document) or within 10 working days of the date of issue of the offering document (in the case of an amended offering document).

#### **Composition of the governing body of a specialist investment fund**

5(1) The governing body of a specialist investment fund shall include at least one natural person who holds such office in a non-executive capacity and who is independent of any promoter of the fund and of any body corporate that is a subsidiary of any promoter of the fund or a subsidiary of any holding company of any promoter of the fund.

(2) Where the administrator of a specialist investment fund is an overseas administrator, the governing body of the fund shall include at least one Isle of Man resident natural person –

- (a) who is the holder of a licence granted under the Fiduciary Services Acts 2000<sup>3</sup> and 2005<sup>4</sup> which allows that fiduciary to act in these circumstances; or
- (b) whose services are provided by a fiduciary to the fund as a client under a licence granted under the Fiduciary Services Acts 2000 and 2005 which allows the fiduciary to provide such services in these circumstances.

(3) For the avoidance of doubt, the individuals referred to in articles 5(1) and 5(2) may be one and the same person.

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

6. Where a specialist investment fund has an overseas administrator the natural person required under article 5(2) shall be responsible for notifying the Commission forthwith upon becoming aware that –

- (a) the governing body have not fulfilled their obligations under article 4, 8 or 10; or
- (b) the requirements of article 9 have not been complied with.

#### **Notification of removal of, resignation of or failure to reappoint a person from the governing body of a specialist investment fund**

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<sup>3</sup> 2000 c. 13

<sup>4</sup> 2005 c. 5

7. Where a member of the governing body of a specialist investment fund is removed from such office, resigns from such office or is not reappointed at the end of his/her term of office that person shall give notice to the Commission in writing forthwith together with the reasons (if any) for that removal, resignation or failure to reappoint.

#### **The administrator of a specialist investment fund**

8. A specialist investment fund shall have an administrator who is either -
- (a) the holder of a licence under the Investment Business Act 1991 which permits it to undertake this activity; or
  - (b) licensed to act as an administrator to collective investment schemes in an acceptable jurisdiction and whose licence extends to administration services provided to collective investment schemes of this type.

#### **Responsibilities of an administrator of a specialist investment fund**

9(1) The administrator of a specialist investment fund shall –

- (a) notify the Commission forthwith upon becoming aware that a member of governing body of the fund is removed from such office, resigns from such office or is not reappointed at the end of his/her term of office. Any such notification shall be accompanied by details of the reasons (if any) for that removal, resignation or failure to reappoint;
- (b) satisfy itself that each investor in the fund has certified that he/she/it/they is/are a specialist investor and has/have made an initial investment in the fund in an amount of not less than US\$100,000;
- (c) within 10 working days of the launch date of the fund certify and submit to the Commission a notification in the form set out at Schedule 2 Part B;
- (d) within 10 working days of becoming aware of any material alteration to the constitutional documents and/or offering document of the fund that would render any of the information contained in the last notification in relation to the fund delivered to the Commission pursuant to paragraph (c) or this paragraph inaccurate, incomplete or otherwise misleading, certify and submit to the Commission an updated notification in the form set out at Schedule 2 Part B to this Order;
- (e) within 10 working days of each calendar quarter end, supply to the Commission the statistical information about the fund which is detailed in Schedule 4 to this Order;
- (f) report to the Commission forthwith upon it becoming aware that any of the conditions in articles 10, 11, 12 and 13 are not complied with;
- (g) notify the Commission within 10 working days of its becoming aware that an audit report of a specialist investment fund, as required by article 14, is qualified by the auditors in relation thereto. Such notification shall be accompanied by a copy of the audit report together with details of any remedial action that the administrator or any other party intends to take;
- (h) in the event that the audited annual financial statements of a specialist investment fund are not distributed within the period prescribed under article 15, notify the Commission of that fact within ten working days and every three months thereafter until such audited annual financial statements are issued and distributed. Each such notification shall –

- (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 both the administrator and the qualifying auditor;
- (i) upon becoming aware that an auditor of a specialist investment fund is removed from office, resigns or is not reappointed at the end of the auditor's term of office, notify the Commission of that fact forthwith.

(2) Where a specialist investment fund has an overseas administrator, that administrator may discharge its duties under this article by ensuring that mechanisms are in place to meet the requirements in paragraph (1), and by monitoring the operation of those mechanisms to ensure that the requirements are met.

### **The arrangements for the provision of asset management services in relation to a specialist investment fund**

10(1) A specialist investment fund shall ensure that, whether directly or indirectly, it receives advisory or discretionary management services in relation to the investment and re-investment of its assets.

(2) It is the responsibility of the governing body to ensure that the appointed asset manager or investment adviser who is providing the services in (1) is suitable to undertake the function.

(2) In assessing suitability in (2), the governing body shall have regard to the regulated status of the asset manager or investment adviser and the regulated status of any person providing services to the asset manager or investment adviser.

### **Investment requirements for a specialist investment fund**

11. A specialist investment fund shall –

- (a) have a minimum initial subscription amount of not less than US\$100,000 for each investor; and
- (b) only accept investments from investors who have certified their status in the form set out in Schedule 6.

### **Offering document of a specialist investment fund**

12. A specialist investment fund shall have an offering document which:

- (a) accurately sets out all material information which, at the date of the offering document, is within the knowledge of the Governing Body (or which that person would have obtained by making reasonable enquiries) and which is relevant for the purpose of making an informed judgement about the merits of participating in the fund; and
- (b) complies with the requirements of the Act and contains the matters set out at Schedule 5 to this Order.

### **Application form of a specialist investment fund**

13(1) A specialist investment fund shall have an application form which contains the certifications set out at Schedule 6.

(2) Before being accepted as an investor in the fund each applicant is required to complete the Part 1 certification and, if applicable, the relevant Part 2 certification.

### **Financial statements**

14(1) A specialist investment fund shall cause financial statements in respect of the fund to be prepared in respect of each accounting period ending on its financial year-end date.

(2) The annual financial statements of a specialist investment fund shall be prepared in accordance with International Financial Reporting Standards (as promulgated by the International Accounting Standards Board) or United Kingdom Accounting Standards (as promulgated by the Accounting Standards Board).

### **Audit of financial statements**

15(1) A specialist investment fund shall have an auditor who is a qualifying auditor.

(2) The annual financial statements of a specialist investment fund shall be audited in accordance with internationally accepted auditing standards and practices by a qualifying auditor who shall issue an audit report in relation thereto.

### **Distribution of financial statements**

16. The audited annual financial statements of a specialist investment fund shall be distributed to its investors no later than 6 months after the fund's financial year-end or within the timescales prescribed in the offering document if earlier.

### **Notification of removal of, resignation of or failure to reappoint an auditor to the fund**

17. Where an auditor of a specialist investment fund is removed from office, resigns or is not reappointed at the end of the auditor's term of office the auditor shall provide a signed statement direct to the Commission stating either:-

- (a) that there are no circumstances connected with the auditor ceasing to hold office which the auditor considers should be brought to the attention of the Commission; or
- (b) if there are circumstances connected with the auditor ceasing to hold office which the auditor considers should be brought to the attention of the Commission, full details of those circumstances.

### **Transitional arrangements**

18(1) This article applies to a scheme which –

- (a) immediately before the commencement of this Order was a professional investor fund within the meaning of the Financial Supervision (Professional Investor Fund) (Exemption) Order 1999<sup>5</sup>; and
- (b) within the period of 12 months following such commencement ceases to be a professional investor fund (as the case may be) and becomes a specialist investment fund.

(2) Article 12 shall not apply to a scheme to which this article applies but only in respect of persons who were investors in the scheme before it became a specialist investment fund.

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<sup>5</sup> SD 602/99 amended by SD 81/03

## SCHEDULE 1

### Meaning of specialist investor

In this Order, "specialist investor" means a person or body who, in relation to a specialist investment fund, has certified that they are sufficiently experienced to understand the risks associated with an investment in that fund, who individually invests an initial minimum of not less than US\$100,000 and who, at the time of the investment falls into one of the following categories —

- (a) a person, partnership, other unincorporated association or body corporate whose ordinary business or professional activity includes, or it is reasonable to expect that it includes, acquiring, underwriting, managing, holding or disposing of investments, whether as principal or agent, or the giving of advice concerning investments;
- (b) a functionary to the specialist investment fund or an associate of a functionary to the specialist investment fund;
- (c) a person who is an employee, director, consultant or shareholder of or to a functionary of the specialist investment fund or an associate of a functionary to the specialist investment fund, who is acquiring an investment in the specialist investment fund as part of his remuneration or an incentive arrangement or by way of co-investment;
- (d) any employee, director, partner or consultant to or of any person referred to in paragraph (a);
- (e) a trustee of a family trust settled by or for the benefit of one or more persons referred to in paragraphs (b) or (c);
- (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 (b) or (c) 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 which has (or which is a wholly-owned subsidiary of a body corporate which has) assets available for investment of not less than US\$1,000,000 (or currency equivalent) or every member, partner or beneficiary of which falls within the definition of specialist investor; or
- (i) an individual who has a net worth, or joint net worth with his/her spouse, greater than US\$1,000,000 (or currency equivalent) excluding his/her principal place of residence.

## SCHEDULE 2

### Part A

#### Responsibility statement to be signed by each member of the governing body of a specialist investment fund

##### To the Isle of Man Financial Supervision Commission

Name of Fund \_\_\_\_\_

1. We confirm that the Offering Document dated \_\_\_\_\_ for the above fund complies with the requirements of the Financial Supervision (Specialist Investment Fund) (Exemption) Order 2007 and accurately sets out all material information to enable an informed investment decision to be made by prospective investors. We jointly and severally accept responsibility for the Offering Document accordingly.
2. We acknowledge that the requirements referred to in paragraph 1 are continuing requirements and that the Offering Document is required to be amended in a timely manner to reflect any material changes to the fund or its circumstances.
3. We acknowledge that it is the responsibility of the governing body of the fund to ensure that the fund is and continues to be managed and operated in accordance with the fund's constitutional documents and offering document.
4. We confirm that each person named in the offering document and referred to therein as being responsible for a function in relation to the fund has consented to the inclusion of its name and to the description of its function in relation to the fund in the form and context in which they appear.
5. We acknowledge that it is the responsibility of the governing body of the fund to ensure that the fund will only be promoted to specialist investors.

_____ Signed	_____ Date	_____ Signed	_____ Date
-----------------	---------------	-----------------	---------------

_____ Name	_____ Name
---------------	---------------

_____ Position	_____ Position
-------------------	-------------------

_____ Signed	_____ Date	_____ Signed	_____ Date
-----------------	---------------	-----------------	---------------

_____ Name	_____ Name
---------------	---------------

_____ Position	_____ Position
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**Please continue on a separate sheet as necessary**

**Part B**

**Specialist investment fund notification and alteration form**  
to be submitted to the Commission within 10 working days of launch\*/alteration

**Date** \_\_\_\_\_  
(of launch or change)

Notification/alteration update (*delete as applicable*)\*\*

Full name of fund \_\_\_\_\_

*The name of the fund must not be misleading or undesirable*

*\* launch date means the date of publication of its initial offering document*

*\*\* If alteration / update, rather than first notification, please indicate clearly changes from previous version*

<b>A</b>	<b>Standing Information</b>		
<b>I</b>	<b>Legal structure of the specialist investment fund (<i>delete as appropriate</i>)</b>		
	<i>i) Company</i> Company number _____  Registered office _____  _____  _____	<b>ii) Trust</b>	<b>iii) Limited Partnership</b>
<b>2</b>	<b>Membership of the Governing Body of the specialist investment fund</b>		
	<b>i) Name</b> _____ Address _____  _____  Date of Birth _____ Is this person an independent non executive member? <i>Yes/No</i> Isle of Man resident? <i>Yes/No</i> Relevant qualifications _____  _____	<b>ii) Name</b> _____ Address _____  _____  Date of Birth _____ Is this person an independent non executive member? <i>Yes/No</i> Isle of Man resident? <i>Yes/No</i> Relevant qualifications _____  _____	
	<b>iii) Name</b> _____ Address _____  _____  Date of Birth _____ Is this person an independent non executive member? <i>Yes/No</i> Isle of Man resident? <i>Yes/No</i> Relevant qualifications _____  _____	<b>iv) Name</b> _____ Address _____  _____  Date of Birth _____ Is this person an independent non executive member? <i>Yes/No</i> Isle of Man resident? <i>Yes/No</i> Relevant qualifications _____  _____	

3	<p style="text-align: center;"><b><u>Administrator of the specialist investment fund</u></b></p> <p>Name _____</p> <p>Address _____</p> <p>_____</p> <p>_____</p> <p>Regulated by _____</p> <p>Licence Category _____</p> <p>Reference no. _____</p> <p style="text-align: right;"><i>(where overseas administrator appointed)</i></p> <p style="text-align: center;"><b>IOM member of the governing body required by article 5(2) of the Order<sup>6</sup></b></p> <p>Name _____</p> <p>Licenceholder* _____</p> <p>Licence category _____</p> <p style="text-align: right;"><i>* if member provided under a category 1 Fiduciary Services Providers licence</i></p>	
4	<p style="text-align: center;"><b><u>Custody Arrangements</u></b></p> <p style="text-align: center;"><i>A description of the custody arrangements for the fund including the name and address of the parties involved in the custody arrangements. (If regulated, name of regulator and licence category/reference number.)</i></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Name _____ Regulated by _____</p> <p>Address _____ Licence Category _____</p> <p>_____ Reference no. _____</p> <p>_____</p>	
5	<p style="text-align: center;"><b><u>Asset Management Arrangements</u></b></p> <p style="text-align: center;"><i>A description of the asset management/advisory arrangements for the fund including the name(s) and address(es) of the parties involved in the arrangements and the name of regulator and licence category/reference number of the regulated entity involved.</i></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Name _____ Regulated by _____</p> <p>Address _____ Licence Category _____</p> <p>_____ Reference no. _____</p>	
6	<p style="text-align: center;"><b><u>Promoter/Sponsor</u></b></p> <p>Name _____ Address _____</p> <p>_____</p> <p>_____</p> <p>Regulated by _____ Licence Category _____ Reference no. _____</p>	

<sup>6</sup> The Order means the Financial Supervision (Specialist Investment Fund) (Exemption) Order 2007



<b>7</b>	<b><u>Qualifying Auditor</u></b> Name_____ Address_____ _____ _____	Accountancy Body of which the qualifying auditor is a member or a member firm _____ _____	
<b>8</b>	<b><u>Conflicts of Interest</u></b> - Please attach details of any interrelationships between the parties in 1 to 7 above which could result in perceived or actual conflicts of interest.		
<b>B</b>	<i>Offering Document and Application Form</i>		
	<b>Does the Offering Document contain:</b>		
<b>9</b>	A statement as required by Schedule 5 paragraph 1 of the Order?	<b>YES/NO*</b>	
<b>10</b>	A statement as required by Schedule 5 paragraph 2 of the Order?	<b>YES/NO*</b>	
<b>11</b>	A definition of Specialist Investor as required by Schedule 5 paragraph 3 of the Order?	<b>YES/NO*</b>	
<b>12</b>	A provision as required by Schedule 5 paragraph 4 of the Order?	<b>YES/NO*</b>	
<b>13</b>	A description of the arrangements for the management and custody of the assets of the fund, as required by Schedule 5 paragraph 5 of the Order?	<b>YES/NO*</b>	
<b>14</b>	A risk warning as required by Schedule 5 paragraph 6 of the Order?	<b>YES/NO*</b>	
<b>15</b>	Disclosure that the fund will have audited annual financial statements which are issued to investors within six months from the end of each financial period, or in line with the offer document, if earlier, as required by Schedule 5 paragraph 7 of the Order?	<b>YES/NO*</b>	
	<b>Does the Application Form contain:</b>		
<b>16</b>	The Part 1 and Part 2 certifications in accordance with Schedule 6 of the Order?	<b>YES/NO*</b>	
<b>C</b>	<b><i>Other information</i></b>		
<b>17</b>	Minimum subscription level		
<b>18</b>	Minimum fund NAV threshold for launch ( <i>not applicable for updates</i> )		
<b>19</b>	Frequency of dealing days		
<b>120</b>	Frequency of valuations ( <i>There is an expectation that fund valuations should normally take place at least quarterly</i> )		
<b>21</b>	Can investors redeem their holdings prior to any material changes (to their rights or to fees, etc) being implemented?	<b>YES/NO*</b>	
<b>22</b>	Please attach details of - <ul style="list-style-type: none"> <li>• the fund's Investment Objective and Policy</li> <li>• the proposed types of Investments*</li> <li>• any Investment Restrictions/Parameters and</li> <li>• permitted level of borrowing/gearing</li> <li>• Level of fees levied on the fund</li> </ul> <i>* e.g. Equity, debt, money market, derivatives/hedge, fund of funds, feeder fund, property, TLP/TEP, emerging markets?</i>		
<b>23</b>	Will assets be held in subsidiaries? (If yes attach brief details of the structure this will take.)	<b>YES/NO*</b>	

24	Distribution channels (type of IFA, direct placement, etc) <hr/> <hr/> <hr/> <hr/>		
25	Is the fund listed/ intended to be listed on a stock exchange? <i>If yes please give details</i> <hr/> <hr/> <hr/>	YES/NO*	

*\* If the answer to questions 8-16, 21, 23 or 25 is no please provide further details.*

*Certification*

**This form shall be signed by the fund's administrator.**

We the undersigned confirm the accuracy of the statements in this notification.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Capacity

\_\_\_\_\_  
Capacity

\_\_\_\_\_  
Company

\_\_\_\_\_  
Company

### SCHEDULE 3

#### Form of annual compliance declaration to be submitted to the Commission within 6 month's of the fund's financial year-end\*

#### To the Isle of Man Financial Supervision Commission

Name of Fund \_\_\_\_\_ ("the Fund")

For the period from: \_\_\_\_\_ to: \_\_\_\_\_

*The period covered by this declaration must correspond with that of the fund's financial year.*

We confirm that:

1. the Fund has at all times during the period covered by this declaration complied with the requirements of the Act and the Order;
2. the Fund has at all times during the period covered by this declaration been managed and operated in accordance with the Fund's constitutional documents and offering document; and
3. the Fund's Offering Document has at all times during the period covered by this declaration accurately set out all material information to enable an informed investment decision to be made by investors.

Any areas of non-compliance, and any other information that you consider should be brought to the Commission's attention in relation to the operation of the Fund, should be detailed on a separate sheet.

_____ Signed	_____ Date	_____ Signed	_____ Date
_____ Name		_____ Name	
_____ Position		_____ Position	
_____ Signed	_____ Date	_____ Signed	_____ Date
_____ Name		_____ Name	
_____ Position		_____ Position	
_____ Signed	_____ Date	_____ Signed	_____ Date
_____ Name		_____ Name	
_____ Position		_____ Position	

\* *To be signed by every member of the governing body of the fund*

## SCHEDULE 4

### Statistical Information to be supplied to the Commission within 10 working days of the end of each calendar quarter\*

1. Name of Scheme:
2. Type of Scheme:
3. Domicile of Scheme:
4. Asset Category of Scheme (Please delete as appropriate from the list below):
  - Securities Scheme,
  - Money Market Fund,
  - Fund of Funds,
  - Feeder Fund,
  - Umbrella Fund (please list asset categories for the sub-funds),
  - Other. If "other" please specify:
5. Legal constitution of Scheme (e.g. OEIC, Unit Trust):
6. Total Assets of Scheme (before deducting liabilities) (\$'000):
7. Net Asset Value of Scheme (\$'000):
8. Total value of subscriptions (\$'000) for the quarter:
9. Total value of redemptions (\$'000) for the quarter:
10. Number of unit holders:
11. Approximate % distribution of unit holders (IOM/UK/Other EC/Rest of the World):

*\* For the avoidance of doubt, the submission of statistical information in relation to a fund in accordance with this notification shall not operate to discharge an administrator from its responsibilities under article 9(1)(d) of this Order and, to the extent that there has been any material alteration to the constitutional documents and/or offering document of the fund within the meaning of article 9(1)(d) a notification in the form set out at Schedule 2 Part B must also be submitted.*

## SCHEDULE 5

### **Specific matters to be contained in the offering document of a specialist investment fund as required in article 12 of this Order**

1. A statement to the effect that the fund shall only accept as investors in the fund, investors who are specialist investors in relation to the fund.
2. A statement to the effect that the fund shall only accept an initial investment in a specified minimum amount, being not less than US\$100,000.
3. The definition of a specialist investor as set out in Schedule 1 to this Order shall be set out in a prominent position.
4. A provision to the effect that no application to invest in the fund shall be accepted, and no such subscription for, or transfer of, an interest in the fund shall be effected, unless and until the investor has signed the certification(s) required by article 13 of this Order.
5. A description of the arrangements for the management and custody of the assets of the fund.
6. A risk warning in a prominent position in the following terms –

"[This fund] has been established in the Isle of Man as a specialist investment fund and, as such, is not subject to any form of authorisation or approval in the Isle of Man.

Investors are not protected by any statutory compensation arrangements in the event of the fund's failure and the Isle of Man Financial Supervision Commission does not vouch for the financial soundness of the fund or for the correctness of any statements made or opinions expressed with regard to it.

The fund is not suitable for those who are not "specialist investors" as defined in the Financial Supervision (Specialist Investment Fund) (Exemption) Order 2007.

Requirements which may be deemed necessary for the protection of retail or non-specialist investors do not apply to specialist investment funds. By signing the declaration at [ ] you are expressly agreeing that you fall within the definition of a "specialist investor" and accept the reduced requirements, or the absence of any such requirements, accordingly.

You are wholly responsible for ensuring that all aspects of [this fund] are acceptable to you. Investment in specialist investment funds may involve special risks that could lead to a loss of all or a substantial portion of such 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].

If you are investing on behalf of another person, the Isle of Man Financial Supervision Commission expects you to be satisfied that the person/persons on whose behalf you are investing, or whose interest is linked to the investment in the specialist investment fund (as the case may be), is a specialist investor who understands the risks associated with this type of investment.

If you are a life assurance company investing assets comprised within your long-term business fund, the Isle of Man Financial Supervision Commission expects that relevant policyholders have been given the opportunity to read the offering document for this fund and as such to have information about the risks associated with this type of investment. "

7. A statement to the effect that the fund is required to have audited annual financial statements which are to be issued to investors within six months from the end of each financial period of the fund, or within the timescales prescribed the offering document (if earlier), as the case may be.

## SCHEDULE 6

### Certifications to be contained in the application form of a specialist investment fund as required in article 12 of this Order

**Part 1 Certification** - This certification is to be completed by all applicants.

"I/we confirm that:

I/we am/are a specialist investor as defined on page [ ] of the offering document of [name of specialist investment fund] dated [ ]; and

I/we am/are sufficiently experienced to understand the features and risks attendant to investing in an unauthorised and unapproved fund of this type; and

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

I/we personally accept all the risks associated with this investment and particularly that my/our investment in the [name of specialist investment fund] involves risks that could result in a loss of a significant proportion or all of the sum invested; and

I/we further confirm that, where appropriate, I/we have taken independent advice on the suitability of this investment within my/our overall investment portfolio.

[Signed ]

[Dated]".

**Part 2 Certification** - The certification at paragraph (1) is to be completed by any investor who is either investing on behalf of another person and the certification at paragraph (2) is to be completed by any investor who is a life assurance company investing assets comprised within its long term business fund (as appropriate).

(1) "I/we confirm that I/we am/are investing in the specialist investment fund on behalf of another person/ other persons and I/we have in my/our possession certification(s) signed by such person/persons certifications to show that -

(a) each such person/persons is a specialist investor and understands the risks associated with this type of investment; and

(b) each such person/persons is investing an initial minimum amount of at least US\$100,000.

[Signed ]

[Dated]".

(2) "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 that:

(i) the policyholder has the opportunity to read the offering documents for relevant funds, where they wish to do so, and as such has information about the high levels of risk attached to a fund which is not intended for retail sale



to private investors (such as specialist investment funds or their equivalent under the laws of any other jurisdiction); and

- (ii) the policyholder, where necessary, meets the minimum criteria of a class of investor, such as a specialist investor.
- (b) we are responsible for ensuring that policyholder declarations are obtained and confirm no investment in this type of fund is made without a client declaration being obtained from relevant policyholders.
- (c) when making an investment in a fund of this policyholder is for a value of at least US\$100,000.

[Signed ] [Dated]”.

Made this

Treasury Minister

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**Explanatory Note**  
**(This note is not part of the order)**

This Order creates a special type of international collective investment scheme which is available only to specialist investors, known as the specialist investment fund. The Order defines a specialist investor for the purposes of the Order and requires certain disclosures to be made in the scheme's documentation.

This Order exempts a specialist investment fund from certain mandatory requirements which would otherwise apply to an international collective investment scheme.

## **Appendix C**

### **THE FINANCIAL SUPERVISION (QUALIFYING INVESTOR FUND) (EXEMPTION) ORDER 2007**



**DRAFT FOR CONSULTATION  
FINANCIAL SUPERVISION ACT 1988**

**FINANCIAL SUPERVISION (QUALIFYING INVESTMENT FUND)  
(EXEMPTION) ORDER 2007**

*Approved by Tynwald  
Coming into operation*

In exercise of the powers conferred on the Treasury by section 11(11) of the Financial Supervision Act 1988<sup>7</sup>, and of all other enabling powers, the following Order is hereby made:—

**Citation and commencement**

1. This Order may be cited as the Financial Supervision (Qualifying Investment Fund) (Exemption) Order 2007 and shall come into operation on the [1<sup>st</sup> November 2007].

**Interpretation**

2 In this Order -

"Act" means the Financial Supervision Act 1988;

"acceptable jurisdiction" means a jurisdiction accepted by the Commission as a jurisdiction in which custodians, promoters or financial advisers, as the case may be, of qualifying investment funds are subject to an appropriate standard of regulation;

"administration" includes the following functions in relation to a scheme (insofar as they are relevant thereto) –

- (a) accounting services;
- (b) handling of administrative enquiries from participants;
- (c) valuation of assets and pricing of units;
- (d) maintenance of the register of unit-holders;
- (e) distribution of income;
- (f) issues, transfers and redemptions of units; and
- (g) record keeping;

"annual financial statements" means, in relation to a qualifying investment fund, financial statements prepared in accordance with article 14;

"associate" means -

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<sup>7</sup> 1988 c. 16.

- (a) in relation to an individual –
  - (i) the father, mother, wife, husband, son, stepson, daughter, stepdaughter, brother or sister of the individual;
  - (ii) a body corporate of which that individual is a director; and
  - (iii) a partner or employee of that individual;
- (b) in relation to a body corporate –
  - (i) a subsidiary of that body corporate; and
  - (ii) an employee of any such subsidiary;

“custodian” means a person who is appointed by the governing body of a scheme and who is entrusted with the custody of the property of the scheme, irrespective of whether or not that person may also be responsible for ensuring that the scheme is managed in accordance with its constitutional documents;

“functionary” means in relation to a qualifying investment fund, the governing body of the fund (or any member thereof) or any person appointed for the time being to provide services to the fund under a contract for services, including (without limitation) any administrator, manager or promoter;

“governing body” means the person or body of persons for the time being responsible for the general supervision of the affairs of a scheme and –

- (a) where the scheme is a unit trust scheme and the trustee of that scheme is a body corporate, shall mean the director(s) of that body corporate;
- (b) where the scheme is an open-ended investment company, shall mean the director(s) of that open-ended investment company;
- (c) where the scheme is a limited partnership and the general partner is a body corporate, shall mean the director(s) of that body corporate;

“launch date” means, in relation to a qualifying investment fund, the date of publication of its initial offering document and, unless the contrary is proved, that date shall be taken to be the date of such offering document;

“manager” means a person appointed by the governing body of a scheme who:

- (a) is responsible for the conduct of substantially all of the administration of the scheme; and
- (b) is responsible for investment management decisions in accordance with the investment objectives and policy of the scheme;

“promoter” means a person (wherever located) who prepares or distributes, or who causes the preparation or distribution of, an offering document or associated marketing material, but does not include a professional adviser acting for or on behalf of that person;

“qualifying auditor” means a person or body corporate who has a permanent place of business on the Island, 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 he is a member and:

- (b) is a member of one of the following bodies of accountants-
  - (vii) The Institute of Chartered Accountants in England and Wales;

- (viii) The Institute of Chartered Accountants of Scotland;
- (ix) The Institute of Chartered Accountants in Ireland;
- (x) The Chartered Association of Certified Accountants;
- (xi) The Chartered Institute of Public Finance and Accountancy;
- (xii) The Association of Authorised Public Accountants; or

(b) is a member firm of one of the bodies referred to in (a);

“qualifying investor” has the meaning ascribed thereto in Schedule 1;

“qualifying investment fund” means a scheme which complies with the conditions set out in this Order and “fund” shall be construed accordingly;

“regulated financial adviser” means a person (wherever located) who advises investors about the merits of investing in the fund and who is regulated for this activity in an acceptable jurisdiction;

“subsidiary” and “holding company” shall be construed in accordance with section 1 of the Companies Act 1974<sup>8</sup>; and

#### **Exemptions from the requirements of the Act**

3(1) A qualifying investment fund shall be exempt from subsections (1), (2)(b) and (7) to (10) (inclusive) of section 11 of the Act.

(2) Subsection (4) of section 11 of the Act shall apply to a qualifying investment fund as if the following words had been deleted therefrom, namely "6, 7(1) (with the omission of the requirement relating to the advocate's certificate) and (2), 10,".

#### **Duties of the governing body of a qualifying investment fund**

4(1) The governing body of a qualifying investment fund shall, in addition to (and without derogating from) any other duties or responsibilities imposed under any applicable law, be responsible for ensuring that-

- (a) the requirements set out in articles 5, 7, 9 and 10 are complied with;
- (b) the offering document and relevant constitutional documents of the fund comply in all respects with the requirements of the Act and this Order;
- (c) the fund is and continues to be managed and operated in accordance with the fund's constitutional documents and offering document;
- (d) the offering document of the fund accurately sets out all material information which, at the date of the offering document, is within the knowledge of the governing body (or which any member of the governing body would have been able to obtain at that time by making reasonable enquiries) which is relevant for the purpose of making an informed judgement about the merits of participating in the fund; and
- (e) the offering document is amended to reflect any material changes to the fund or its circumstances in a timely manner and that the manager of the fund is notified of such change(s) and provided with a copy of the amended offering document forthwith;

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<sup>8</sup> 1974 c. 30

- (f) within 6 months of the fund's financial year-end, Part 1 of the annual compliance declaration in the form set out at Schedule 3 to this Order is completed and signed by each member of the governing body and, in conjunction with the manager, the completed declaration (including both Part 1 and Part 2) is submitted to the Commission; and
- (g) the responsibilities imposed upon the manager under article 8 are discharged.

(2) Each member of the governing body of a qualifying investment fund or proposed qualifying investment fund shall sign a statement of responsibility in the form set out in Schedule 2 Part A in relation to the initial offering document of the fund and any amended offering document of the fund. Each statement of responsibility shall be submitted to the Commission by the governing body within 10 working days of the launch date of the fund (in the case of the initial offering document) or within 10 working days of the date of issue of the offering document (in the case of an amended offering document).

#### **Composition of the governing body of a qualifying investment fund**

5(1) The governing body of a qualifying investment fund shall include

- (a) at least one natural person who holds such office in a non-executive capacity and who is independent of any promoter of the fund and of any company that is a subsidiary of any promoter of the fund or a subsidiary of any holding company of any promoter of the fund; and
- (b) at least one Isle of Man resident natural person

(2) For the avoidance of doubt, the individuals referred to in articles 5(1)(a) and 5(1)(b) may be one and the same person.

#### **Notification of removal of, resignation of or failure to reappoint a member of the governing body of a qualifying investment fund**

6. Where a member of the governing body of a qualifying investment fund is removed from such office, resigns from such office or is not reappointed at the end of his/her term of office that person shall give notice to the Commission in writing forthwith together with the reasons (if any) for that removal, resignation or failure to reappoint.

#### **The manager of a qualifying investment fund**

7. A qualifying investment fund shall have a manager who is the holder of a licence under the Investment Business Act 1991 which permits it to undertake this activity.

#### **Responsibilities of a manager of a qualifying investment fund**

8. The manager of a qualifying investment fund shall –

- (a) be responsible for determining whether the fund is and continues to be managed and operated in accordance with the fund's constitutional and offering documents. The manager shall notify the Commission forthwith if it determines that the fund is not managed and operated accordingly.
- (b) notify the Commission forthwith on becoming aware that a member of the governing body of the fund is removed from such office, resigns from such office or is not reappointed at the end of his/her term of office. Any such notification shall be accompanied by details of the reasons (if any) for that removal, resignation or failure to reappoint;
- (c) satisfy itself that each investor in the fund has certified that he/she/it/they is/are a qualifying investor and, in the case of investors qualifying under Schedule 1

- paragraph (h), that the qualifying investor's status as such has also been certified by the qualifying investor's regulated financial adviser;
- (d) within 10 working days of the launch date of the fund certify and submit to the Commission a notification in the form set out at Schedule 2 Part B;
  - (e) within 10 working days of becoming aware of any material alteration to the constitutional documents and/or offering document of the fund that would render any of the information contained in the last notification in relation to the fund delivered to the Commission pursuant to paragraph (d) or this paragraph inaccurate, incomplete or otherwise misleading, certify and submit to the Commission an updated notification in the form set out at Schedule 2 Part B to this Order;
  - (f) in compliance with article 4(1)(e), within 6 months of the fund's financial year-end, complete and sign Part 2 of the annual compliance declaration in the form set out at Schedule 3 to this Order and, in conjunction with the governing body, submit the completed declaration (including both Part 1 and Part 2) to the Commission;
  - (g) within 10 working days of each calendar quarter end, supply to the Commission the statistical information about the fund which is detailed in Schedule 4 to this Order;
  - (h) report to the Commission forthwith upon it becoming aware that any of the conditions in articles 12, 13 and 14 are not complied with;
  - (i) notify the Commission within 10 working days of its becoming aware that an audit report of a qualifying fund, as required by article 15, is qualified by the auditors in relation thereto. Such notification shall be accompanied by a copy of the audit report together with details of any remedial action that the manager or any other party intends to take;
  - (j) in the event that the audited annual financial statements of a qualifying investment fund are not distributed within the period prescribed under article 16, notify the Commission of that fact within ten working days and every three months thereafter until such audited annual financial statements are issued and distributed. Such notification shall –
    - (i) give details of the issues giving rise to the delay;
    - (ii) contain a revised timetable for distribution; and
    - (iii) be signed by or on behalf of both the manager and the qualifying auditor;
  - (k) upon becoming aware that an auditor of a qualifying investment fund is removed from office, resigns or is not reappointed at the end of the auditor's term of office, notify the Commission of that fact forthwith.

#### **The custodian of a qualifying investor fund**

9. A qualifying investment fund shall have a custodian who must be a different person from the manager and who is either -

- (a) an authorised person for the purpose of the Act and who is permitted to undertake this activity; or
- (b) licensed to act as a custodian to collective investment schemes in an acceptable jurisdiction and whose licence extends to custody services provided to collective investment schemes of this type.



### **The promoter of a qualifying investor fund**

10. Any promoter of a qualifying investment fund shall be regulated for that purpose under the Investment Business Act 1991 or be regulated for that purpose in an acceptable jurisdiction.

### **Investment requirements for a qualifying investment fund**

11. A qualifying investment fund shall only accept investments from investors who have certified their status in the form set out in Schedule 6.

### **Offering document of a qualifying investment fund**

12. A qualifying investment fund shall have an offering document which:

- (a) accurately sets out all material information which, at the date of the offering document, is within the knowledge of the governing body (or which that person would have obtained by making reasonable enquiries) and which is relevant for the purpose of making an informed judgement about the merits of participating in the fund; and
- (b) complies with the requirements of the Act and contains the matters set out at Schedule 5 to this Order.

### **Application form of a qualifying investment fund**

13(1) A qualifying investment fund shall have an application form which contains the certifications set out at Schedule 6.

(2) Before being accepted as an investor in the fund each applicant is required to complete the Part 1 certification and, if applicable, the relevant Part 2 certification. The Part 3 certification shall be completed by a regulated financial adviser where required.

### **Financial statements**

14(1) A qualifying investment fund shall cause financial statements in respect of the fund to be prepared in respect of each accounting period ending on its financial year-end date.

(2) The annual financial statements of a qualifying investment fund shall be prepared in accordance with International Financial Reporting Standards (as promulgated by the International Accounting Standards Board) or United Kingdom Accounting Standards (as promulgated by the Accounting Standards Board).

### **Audit of financial statements**

15(1) A qualifying investment fund shall have an auditor who is a qualifying auditor.

(2) The annual financial statements of a qualifying investment fund shall be audited in accordance with internationally accepted auditing standards and practices by a qualifying auditor who shall issue an audit report in relation thereto.

### **Distribution of financial statements**

16. The audited annual financial statements of a qualifying investment fund shall be distributed to its investors no later than 6 months after the fund's financial year-end or within the timescales prescribed in the offering document if earlier.

### **Notification of removal of, resignation of or failure to reappoint an auditor to the fund**

17. Where an auditor of a qualifying investment fund is removed from office, resigns or is not reappointed at the end of the auditor's term of office the auditor shall provide a signed statement direct to the Commission stating either:-

- (a) that there are no circumstances connected with the auditor ceasing to hold office which the auditor considers should be brought to the attention of the Commission; or
- (b) if there are circumstances connected with the auditor ceasing to hold office which the auditor considers should be brought to the attention of the Commission, full details of those circumstances.

### **Transitional arrangements**

18(1) This article applies to a scheme which –

- (a) immediately before the commencement of this Order was a professional investor fund within the meaning of the Financial Supervision (Professional Investor Fund) (Exemption) Order 1999<sup>9</sup>; and
- (b) within the period of 12 months following such commencement ceases to be a professional investor fund (as the case may be) and becomes a qualifying investment fund.

(2) Article 12 shall not apply to a scheme to which this article applies but only in respect of persons who were investors in the scheme before it became a qualifying investment fund.

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<sup>9</sup> SD 602/99 amended by SD 81/03

## SCHEDULE 1

### Meaning of qualifying investor

In this Order, "qualifying investor" means a person or body who, in relation to a qualifying investment fund, 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 investment falls into one of the following categories —

- (a) a person, partnership, other unincorporated association or body corporate whose ordinary business or professional activity includes, or it is reasonable to expect that it includes, acquiring, underwriting, managing, holding or disposing of investments, whether as principal or agent, or the giving of advice concerning investments;
- (b) a functionary to the qualifying investment fund or an associate of a functionary to the qualifying investment fund;
- (c) a person who is an employee, director, consultant or shareholder of or to a functionary of the qualifying investment fund or an associate of a functionary to the qualifying investment fund, who is acquiring an investment in the qualifying investment fund as part of his remuneration or an incentive arrangement or by way of co-investment;
- (d) any employee, director, partner or consultant to or of any person referred to in paragraph (a);
- (e) a trustee of a family trust settled by or for the benefit of one or more persons referred to in paragraphs (b) or (c);
- (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 (b) or (c) 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.

**SCHEDULE 2  
Part A**

**Responsibility statement to be signed by each member of the governing body of a  
qualifying investment fund**

To the Isle of Man Financial Supervision Commission

Name of Fund \_\_\_\_\_

6. We confirm that the Offering Document dated \_\_\_\_\_ for the above fund complies with the requirements of the Financial Supervision (Qualifying Investment Fund) (Exemption) Order 2007 and accurately sets out all material information to enable an informed investment decision to be made by prospective investors. We jointly and severally accept responsibility for the Offering Document accordingly.
7. We acknowledge that the requirements referred to in paragraph 1 are continuing requirements and that the Offering Document is required to be amended in a timely manner to reflect any material changes to the fund or its circumstances.
8. We acknowledge that it is the responsibility of the governing body of the fund to ensure that the fund is and continues to be managed and operated in accordance with the fund's constitutional documents and offering document.
9. We confirm that each person named in the offering document and referred to therein as being responsible for a function in relation to the fund has consented to the inclusion of its name and to the description of its function in relation to the fund in the form and context in which they appear.
10. We acknowledge that it is the responsibility of the governing body of the fund to ensure that the fund will only be promoted to qualifying investors.

Signed	Date	Signed	Date
Name		Name	
Position		Position	
Signed	Date	Signed	Date
Name		Name	
Position		Position	

**Please continue on a separate sheet as necessary**

**Part B**

**Qualifying investor fund notification and alteration form**

**to be submitted to the Commission within 10 working days of launch\* /alteration**

**Date** \_\_\_\_\_ Notification/alteration update (*delete as applicable*)\*\*  
(of launch or change)

Full name of fund \_\_\_\_\_

*The name of the fund must not be misleading or undesirable*

*\* launch date means the date of publication of its initial offering document*

*\*\* If alteration / update, rather than first notification, please indicate clearly changes from previous version*

<b>A</b>	<b>Standing Information</b>		
<b>1</b>	<b><u>Legal structure of the Qualifying Investment Fund</u> (<i>delete as appropriate</i>)</b>		
	<p><i>i) Company</i> Company number _____ Registered office _____ _____ _____</p>	<p><b>ii) Trust</b></p>	<p><b>iii) Limited Partnership</b></p>
<b>2</b>	<b><u>Membership of the Governing Body of the Qualifying Investment Fund</u></b>		
	<p><b>i) Name</b> _____ Address _____ _____ _____</p> <p>Date of Birth _____ Is this person an independent non executive member? <i>Yes/No</i> Isle of Man resident? <i>Yes/No</i> Relevant qualifications _____ _____</p> <p><b>iii) Name</b> _____ Address _____ _____ _____</p> <p>Date of Birth _____ Is this person an independent non executive member? <i>Yes/No</i> Isle of Man resident? <i>Yes/No</i> Relevant qualifications _____ _____</p>	<p><b>ii) Name</b> _____ Address _____ _____ _____</p> <p>Date of Birth _____ Is this person an independent non executive member? <i>Yes/No</i> Isle of Man resident? <i>Yes/No</i> Relevant qualifications _____ _____</p> <p><b>iv) Name</b> _____ Address _____ _____ _____</p> <p>Date of Birth _____ Is this person an independent non executive member? <i>Yes/No</i> Isle of Man resident? <i>Yes/No</i> Relevant qualifications _____ _____</p>	

3	<u><b>Manager</b></u> Name _____ Address _____ _____ _____ Licence Category _____	<u><b>Administrator (if applicable)</b></u> Name _____ Address _____ _____ _____ Licence Category _____	
4	<u><b>Custodian</b></u> Name _____ Address _____ _____ _____ Regulated by _____	<u><b>5 Asset manager/adviser</b></u> Name _____ Address _____ _____ _____ Regulated by _____	
6	<u><b>Promoter/Sponsor</b></u> Name _____ Address _____ _____ Regulated by _____ Licence Category _____ Reference no. _____		
7	<u><b>Qualifying Auditor</b></u> Name _____ Address _____ _____ _____	Accountancy Body of which the qualifying auditor is a member or a member firm _____ _____	
8	<u><b>Conflicts of Interest -</b></u> Please attach details of any interrelationships between the parties in 1 to 7 above which could result in perceived or actual conflicts of interest.		
B	<i>Offering Document and Application Form</i>		
	<b>Does the Offering Document contain:</b>		
9	A statement as required by Schedule 5 paragraph 1 of the Order?	<b>YES/NO*</b>	
10	A provision as required by Schedule 5 paragraph 2 of the Order?	<b>YES/NO*</b>	
11	A definition of Qualifying Investor as required by Schedule 5 paragraph 3 of the Order?	<b>YES/NO*</b>	
12	A provision as required by Schedule 5 paragraph 4 of the Order?	<b>YES/NO*</b>	
13	A risk warning as required by Schedule 5 paragraph 5 of the Order?	<b>YES/NO*</b>	
14	Disclosure that the fund will have audited annual financial statements which are issued to investors within six months from the end of each financial period, or in line with the offer document, if earlier, as required by Schedule 5 paragraph 6 of the Order?	<b>YES/NO*</b>	
	<b>Does the Application Form contain:</b>		
15	The Part 1, Part 2 and Part 3 certifications in accordance with Schedule 6 of the Order?	<b>YES/NO*</b>	

<b>C</b>	<b><i>Other information</i></b>		
<b>16</b>	Minimum subscription level		
<b>17</b>	Minimum fund NAV threshold for launch (not applicable for updates)		
<b>18</b>	Frequency of dealing days		
<b>19</b>	Frequency of valuations ( <i>There is an expectation that fund valuations should normally take place at least quarterly</i> )		
<b>20</b>	Can investors redeem their holdings prior to any material changes (to their rights or to fees, etc) being implemented?	<b>YES/NO*</b>	
<b>21</b>	Please attach details of - <ul style="list-style-type: none"> <li>• the fund's Investment Objective and Policy</li> <li>• the proposed types of Investments**</li> <li>• any Investment Restrictions/Parameters and</li> <li>• permitted level of borrowing/gearing</li> <li>• level of fees levied on the fund</li> </ul> ** <i>e.g. Equity, debt, money market, derivatives/hedge, fund of funds, feeder fund, property, TLP/TEP, emerging markets?</i>		
<b>22</b>	Will assets be held in subsidiaries? (If yes attach brief details of the structure this will take.)	<b>YES/NO*</b>	
<b>23</b>	Distribution channels (type of IFA, direct placement, etc)  _____  _____  _____		
<b>24</b>	Is the fund listed/ intended to be listed on a stock exchange? <i>If yes please give details</i>  _____  _____	<b>YES/NO*</b>	

*\* If the answer to questions 9-15, 20, 22 or 24 is no please provide further details.*

*Certification*

**This form shall be signed by the fund's manager.**

We the undersigned confirm the accuracy of the statements in this notification.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Capacity

\_\_\_\_\_  
Capacity

\_\_\_\_\_  
Company

\_\_\_\_\_  
Company



**SCHEDULE 3**

**Form of annual compliance declaration to be submitted to the Commission within 6 months of the fund's financial year-end**

To the Isle of Man Financial Supervision Commission

Name of Fund \_\_\_\_\_ (the "Fund")

For the period from: \_\_\_\_\_ to: \_\_\_\_\_

*The period covered by this declaration must correspond with that of the fund's financial year.*

**Part 1 – Governing Body Declaration\***

We confirm that:

- 4. the Fund has at all times during the period covered by this declaration complied with the requirements of the Act and the Order;
- 5. the Fund has at all times during the period covered by this declaration been managed and operated in accordance with the Fund's constitutional documents and offering document; and
- 6. the Fund's Offering Document has at all times during the period covered by this declaration accurately set out all material information to enable an informed investment decision to be made by investors.

Any areas of non-compliance, and any other information that you consider should be brought to the Commission's attention in relation to the operation of the Fund, should be detailed on a separate sheet.

_____ Signed	_____ Date	_____ Signed	_____ Date
_____ Name		_____ Name	
_____ Position		_____ Position	
_____ Signed	_____ Date	_____ Signed	_____ Date
_____ Name		_____ Name	
_____ Position		_____ Position	
_____ Signed	_____ Date	_____ Signed	_____ Date
_____ Name		_____ Name	
_____ Position		_____ Position	

*\* To be signed by every member of the governing body of the fund*

## Part 2 – Manager Declaration

We confirm that:

1. we are not aware of any matters that lead us to believe that the Fund has not, during the period covered by this declaration, complied with the requirements of the Act and the Financial Supervision (Qualifying Investment Fund) (Exemption) Order 2007;
2. at all times during the period covered by this declaration, the Fund has been managed and operated in accordance with the fund's constitutional documents and offering document; and
3. we are not aware of any matters that lead us to believe that at any time during the period covered by this declaration the Fund's Offering Document did not accurately set out all material information to enable an informed investment decision to be made by investors.

Any areas of non-compliance, and any other information that you consider should be brought to the Commission's attention in relation to the operation of the Fund, should be detailed on a separate sheet.

_____ Signed	_____ Date	_____ Signed	_____ Date
_____ Name		_____ Name	
_____ Manager		_____ Manager	

## SCHEDULE 4

### Statistical information to be supplied to the Commission within 10 working days of the end of each calendar quarter\*

12. Name of Scheme:
13. Type of Scheme:
14. Domicile of Scheme:
15. Asset Category of Scheme (Please delete as appropriate from the list below):
  - Securities Scheme,
  - Money Market Fund,
  - Fund of Funds,
  - Feeder Fund,
  - Umbrella Fund (please list asset categories for the sub-funds),
  - Other. If "other" please specify:
16. Legal constitution of Scheme (e.g. OEIC, Unit Trust):
17. Total Assets of Scheme (before deducting liabilities) (\$'000):
18. Net Asset Value of Scheme (\$'000):
19. Total value of subscriptions (\$'000) for the quarter:
20. Total value of redemptions (\$'000) for the quarter:
21. Number of unit holders:
22. Approximate % distribution of unit holders (IOM/UK/Other EC/Rest of the World):

*\* For the avoidance of doubt, the submission of statistical information in relation to a fund in accordance with this notification shall not operate to discharge an manager from its responsibilities under article 8(e) of this Order and, to the extent that there has been any material alteration to the constitutional documents and/or offering document of the fund within the meaning of article 8(e) a notification in the form set out at Schedule 2 Part B must also be submitted.*

## SCHEDULE 5

### **Specific matters to be contained in the Offering Document of a Qualifying Investment Fund as required by article 12 of this Order**

1. A statement to the effect that the fund shall only accept as investors in the fund investors who are qualifying investors in relation to the fund.
2. A statement to the effect that the fund shall only accept an initial investment in a specified minimum subscription amount, being an amount appropriate to the fund which is determined jointly by the governing body of the fund and the manager.
3. The definition of a qualifying investor as set out in Schedule 1 of this Order shall be set out in a prominent position.
4. A provision to the effect that no application to invest in the fund shall be accepted, and no such subscription for, or transfer of, an interest in the fund shall be effected, unless and until -
  - (a) the investor has signed the certification(s) required by Schedule 6 Parts 1 and 2; ; and
  - (b) where an investor is a qualifying investor only by virtue of Schedule 1 paragraph (h), the qualifying investor's regulated financial adviser has signed the certification required by Schedule 6 Part 3.
5. A risk warning in a prominent position in the following terms –

"[This fund] has been established in the Isle of Man as a qualifying investment fund and, as such, is not subject to any form of authorisation or approval in the Isle of Man.

Investors are not protected by any statutory compensation arrangements in the event of the fund's failure and the Isle of Man Financial Supervision Commission does not vouch for the financial soundness of the fund or for the correctness of any statements made or opinions expressed with regard to it.

The fund is not suitable for those who are not "qualifying investors" as defined in the Financial Supervision (Qualifying Investment Fund) (Exemption) Order 2007.

Requirements which may be deemed necessary for the protection of retail or non-qualifying investors, do not apply to qualifying investment funds. By signing the declaration at [ ] you are expressly agreeing that you fall within the definition of a "qualifying investor" and accept the reduced requirements, or the absence of such requirements, accordingly.

You are wholly responsible for ensuring that all aspects of [this fund] are acceptable to you. Investment in qualifying investment funds may involve special risks that could lead to a loss of all or a substantial portion of such 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].

If you are investing on behalf of another person, the Isle of Man Financial Supervision Commission expects you to be satisfied that the person/persons on whose behalf you are investing, or whose interest is linked to the investment in

the qualifying investment fund (as the case may be), is a qualifying investor who understands the risks associated with this type of investment.

If you are a life assurance company investing assets comprised within your long-term business fund, the Isle of Man Financial Supervision Commission expects that relevant policyholders have been given the opportunity to read the offering document for this fund and as such to have information about the risks associated with this type of investment.”

6. A statement to the effect that the fund is required to have audited annual financial statements which are to be issued to investors within six months from the end of each financial period of the fund, or within the timescales prescribed the offering document (if earlier), as the case may be.

## SCHEDULE 6

### Certifications to be contained in the application form of a qualifying investor fund as required by article 13 of this Order

**Part 1 Certification** – This certification is to be completed by all applicants.

“I/we confirm that:

I/we am/are a qualifying investor as defined on page [ ] of the offering document of [name of qualifying investment fund] dated [ ]; and

I/we am/are sufficiently experienced to understand the features and risks attendant to investing in an unauthorised and unapproved fund of this type; and

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

I/we personally accept all the risks associated with this investment and particularly that my/our investment in the [name of qualifying investment fund] involves risks that could result in a loss of a significant proportion or all of the sum invested; and

I/we further confirm that, where appropriate, I/we have taken independent advice on the suitability of this investment within my/our overall investment portfolio.

[Signed ] [Dated]”.

**Part 2 Certification** – The certification at paragraph (1) is to be completed by any investor who is either investing on behalf of another person and the certification at paragraph (2) is to be completed by any investor who is a life assurance company investing assets comprised within its long term business fund (as appropriate).

(1) “I/we confirm that I/we am/are investing in the qualifying investment fund on behalf of another person/other persons and that I/we have in my/our possession (a) certification(s) signed by such person/persons to show that each such person/persons is a qualifying investor.

[Signed ] [Dated]”.

(2) “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 that:

(i) the policyholder has the opportunity to read the offering documents for relevant funds, where they wish to do so, and as such has information about the high levels of risk attached to a fund which is not intended for retail sale to private investors (such as qualifying investment funds or their equivalent under the laws of any other jurisdiction); and

- (ii) the policyholder, where necessary, meets the minimum criteria of a class of investor, such as a qualifying investor.
- (b) we are responsible for ensuring that policyholder declarations are obtained and confirm no investment in this type of fund is made without a client declaration being obtained from relevant policyholders.

[Signed ] [Dated]”.

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

“I confirm that:

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

Made this

Treasury Minister

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**Explanatory Note**  
**(This note is not part of the order)**

This Order creates a special type of international collective investment scheme which is available only to qualifying investors, known as the qualifying investment fund. The Order defines a qualifying investor for the purposes of the Order and requires certain disclosures to be made in the scheme's documentation.

This Order exempts a qualifying investment fund from certain mandatory requirements which would otherwise apply to an international collective investment scheme.



## Appendix D

### THE FINANCIAL SUPERVISION (EXPERIENCED INVESTOR FUND) (EXEMPTION) (AMENDMENT) ORDER 2007



**DRAFT FOR CONSULTATION  
FINANCIAL SUPERVISION ACT 1988**

**FINANCIAL SUPERVISION (EXPERIENCED INVESTOR FUND) (EXEMPTION)  
(AMENDMENT) (ORDER) 2007**

*Approved by Tynwald  
Coming into operation*

In exercise of the powers conferred on the Treasury by section 11(11) of the Financial Supervision Act 1988<sup>10</sup>, and of all other enabling powers, the following Order is hereby made:—

**Citation and commencement**

1. This Order may be cited as the Financial Supervision (Experienced Investor Fund) (Exemption) (Amendment) Order 2007 and shall come into operation on the [1<sup>st</sup> November 2007].

**Interpretation**

2 In this Order -

“the 1999 Order” means the Financial Supervision (Experienced Investor Fund) (Exemption) Order 1999<sup>11</sup>.

**Amendments**

3. In article 2 of the 1999 Order insert the following definitions;

“acceptable jurisdiction” means a jurisdiction accepted by the Financial Supervision Commission as a jurisdiction in which custodians or promoters as the case may be, of qualifying type EIFs or regulated financial advisers advising upon qualifying type EIFs are subject to an appropriate standard of regulation;

“administrator” means a person appointed by the governing body of a scheme who is responsible for the conduct of substantially all of the administration of the scheme.

“administration” includes the following functions in relation to a scheme (insofar as they are relevant thereto) –

- (a) accounting services;
- (b) handling of administrative enquiries from participants;
- (c) valuation of assets and pricing of units;
- (d) maintenance of the register of unit-holders;

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<sup>10</sup> 1988 c. 16.

<sup>11</sup> SD603/99

- (e) distribution of income;
- (f) issues, transfers and redemptions of units; and
- (g) record keeping;

“annual financial statements” means, in relation to a continuing EIFs financial statements prepared in accordance with article 14;

“associate” means –

- (a) in relation to an individual –
  - (i) the father, mother, wife, husband, son, stepson, daughter, stepdaughter, brother or sister of the individual;
  - (ii) a body corporate of which that individual is a director; and
  - (iii) a partner or employee of that individual;
- (b) in relation to a body corporate –
  - (i) a subsidiary of that body corporate; and
  - (ii) an employee of any such subsidiary;

“asset manager” means a person appointed by the governing body of a scheme who is responsible for investment management decisions in accordance with the investment objectives and policy of the scheme;

“continuing EIF” means an experienced investor fund which meets the requirements in this Order to continue as a qualifying type experienced investor fund or a specialist type experienced investor fund;

“custodian” means a person who is appointed by the governing body of a scheme and who is entrusted with the custody of the property of the scheme, irrespective of whether or not that person may also be responsible for ensuring that the scheme is managed in accordance with its constitutional documents;

“functionary” means, in relation to a continuing EIF, the governing body of the fund (or any member thereof) or any person appointed for the time being to provide services to the fund under a contract for services, including (without limitation) any administrator, manager or promoter;

“governing body” means the person or body of persons for the time being responsible for the general supervision of the affairs of a scheme and –

- (a) where the scheme is a unit trust scheme and the trustee of that scheme is a body corporate, shall mean the director(s) of that body corporate;
- (b) where the scheme is an open-ended investment company, shall mean the director(s) of that open-ended investment company;
- (c) where the scheme is a limited partnership and the general partner is a body corporate, shall mean the director(s) of that body corporate;

“investment adviser” means a person appointed by the governing body of a scheme who is responsible for advising the governing body about investments in the scheme in accordance with the investment objectives and policy of the scheme;

“launch date” means, in relation to a continuing EIF, the date of publication of its initial offering document and, unless the contrary is proved, that date shall be taken to be the date of such offering document;

“manager” means a person appointed by the governing body of a scheme who:

- (a) is responsible for the conduct of substantially all of the administration of the scheme; and
- (b) is responsible for investment management decisions in accordance with the investment objectives and policy of the scheme;

“promoter” means a person (wherever located) who prepares or distributes, or who causes the preparation or distribution of, an offering document or associated marketing material, but does not include a professional adviser acting for or on behalf of that person;

“qualifying auditor” means a person or body corporate who has a permanent place of business on the Island, 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 he is a member and:

- (c) is a member of one of the following bodies of accountants-
  - (xiii) The Institute of Chartered Accountants in England and Wales;
  - (xiv) The Institute of Chartered Accountants of Scotland;
  - (xv) The Institute of Chartered Accountants in Ireland;
  - (xvi) The Chartered Association of Certified Accountants;
  - (xvii) The Chartered Institute of Public Finance and Accountancy;
  - (xviii) The Association of Authorised Public Accountants; or
- (b) is a member firm of one of the bodies referred to in (a);

“qualifying investor” has the meaning ascribed thereto in Schedule 1;

“qualifying type experienced investor fund” is an experienced investor fund whose governing body resolves to meet the requirements for a qualifying type experienced investor fund under this Order and which complies with the conditions for a qualifying type experienced investor fund set out in this Order and “qualifying type EIF” shall be construed accordingly;

“regulated financial adviser” means a person (wherever located) who advises investors about the merits of investing in the fund and who is regulated for this activity in an acceptable jurisdiction;

“specialist investor” has the meaning ascribed thereto in Schedule 1;

“specialist type experienced investor fund” is an experienced investor fund whose governing body resolves to meet the requirements for a specialist type experienced investor fund under this Order and which complies with the conditions for a specialist type experienced investor fund set out in this Order and “specialist type EIF” shall be construed accordingly; and

“subsidiary” and “holding company” shall be construed in accordance with section 1 of the Companies Act 1974<sup>12</sup>.”

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<sup>12</sup> 1974 c. 30

4. In article 2(1) of the 1999 Order, in the definition of "experienced investor fund" after the words "article 4" insert the words "and for the purposes of the Investment Business (Exemption) (Fund Managers) Regulations 2005 shall also include a continuing EIF";

5. Replace article 3. of the 1999 Order, with the following:

"3(1) An experienced investor fund and a continuing EIF shall be exempt from subsection (1), and subsection (7) to (10) (inclusive) of section 11 of the Act.

(2) Subsection (4) of section 11 of the Act shall apply to an experienced investor fund and a continuing EIF as if the following words had been deleted therefrom, namely "6, 7(1) (with the omission of the requirement relating to the advocate's certificate) and (2), 10,

(3) A continuing EIF shall be exempt from subsection 2(b) of section 11 of the Act."

6. In article 4(8)(b) of the 1999 order replace "is satisfied are experienced investors" with "is satisfied, on the basis of the certification made by that investor under (8)(d), are experienced investors".

6. After article 5 of the 1999 order insert the following –

**"Experienced Investor Funds continuing as Qualifying Type Experienced Investor Funds and Specialist Type Experienced Investor Funds**

6.(1) No experienced investor funds shall be established after the 1<sup>st</sup> November 2007;

(2) Only funds which are existing experienced investor funds as at 1<sup>st</sup> November 2007 shall be eligible to become continuing EIFs.

7. (1) The Governing Body of an experienced investor fund shall -

(a) by 1<sup>st</sup> May 2008 resolve to become-

(i) a qualifying type experienced investor fund; or

(ii) a specialist type experienced investor fund; and

(b) submit a signed statement of responsibility to the Commission as set out in Schedule 2 by 14<sup>th</sup> May 2008;

(2) The Governing Body shall:

(a) by 1<sup>st</sup> November 2008, ensure that the offering document and relevant constitutional documents of the fund comply in all respects with the requirements of the Order applicable to qualifying type EIFs or specialist type EIFs, as appropriate; and

(b) by 14<sup>th</sup> November 2008 provide written confirmation to the Commission that the fund complies with the requirements of the Order applicable to qualifying type EIFs or specialist type EIFs, as appropriate, accompanied by the notification at Schedule 3.

(3) The fund shall not become a continuing EIF until it has made any necessary changes to comply with the requirements in this order for a qualifying type EIF or a specialist type EIF, as appropriate.

(4) Existing experienced investors in a fund at the date on which it becomes:

(a) a qualifying type EIF are not required to certify that they are qualifying investors in respect of their existing holding; and

(b) a specialist type EIF are not required to certify that they are specialist investors or to have an initial investment amount in excess of US£100,00 in respect of their existing holding.

(5) If the requirements of (1) are not met or the requirements of (2) are not met the fund shall cease to be an experienced investor fund.

### **Duties of the governing body of a continuing EIF**

8(1) The governing body of a continuing EIF shall, in addition to (and without derogating from) any other duties or responsibilities imposed under any applicable law, be responsible for ensuring that-

- (a) the requirements set out in
  - (i) the requirements in articles 9, 18, 21 and 22 are complied with in relation to a qualifying type EIFs; and
  - (ii) the requirements in articles 9, 25 and 26 are complied with in relation to a specialist type EIF;
- (b) the offering document and relevant constitutional documents of the fund are accurate and comply in all respects with the requirements of the Act and this Order;
- (c) the fund is and continues to be managed and operated in accordance with the fund's constitutional documents and offering document;
- (d) the offering document of the fund accurately sets out all material information which, at the date of the offering document, is within the knowledge of the governing body (or which any member of the governing body would have been able to obtain at that time by making reasonable enquiries) which is relevant for the purpose of making an informed judgement about the merits of participating in the fund; and
- (e) the offering document is amended to reflect any material changes to the fund or its circumstances in a timely manner and that the manager/administrator of the fund is notified of such change(s) and provided with a copy of the amended offering document forthwith;
- (f) within 6 months of the fund's financial year-end, an annual compliance declaration in the form set out at Schedule 4 to this Order is signed by each member of the governing body and submitted to the Commission; and
- (g) the responsibilities imposed upon the manager of a qualifying type EIF under article 20, or the administrator of a specialist type EIF under article 24, as appropriate, are discharged.

(2) Each person constituting or comprised within the governing body of a continuing EIF or a proposed continuing EIF shall sign a statement of responsibility in the form set out in Schedule 3 Part A in relation to any amended offering document of the fund. Each statement of responsibility shall be submitted to the Commission by the governing body within 10 working days of the date of issue of the amended offering document.

### **Composition of the governing body of a continuing EIF**

9. The governing body of a continuing EIF shall include at least one natural person who holds such office in a non-executive capacity and who is independent of any promoter of the fund and of any company that is a subsidiary of any promoter of the fund or a subsidiary of any holding company of any promoter of the fund.

**Notification of removal of, resignation of or failure to reappoint a person from the governing body of a continuing EIF**

10. Where a member of the governing body of a continuing EIF is removed from such office, resigns from such office or is not reappointed at the end of his/her term of office that person shall give notice to the Commission in writing forthwith together with the reasons (if any) for that removal, resignation or failure to reappoint.

**Investment requirements for a continuing EIF**

11(1)A qualifying type EIF shall only accept investments from investors who have certified their status as a qualifying investor in the form set out in Schedule 7A.

(2) A specialist type EIF shall:

- (a) have a minimum initial subscription amount of not less than US\$100,000 for each investor; and
- (b) only accept investments from investors who have certified their status as a specialist investor in the form set out in Schedule 7B.

**Offering document of a continuing EIF**

12. A continuing EIF shall have an offering document which:

- (a) accurately sets out all material information which, at the date of the offering document, is within the knowledge of the governing body (or which that person would have obtained by making reasonable enquiries) and which is relevant for the purpose of making an informed judgement about the merits of participating in the fund; and
- (b) complies with the requirements of the Act and which contains the matters set out at Schedule 6 to this Order for a qualifying type EIF or a specialist type EIF, as appropriate.

**Application form of a continuing EIF**

13(1) A qualifying type EIF shall have an application form which contains the certifications set out at Schedule 7A.

(2) A specialist type EIF shall have an application form which contains the certifications set out at Schedule 7B.

(2) Before being accepted as an investor in the fund each applicant is required to complete the Part 1 certification and, if applicable, the relevant Part 2 certification. In the case of a qualifying type EIF, the Part 3 certification shall be completed by a regulated financial adviser where required.

**Financial statements**

14(1) A continuing EIF shall cause financial statements in respect of the fund to be prepared in respect of each accounting period ending on its financial year-end date.

(2) The annual financial statements of a continuing EIF shall be prepared in accordance with International Financial Reporting Standards (as promulgated by the International

Accounting Standards Board) or United Kingdom Accounting Standards (as promulgated by the Accounting Standards Board).

### **Audit of financial statements**

15(1) A continuing EIF shall have an auditor who is a qualifying auditor.

(2) The annual financial statements of a continuing EIF shall be audited in accordance with internationally accepted auditing standards and practices by a qualifying auditor who shall issue an audit report in relation thereto.

### **Distribution of financial statements**

16. The audited annual financial statements of a continuing EIF shall be distributed to its investors no later than 6 months after the fund's financial year-end or within the timescales prescribed in the offering document if earlier.

### **Notification of removal of, resignation of or failure to reappoint an auditor to the fund**

17. Where an auditor of a continuing EIF is removed from office, resigns or is not reappointed at the end of the auditor's term of office the auditor shall provide a signed statement direct to the Commission stating either:-

- (a) that there are no circumstances connected with the auditor ceasing to hold office which the auditor considers should be brought to the attention of the Commission; or
- (b) if there are circumstances connected with the auditor ceasing to hold office which the auditor considers should be brought to the attention of the Commission, full details of those circumstances.

## **ADDITIONAL REQUIREMENTS APPLICABLE TO QUALIFYING TYPE EIFS**

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

18. A qualifying type EIF shall have a manager in the Island, and such manager must be-

- (a) the holder of a licence under the Investment Business Act 1991 which permits them to undertake this activity; or
- (b) an exempt person.

19. Where a qualifying type EIF has a manager who is an exempt person, the fund administrator shall be responsible for the requirements in article 20.

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

20. The manager of a qualifying type EIF shall –

- (a) be responsible for determining whether the fund is and continues to be managed and operated in accordance with the fund's constitutional and offering documents. The manager shall notify the Commission forthwith if it determines that the fund is not managed and operated accordingly.
- (b) notify the Commission forthwith on becoming aware that a member of the governing body of the fund is removed from such office, resigns from such office or is not reappointed at the end of his/her term of office. Any such notification



shall be accompanied by details of the reasons (if any) for that removal, resignation or failure to reappoint;

- (c) satisfy itself that each investor in the fund has certified that he/she/it/they is/are a qualifying investor and, in the case of investors qualifying under Schedule 1 paragraph (h), that the qualifying investor's status as such has also been certified by the qualifying investor's regulated financial adviser;
- (d) within 10 working days of the fund becoming a qualifying type EIF certify and submit to the Commission a notification in the form set out at Schedule 3 Part B;
- (e) within 10 working days of becoming aware of any material alteration to the constitutional documents and/or offering document of the fund that would render any of the information contained in the last notification in relation to the fund delivered to the Commission pursuant to paragraph (d) or this paragraph inaccurate, incomplete or otherwise misleading, certify and submit to the Commission an updated notification in the form set out at Schedule 3 Part B to this Order;
- (f) in compliance with article 8(1)(e), within 6 months of the fund's financial year-end, complete and sign Part 2 of the annual compliance declaration in the form set out at Schedule 4 to this Order and, in conjunction with the governing body, submit the completed declaration (including both Part 1 and Part 2) to the Commission;
- (g) within 10 working days of each calendar quarter end, supply to the Commission the statistical information about the fund which is detailed in Schedule 5 to this Order;
- (h) report to the Commission forthwith upon it becoming aware that any of the conditions in articles 12, 13 and 14 are not complied with;
- (i) notify the Commission within 10 working days of its becoming aware that an audit report of a qualifying type EIF, as required by article 15, is qualified by the auditors in relation thereto. Such notification shall be accompanied by a copy of the audit report together with details of any remedial action that the manager or any other party intends to take;
- (j) in the event that the audited annual financial statements of a qualifying type EIF are not distributed within the period prescribed under article 16, notify the Commission of that fact within ten working days and every three months thereafter until such audited annual financial statements are issued and distributed. Such notification shall –
  - (i) give details of the issues giving rise to the delay;
  - (ii) contain a revised timetable for distribution; and
  - (iii) be signed by or on behalf of both the manager and the qualifying auditor;
- (k) upon becoming aware that an auditor of a qualifying type EIF is removed from office, resigns or is not reappointed at the end of the auditor's term of office, notify the Commission of that fact forthwith.

### **The Custodian of a qualifying type EIF**

21. A qualifying type EIF shall have a custodian who must be a different person from the manager and who is either -

- (a) an authorised person for the purpose of the Act and who is permitted to undertake this activity; or

- (b) licensed to act as a custodian to collective investment schemes in an acceptable jurisdiction and whose licence extends to custody services provided to collective investment schemes of this type.

### **The Promoter of a qualifying type EIF**

22. With effect from 1<sup>st</sup> November 2008, a qualifying type EIF shall have a promoter who is regulated for that purpose in an acceptable jurisdiction.

## **ADDITIONAL REQUIREMENTS APPLICABLE TO SPECIALIST TYPE EIFS**

### **The administrator of a specialist type EIF**

23. A specialist type EIF shall have an administrator who is the holder of a licence under the Investment Business Act 1991 which permits it to undertake this activity.

### **Responsibilities of an administrator of a specialist type EIF**

24. The administrator of a specialist type EIF shall –
- (a) notify the Commission forthwith upon becoming aware that a member of governing body of the fund is removed from such office, resigns from such office or is not reappointed at the end of his/her term of office. Any such notification shall be accompanied by details of the reasons (if any) for that removal, resignation or failure to reappoint;
  - (b) satisfy itself that each investor in the fund has certified that he/she/it/they is/are a specialist investor and has/have made an initial investment in the fund in an amount of not less than US\$100,000;
  - (c) within 10 working days of the launch date of the fund certify and submit to the Commission a notification in the form set out at Schedule 3 Part B;
  - (d) within 10 working days of becoming aware of any material alteration to the constitutional documents and/or offering document of the fund that would render any of the information contained in the last notification in relation to the fund delivered to the Commission pursuant to paragraph (c) or this paragraph inaccurate, incomplete or otherwise misleading, certify and submit to the Commission an updated notification in the form set out at Schedule 3 Part B to this Order;
  - (e) within 10 working days of each calendar quarter end, supply to the Commission the statistical information about the fund which is detailed in Schedule 5 to this Order;
  - (f) report to the Commission forthwith upon it becoming aware that any of the conditions in articles 12, 13, 14 and 25 are not complied with;
  - (g) notify the Commission within 10 working days of its becoming aware that an audit report of a specialist type EIF, as required by article 15, is qualified by the auditors in relation thereto. Such notification shall be accompanied by a copy of the audit report together with details of any remedial action that the administrator or any other party intends to take;
  - (h) in the event that the audited annual financial statements of a specialist type EIF are not distributed within the period prescribed under article 16, notify the Commission of that fact within ten working days and every three months

thereafter until such audited annual financial statements are issued and distributed. Each such notification shall –

- (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 both the administrator and the qualifying auditor;
- (i) upon becoming aware that an auditor of a specialist type EIF is removed from office, resigns or is not reappointed at the end of the auditor's term of office, notify the Commission of that fact forthwith.

### **The arrangements for the provision of asset management services in relation to a specialist type EIF**

25(1) A specialist type EIF shall ensure that, whether directly or indirectly, it receives advisory or discretionary management services in relation to the investment and re-investment of its assets.

(2) It is the responsibility of the governing body to ensure that the appointed asset manager or investment adviser who is providing the services in (1) is suitable to undertake the function.

(2) In assessing suitability in (2), the governing body shall have regard to the regulated status of the asset manager or investment adviser and the regulated status of any person providing services to the asset manager or investment adviser.

### **Custody arrangements for a specialist type EIF**

26(1) A specialist type EIF is not required to have a custodian.

(2) Existing investors in a specialist type EIF must approve any proposal that the fund will cease to have a custodian, or that the custodian will not be a different person from the administrator who is:

- (a) an authorised person for the purpose of the Act and who is permitted to undertake this activity; or
- (b) licensed to act as a custodian to collective investment schemes in an acceptable jurisdiction and whose licence extends to custody services provided to collective investment schemes of this type.

## SCHEDULE 1

### 1. Meaning of qualifying investor

In this Order, "qualifying investor" means a person or body who, in relation to a qualifying type experienced investor fund, 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 investment falls into one of the following categories —

- (a) a person, partnership, other unincorporated association or body corporate whose ordinary business or professional activity includes, or it is reasonable to expect that it includes, acquiring, underwriting, managing, holding or disposing of investments, whether as principal or agent, or the giving of advice concerning investments;
- (b) a Functionary to the qualifying type experienced investor fund or an Associate of a Functionary to the qualifying type experienced investor fund;
- (c) a person who is an employee, director, consultant or shareholder of or to a Functionary of the qualifying type experienced investor fund or an Associate of a Functionary to the qualifying type experienced investor fund, who is acquiring an investment in the qualifying type experienced investor fund as part of his remuneration or an incentive arrangement or by way of co-investment;
- (d) any employee, director, partner or consultant to or of any person referred to in paragraph (a);
- (e) a trustee of a family trust settled by or for the benefit of one or more persons referred to in paragraphs (b) or (c);
- (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 (b) or (c) 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 article Schedule 7 Part 3.

### 2. Meaning of specialist investor

In this Order, "specialist investor" means a person or body who, in relation to a specialist type experienced investor fund, has certified that they are sufficiently experienced to understand the risks associated with an investment in that fund, who individually invests an initial minimum of not less than US\$100,000 and who, at the time of the investment falls into one of the following categories —

- (a) a person, partnership, other unincorporated association or body corporate whose ordinary business or professional activity includes, or it is reasonable to expect that it includes, acquiring, underwriting, managing, holding or disposing of investments, whether as principal or agent, or the giving of advice concerning investments;

- (b) a functionary to the specialist type experienced investor fund or an associate of a functionary to the specialist type experienced investor fund;
- (c) a person who is an employee, director, consultant or shareholder of or to a functionary of the specialist type experienced investor fund or an associate of a functionary to the specialist type experienced investor fund, who is acquiring an investment in the specialist type experienced investor fund as part of his remuneration or an incentive arrangement or by way of co-investment;
- (d) any employee, director, partner or consultant to or of any person referred to in paragraph (a);
- (e) a trustee of a family trust settled by or for the benefit of one or more persons referred to in paragraphs (b) or (c);
- (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 (b) or (c) 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 which has (or which is a wholly-owned subsidiary of a body corporate which has) assets available for investment of not less than US\$1,000,000 (or currency equivalent) or every member, partner or beneficiary of which falls within the definition of specialist investor; or
- (i) an individual who has a net worth, or joint net worth with his/her spouse, greater than US\$1,000,000 (or currency equivalent) excluding his/her principal place of residence.

## SCHEDULE 2

**Responsibility statement to be signed by each member of the governing body of a continuing EIF and submitted to the Isle of Man Financial Supervision Commission by 1<sup>st</sup> May 2008**

**To the Isle of Man Financial Supervision Commission**

Name of Fund \_\_\_\_\_

Type of continuing EIF which the fund will become:                      Qualifying type/ Specialist Type

11. We confirm that the Offering Document dated \_\_\_\_\_ for the above fund complies with the requirements of article 4 of the Financial Supervision (Experienced Investor Fund) (Exemption) Order 2000 ("the Order") and contains all material information to enable an informed investment decision to be made by prospective investors. We jointly and severally accept responsibility for the Offering Document accordingly.
12. We confirm that the offering document and relevant constitutional documents of the fund shall comply in all respects with the requirements of the requirements of the Order applicable to qualifying type experienced investor funds or specialist type experienced investor funds, as appropriate, by 1<sup>st</sup> November 2008. We jointly and severally accept responsibility for ensuring that necessary changes are made to the Offering Document accordingly.
13. We acknowledge that the requirements referred to in paragraph 2 are continuing requirements and that the Offering Document is required to be amended in a timely manner to reflect any material changes to the fund or its circumstances.
14. We acknowledge that it is the responsibility of the governing body of the fund to ensure that the fund is and continues to be managed and operated in accordance with the fund's constitutional documents and offering document;
15. We confirm that the current investors in the fund are experienced investors;
16. We acknowledge that it is the responsibility of the governing body of the fund to ensure that that the fund will only be promoted to qualifying investors or specialist investors, as appropriate;
7. We confirm that each person named in the offering document and referred to therein as being responsible for a function in relation to the fund has consented to the inclusion of its name and to the description of its function in relation to the fund in the form and context in which they appear.

Signed	Date	Signed	Date
Name		Name	
Position		Position	
Signed	Date	Signed	Date
Name		Name	
Position		Position	

**Please continue on a separate sheet as necessary**

**SCHEDULE 3**

**Part A**

**Responsibility statement to be signed by each member of the governing body of a continuing EIF**

**To the Isle of Man Financial Supervision Commission**

Name of Fund \_\_\_\_\_

Type of continuing EIF: \_\_\_\_\_ Qualifying type/ Specialist Type

1. We confirm that the Offering Document dated \_\_\_\_\_ for the above fund complies with the requirements of the Financial Supervision (Experienced Investor Fund) (Exemption) Order 2000 and accurately sets out all material information to enable an informed investment decision to be made by prospective investors. We jointly and severally accept responsibility for the Offering Document accordingly.
2. We acknowledge that the requirements referred to in paragraph 1 are continuing requirements and that the Offering Document is required to be amended in a timely manner to reflect any material changes to the fund or its circumstances.
3. We acknowledge that it is the responsibility of the governing body of the fund to ensure that the fund is and continues to be managed and operated in accordance with the fund’s constitutional documents and offering document.
4. We confirm that each person named in the offering document and referred to therein as being responsible for a function in relation to the fund has consented to the inclusion of its name and to the description of its function in relation to the fund in the form and context in which they appear.
5. We acknowledge that it is the responsibility of the governing body of the fund to ensure that the fund will only be promoted to qualifying or specialist investors, as appropriate.

\_\_\_\_\_  
Signed \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Governing Body

\_\_\_\_\_  
Signed \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Governing Body

\_\_\_\_\_  
Signed \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Governing Body

\_\_\_\_\_  
Signed \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Governing Body

**Please continue on a separate sheet as necessary**

**Part B**

**Continuing EIF Fund Notification/Alteration Form**  
to be submitted to the Commission within 10 working days of alteration\*

**Date** \_\_\_\_\_ Type of Fund Type: Qualifying Type/Specialist Type  
(of change)

Full name of fund \_\_\_\_\_

*The name of the fund must not be misleading or undesirable*

**\*\* After first notification, please indicate clearly changes from previous version**

<b>A</b>	Standing Information				
<b>1</b>	<p><b>Legal structure of the Fund (<i>delete as appropriate</i>)</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; vertical-align: top;"> <p><i>i) Company</i></p> <p>Company number _____</p> <p>Registered office _____</p> <p>_____</p> <p>_____</p> </td> <td style="width: 33%; vertical-align: top;"> <p><b>ii) Trust</b></p> </td> <td style="width: 33%; vertical-align: top;"> <p><b>iii) Limited Partnership</b></p> </td> </tr> </table>		<p><i>i) Company</i></p> <p>Company number _____</p> <p>Registered office _____</p> <p>_____</p> <p>_____</p>	<p><b>ii) Trust</b></p>	<p><b>iii) Limited Partnership</b></p>
<p><i>i) Company</i></p> <p>Company number _____</p> <p>Registered office _____</p> <p>_____</p> <p>_____</p>	<p><b>ii) Trust</b></p>	<p><b>iii) Limited Partnership</b></p>			
<b>2</b>	<b><u>Membership of the Governing Body of the Fund</u></b>				
	<p><b>i) Name</b> _____</p> <p>Address _____</p> <p>_____</p> <p>_____</p> <p>Date of Birth _____</p> <p>Is this person an independent non executive member? <i>Yes/No</i></p> <p>Relevant qualifications _____</p> <p>_____</p>	<p><b>ii) Name</b> _____</p> <p>Address _____</p> <p>_____</p> <p>_____</p> <p>Date of Birth _____</p> <p>Is this person an independent non executive member? <i>Yes/No</i></p> <p>Relevant qualifications _____</p> <p>_____</p>			
	<p><b>iii) Name</b> _____</p> <p>Address _____</p> <p>_____</p> <p>_____</p> <p>Date of Birth _____</p> <p>Is this person an independent non executive member? <i>Yes/No</i></p> <p>Relevant qualifications _____</p> <p>_____</p>	<p><b>iv) Name</b> _____</p> <p>Address _____</p> <p>_____</p> <p>_____</p> <p>Date of Birth _____</p> <p>Is this person an independent non executive member? <i>Yes/No</i></p> <p>Relevant qualifications _____</p> <p>_____</p>			



3	<p style="text-align: center;"><b><u>Manager / administrator of the Fund</u></b></p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> Manager/Administrator  Name _____  Address _____  _____  _____  Licence Category _____ </td> <td style="width: 50%; vertical-align: top;"> <i>If an exempt manager appointed details of fund administrator</i>  Name _____  Address _____  _____  _____  Licence Category _____ </td> </tr> </table>	Manager/Administrator Name _____ Address _____ _____ _____ Licence Category _____	<i>If an exempt manager appointed details of fund administrator</i> Name _____ Address _____ _____ _____ Licence Category _____	
Manager/Administrator Name _____ Address _____ _____ _____ Licence Category _____	<i>If an exempt manager appointed details of fund administrator</i> Name _____ Address _____ _____ _____ Licence Category _____			
4	<p style="text-align: center;"><b><u>Custody arrangements</u></b></p> <p style="text-align: center;"><i>A description of the Custody arrangements for the fund including the name and address of parties involved in the custody arrangements.</i></p> _____ _____ _____ Name _____ Regulated by _____ Address _____ Licence Category _____ _____ Reference no. _____ _____			
5	<p style="text-align: center;"><b><u>Asset Management Arrangements</u></b></p> <p style="text-align: center;"><i>A description of the asset management/advisory arrangements for the fund including the name(s) and address(es) of the parties involved in the arrangements and the name of regulator and licence category/reference number of the regulated entity involved.</i></p> _____ _____ _____ Name _____ Regulated by _____ Address _____ Licence Category _____ _____ Reference no. _____			
6	<p style="text-align: center;"><b><u>Promoter/Sponsor</u></b></p> Name _____ Address _____ _____ Regulated by _____ Licence Category _____ Reference no. _____			
7	<p style="text-align: center;"><b><u>Qualifying Auditor</u></b></p> Name _____ Address _____ _____ _____	Accountancy Body of which the qualifying auditor is a member or a member firm _____ _____		

<b>8</b>	<b>Conflicts of Interest -</b> Please attach details of any interrelationships between the parties in 1 to 7 above which could result in perceived or actual conflicts of interest.		
<b>B</b>	<i>Offering Document and Application Form</i>		
	<b>Does the Offering Document contain:</b>		
<b>9</b>	A statement as required by Schedule 6 paragraph 1 of the Order?	<b>YES/NO*</b>	
<b>10</b>	A provision as required by Schedule 6 paragraph 2 of the Order?	<b>YES/NO*</b>	
<b>11</b>	A definition of Qualifying/ Specialist Investor as required by Schedule 6 paragraph 3 of the Order?	<b>YES/NO*</b>	
<b>12</b>	A provision as required by Schedule 6 paragraph 4 of the Order?	<b>YES/NO*</b>	
<b>13</b>	A description of the arrangements for the management and custody of the assets of the fund, as required by Schedule 6 paragraph 5 of the Order?	<b>YES/NO*</b>	
<b>14</b>	A risk warning as required by Schedule 6 paragraph 6 of the Order?	<b>YES/NO*</b>	
<b>15</b>	Disclosure that the fund will have audited annual financial statements which are issued to investors within six months from the end of each financial period, or in line with the offer document, if earlier, as required by Schedule 6 paragraph 7 of the Order?	<b>YES/NO*</b>	
	<b>Does the Application Form contain:</b>		
<b>16</b>	Certifications in accordance with Schedule 7 of the Order?	<b>YES/NO*</b>	
<b>C</b>	<i>Other information</i>		
<b>17</b>	Minimum subscription level		
<b>18</b>	Minimum fund NAV threshold for launch (not applicable in case of updated information)		
<b>19</b>	Frequency of dealing days		
<b>20</b>	Frequency of valuations ( <i>There is an expectation that fund valuations should normally take place at least quarterly</i> )		
<b>21</b>	Can investors redeem their holdings prior to any material changes (to their rights or to fees, etc) being implemented?	<b>YES/NO*</b>	
<b>22</b>	Please attach details of - <ul style="list-style-type: none"> <li>• the fund's Investment Objective and Policy</li> <li>• the proposed types of Investments* to be made by the Fund</li> <li>• any Investment Restrictions/Parameters</li> <li>• permitted level of borrowing/gearing and</li> <li>• level of fees levied on the fund</li> </ul> <i>* e.g. Equity, debt, money market, derivatives/hedge, fund of funds, feeder fund, property, TLP/TEP, emerging markets?</i>		
<b>23</b>	Will assets be held in subsidiaries? (If yes attach brief details of the structure this will take.)	<b>YES/NO*</b>	
<b>24</b>	Distribution channels (type of IFA, direct placement, etc)  _____  _____  _____		
<b>25</b>	Is the fund listed/ intended to be listed on a stock exchange?	<b>YES/NO*</b>	

	If yes please give details <hr/> <hr/>		
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*If the answer to questions 9-16, 21, 23 or 25 is no please provide further details.*

*Certification*

**This form shall be signed by the fund's manager/ administrator.**

We the undersigned confirm the accuracy of the statements in this notification.

\_\_\_\_\_  
Signed \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Capacity

\_\_\_\_\_  
Company

\_\_\_\_\_  
Signed \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Capacity

\_\_\_\_\_  
Company

**SCHEDULE 4**

**Form of Annual Compliance Declaration to be submitted to the Commission within  
6 month's of the fund's financial year end**

**To the Isle of Man Financial Supervision Commission**

Name of Fund \_\_\_\_\_

For the period: \_\_\_\_\_ To: \_\_\_\_\_

*The period covered by this statement must correspond with that of the fund's financial year.*

**Part 1 – Governing Body Declaration\*** *(to be completed for all continuing EIFs)*

We confirm that:

7. the Fund has at all times during the period covered by this declaration complied with the requirements of the Act and the Order;
8. the Fund has at all times during the period covered by this declaration been managed and operated in accordance with the Fund's constitutional documents and offering document; and
9. the Fund's Offering Document has at all times during the period covered by this declaration accurately set out all material information to enable an informed investment decision to be made by investors.

Any areas of non-compliance, and any other information that you consider should be brought to the Commission's attention in relation to the operation of the Fund, should be detailed on a separate sheet.

Signed	Date	Signed	Date
Name		Name	
Position		Position	
Signed	Date	Signed	Date
Name		Name	
Position		Position	

*\* To be signed by every member of the governing body of the fund*

*Please continue on a separate sheet as necessary*

**Part 2 – Manager Declaration** *(to be completed for qualifying type experienced investor funds only)*

We confirm that:

- 4. we are not aware of any matters that lead us to believe that the Fund has not, during the period covered by this declaration, complied with the requirements of the Act and the the Financial Supervision (Experienced Investor Fund) (Exemption) Order 1999;
- 5. at all times during the period covered by this declaration, the Fund has been managed and operated in accordance with the fund’s constitutional documents and offering document; and
- 6. we are not aware of any matters that lead us to believe that at any time during the period covered by this declaration the Fund’s Offering Document did not accurately set out all material information to enable an informed investment decision to be made by investors.

Any areas of non-compliance, and any other information that you consider should be brought to the Commission’s attention in relation to the operation of the Fund, should be detailed on a separate sheet.

_____	_____	_____	_____
Signed	Date	Signed	Date
_____	_____	_____	_____
Name		Name	
_____	_____	_____	_____
Manager		Manager	

## SCHEDULE 5

### Statistical Information to be supplied to the Commission within 10 working days of the end of each calendar quarter

23. Name of Scheme:
24. Type of Scheme:
25. Domicile of Scheme:
26. Asset Category of Scheme (Please delete as appropriate from the list below):
  - Securities Scheme,
  - Money Market Fund,
  - Fund of Funds,
  - Feeder Fund,
  - Umbrella Fund (please list asset categories for the sub-funds),
  - Other. If "other" please specify:
27. Legal constitution of Scheme (e.g. OEIC, Unit Trust):
28. Total Assets of Scheme (before deducting liabilities) (\$'000):
29. Net Asset Value of Scheme (\$'000):
30. Total value of subscriptions (\$'000) for the quarter:
31. Total value of redemptions (\$'000) for the quarter:
32. Number of unit holders:
33. Approximate % distribution of unit holders (IOM/UK/Other EC/Rest of the World):

*\* For the avoidance of doubt, the submission of statistical information in relation to a fund in accordance with this notification shall not operate to discharge a manager/ administrator from its responsibilities under this Order and, to the extent that there has been any material alteration to the constitutional documents and/or offering document of the fund within the meaning of article 20(e) or 24(e) respectively a notification in the form set out at Schedule 2 Part B must also be submitted.*

## SCHEDULE 6

### **A Specific matters to be contained in the Offering Document of a continuing EIF as required in article 12 of this Order**

1. A statement to the effect that the fund shall only accept as investors in the fund investors who are;

(a) qualifying investors if the fund is a qualifying type experienced investor fund;  
or

(b) specialist investors if the fund is a specialist type experienced investor fund.

2. A statement to the effect that, in relation to a:

(a) qualifying type EIF, the fund shall only accept an initial investment in a specified minimum subscription amount, being an amount appropriate to the fund which is determined jointly by the governing body of the fund and the manager.

(b) specialist type EIF, the fund shall only accept an initial investment in a specified minimum amount, being not less than US\$100,000.

3. The definition of a qualifying investor or specialist investor, as appropriate, as set out in Schedule 1 of this Order shall be set out in a prominent position.

4. A provision to the effect that no application to invest in the fund shall be accepted, and no such subscription for, or transfer of, an interest in the fund shall be effected, unless and until:

(1) In relation to a qualifying type experienced investor fund:

(a) the investor has signed the certifications required by Schedule 7A Parts 1 and 2, as required;

(b) where an investor is a qualifying investor by virtue of Schedule 1 paragraph (h), the person's regulated financial adviser has signed a statement as stated in Schedule 6 Part 3.

(2) In relation to a specialist type experienced investor fund the investor has signed the certifications required by Schedule 7B Parts 1 and 2, as required.

5. A description of the arrangements for the management and custody of the assets of the fund.

6. A risk warning in a prominent position in the following terms –

"[This fund] has been established in the Isle of Man as a qualifying/specialist\* type experienced investor fund and, as such, is not subject to any form of authorisation or approval in the Isle of Man.

Investors are not protected by any statutory compensation arrangements in the event of the fund's failure and the Isle of Man Financial Supervision Commission does not vouch for the financial soundness of the fund or for the correctness of any statements made or opinions expressed with regard to it.



The fund is not suitable for those who are not "qualifying investors"/"specialist investors"\* as defined in the Financial Supervision (Experienced Investor Fund) (Exemption) Order 1999.

Requirements which may be deemed necessary for the protection of retail or non-qualifying/specialist\* investors, do not apply to qualifying/specialist\* type experienced investor funds. By signing the declaration at [ ] you are expressly agreeing that you fall within the definition of a "qualifying investor"/"specialist investor"\* and accept the reduced requirements accordingly.

You are wholly responsible for ensuring that all aspects of [this fund] are acceptable to you. Investment in qualifying/specialist\* type experienced investor funds may involve special risks that could lead to a loss of all or a substantial portion of such 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].

If you are investing on behalf of another person, the Isle of Man Financial Supervision Commission expects you to be satisfied that the person/persons on whose behalf you are investing, or whose interest is linked to the investment in the qualifying/\*specialist investment fund (as the case may be), is a qualifying investor/\*specialist investor who understands the risks associated with this type of investment.

If you are a life assurance company investing assets comprised within your long-term business fund, the Isle of Man Financial Supervision Commission expects that relevant policyholders have been given the opportunity to read the offering document for this fund and as such to have information about the risks associated with this type of investment. "

7. A statement to the effect that the fund is required to have audited annual financial statements which are to be issued to investors within six months from the end of each financial period of the fund, or within the timescales prescribed the offering document (if earlier), as the case may be.

## SCHEDULE 7

### **A Certifications to be contained in the Application Form of a qualifying type experienced investor fund as required in article 13 of this Order**

**Part 1 Certification** – This certification is to be completed by all applicants.

“I/we confirm that:

I/we am/are a qualifying investor as defined on page [ ] of the offering document of [name of qualifying type experienced investor fund] dated [ ]; and

I/we am/are sufficiently experienced to understand the features and risks attendant to investing in an unauthorised and unapproved fund of this type; and

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

I/we personally accept all the risks associated with this investment and particularly that my/our investment in the [name of qualifying type experienced investor fund] involves risks that could result in a loss of a significant proportion or all of the sum invested; and

I/we further confirm that, where appropriate, I/we have taken independent advice on the suitability of this investment within my/our overall investment portfolio.

[Signed ] [Dated]”.

**Part 2 Certification** – The certification at paragraph (1) is to be completed by any investor who is either investing on behalf of another person and the certification at paragraph (2) is to be completed by any investor who is a life assurance company investing assets comprised within its long term business fund (as appropriate).

(1) “I/we confirm that I/we am/are investing in the qualifying investment fund on behalf of another person/other persons and that I/we have in my/our possession (a) certification(s) signed by such person/persons to show that each such person/persons is a qualifying investor.

[Signed ] [Dated]”.

(2) “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 that:

(i) the policyholder has the opportunity to read the offering documents for relevant funds, where they wish to do so, and as such has information about the high levels of risk attached to a fund which is not intended for retail sale to private investors (such as qualifying type experienced investor or their equivalent under the laws of any other jurisdiction); and

- (ii) the policyholder, where necessary, meets the minimum criteria of a class of investor, such as a qualifying investor.
- (b) we are responsible for ensuring that policyholder declarations are obtained and confirm no investment in this type of fund is made without a client declaration being obtained from relevant policyholders.

[Signed ] [Dated]”.

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

“I confirm that:

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

## **B Certifications to be contained in the Application Form of a Specialist Type Experienced Investor Fund as required in article 13 of this Order**

**Part 1 Certification** - This certification is to be completed by all applicants.

“I/we confirm that:

I/we am/are a specialist investor as defined on page [ ] of the offering document of [name of specialist type experienced investor fund] dated [ ]; and

I/we am/are sufficiently experienced to understand the features and risks attendant to investing in an unauthorised and unapproved fund of this type; and

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

I/we personally accept all the risks associated with this investment and particularly that my/our investment in the [name of specialist type experienced investor fund] involves risks that could result in a loss of a significant proportion or all of the sum invested; and

I/we further confirm that, where appropriate, I/we have taken independent advice on the suitability of this investment within my/our overall investment portfolio.

[Signed ] [Dated]”.

**Part 2 Certification** - The certification at paragraph (1) is to be completed by any investor who is either investing on behalf of another person and the certification at paragraph (2) is to be completed by any investor who is a life assurance company investing assets comprised within its long term business fund (as appropriate).

- (1) “I/we confirm that I/we am/are investing in the specialist type experienced investor fund on behalf of another person/ other persons and I/we have in my/our possession certification(s) signed by such person/persons certifications to show that -
- (a) each such person/persons is a specialist investor and understands the risks associated with this type of investment; and
  - (b) each such person/persons is investing an initial minimum amount of at least US\$100,000.

[Signed ] [Dated]”.

- (2) “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 that:
    - (i) the policyholder has the opportunity to read the offering documents for relevant funds, where they wish to do so, and as such has information about the high levels of risk attached to a fund which is not intended for retail sale to private investors (such as specialist type experienced investor funds or their equivalent under the laws of any other jurisdiction); and
    - (ii) the policyholder, where necessary, meets the minimum criteria of a class of investor, such as a specialist investor.
  - (b) we are responsible for ensuring that policyholder declarations are obtained and confirm no investment in this type of fund is made without a client declaration being obtained from relevant policyholders.
  - (c) when making an investment in a fund of this type, we ensure that the associated interest of each relevant policyholder is for a value of at least US\$100,000.

[Signed ] [Dated]”.

Made this

Treasury Minister

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**Explanatory Note**  
**(This note is not part of the order)**

This Order amends the Financial Supervision (Experienced Investor Fund) (Exemption) Order 1999 by creating two new subtypes of experienced investor fund, the qualifying type experienced investor fund and the specialist type experienced investor fund, through which existing experienced investor funds may continue. The Order defines a qualifying investor and a specialist investor for the purposes of the Order and requires certain disclosures to be made in the scheme's documentation.