



## **Guidance Note - Promotion of Full International Schemes (FIS), Specialist Funds (SFs), Qualifying Funds (QFs), Experienced Investor Funds (EIFs) and Professional Investor Funds (PIFs) (Together “affected schemes”).**

**January 2017**

### **Legislation**

Promotion of affected schemes on the Isle of Man, as with other unregulated funds, is subject to the Collective Investment Schemes (Promotion of Schemes other than Authorised and Recognised schemes) (Exemption) Regulations 2010.

The promotion of affected schemes in other jurisdictions must be in accordance with the relevant host country rules and regulations.

In the Collective Investment Schemes Act 2008, Part 2 “Establishment and Promotion” section 3 covers restriction on promotion. The relevant excerpt is as follows:

“(1) Subject to subsections (2) and (3) a person must not —

- a) issue or cause to be issued in the Island any advertisement inviting persons to become or offer to become participants in a scheme or containing information calculated to lead directly or indirectly to persons becoming or offering to become participants in a scheme; or
- b) advise or procure any person in the Island to become or offer to become a participant in a scheme, unless the scheme is an authorised scheme or a recognised scheme.

(2) Subsection (1) does not apply if the advertisement is issued to or the person mentioned in paragraph (b) of that subsection is —

- a) a licenceholder within the meaning of section 7 of the *Financial Services Act 2008* whose licence permits the licenceholder to advise or procure any person in the Island to become or offer to become a participant in a scheme of the same class as the scheme to which the advertisement refers or in respect of which the advice or procurement under subsection (1) is given;
- b) an authorised insurer within the meaning of section 8 of the *Insurance Act 2008*; or
- c) a person whose ordinary business involves the acquisition and disposal of property of the same kind as the property, or a substantial part of the property, to which the scheme relates.

(3) Regulations may exempt any scheme or class of scheme or any person or class of persons from the provisions of subsection (1).

(4) A person must not issue an advertisement in relation to a scheme which is false or misleading in a material particular.

(5) An advertisement or other information issued outside the Island in relation to a scheme is to be treated as issued in the Island if —

- a) it is directed to persons in the Island; or
- b) it is made available to them otherwise than in —
  - (i) a publication published and circulating principally outside the Island; or
  - (ii) a sound, television, world wide web or internet broadcast transmitted principally for reception outside the Island.

(6) In subsection (5)(b)(i), “published” includes published by any electronic means, including by way of email or on a website, webpage or internet site or page. “

## Exemptions

The Collective Investment Schemes (Promotion of Schemes other than Authorised and Recognised schemes) (Exemption) Regulations 2010 lists the following exemptions:

- 1) Section 3(1) of the Act does not apply to the promotion of affected schemes if they are promoted subject to regulation 5 and, as the case requires, paragraph (2) of this regulation.
- 2) The exemption from section 3 given under regulation 5 only applies where an advertisement for an affected scheme includes a statement that either —
  - (a) scheme participants are not protected by any statutory compensatory scheme; or
  - (b) scheme participants are protected by a statutory compensation scheme; as appropriate.
- 3) Where a compensation scheme applies under section 2(b), the details of the compensation arrangements must be clearly set out.

## Promotion of an Affected Scheme

- (1) An appropriate licenceholder may promote an affected scheme —
  - a) to any person —
    - (i) who is currently a participant in that scheme;
    - (ii) who is currently a participant in a scheme whose assets will be absorbed or taken over by that scheme; or
    - (iii) as an alternative offer to a cash settlement being made for the units held by that person in a scheme which is to be liquidated;
  - (b) to any person who holds a licence under the Financial Services Act 2008 or the Insurance Act 2008;
  - (c) to a person who is not a retail investor;
  - (d) to an individual who is a client of the licenceholder and for whom the licenceholder (after having sought information about his circumstances and investment objectives) believes that investment in the scheme is suitable; or,
  - (e) to a body corporate who is a client of the licenceholder.

- (2) An overseas person will not be regarded as having promoted an affected scheme to a person in the Island if the promotion —
- (a) resulted from a direct approach by, or on behalf of, the person in the Island to the overseas person; and
  - (b) was not in any way solicited by the overseas person.

All Full International Schemes, SF's, QF's or EIF's wherever they are incorporated, must have an offering document which contains all material information which at the date of the offering document is within the knowledge of the licenceholder or which that person would have obtained by making reasonable enquiries which would be relevant for the purpose of making an informed judgement about the merits of participating in the fund.

Full International Schemes, SF's, QF's or EIFs which are Isle of Man incorporated open-ended investment companies are exempted from the requirement to produce a prospectus under Isle of Man Companies Act 1931 by virtue of the Collective Investment Schemes (Prospectus) (Exemption) Regulations 2010.

*Status of Guidance: The Isle of Man Financial Services Authority issues guidance for various purposes, including to illustrate best practice, to assist licenceholders to comply with legislation and to provide examples or illustrations. Guidance is, by its nature, not law, however it is persuasive. Where a person follows guidance this would tend to indicate compliance with the legislative provisions, and vice versa.*