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Collective Investment Schemes Act 2008

COLLECTIVE INVESTMENT SCHEMES (DEFINITION) ORDER 2017

Approved by Tynwald: 17 October 2017

Coming into Operation: 1 November 2017

As amended by SD 2019/0097¹

The Isle of Man Financial Services Authority, after consulting in accordance with section 24(13) of the Collective Investment Schemes Act 2008, makes the following Order under section 1(5) of that Act.

1 Title

This Order is the Collective Investment Schemes (Definition) Order 2017.

2 Commencement

If approved by Tynwald, this Order comes into operation on 1 November 2017.

3 Interpretation

In this Order —

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

“**approved bank**” means —

- (a) a person, in respect of which a financial services licence issued under the Financial Services Act 2008 is in force, which permits the carrying on of a regulated activity falling within Class 1(1) or 1(2); and
- (b) any person who is authorised under the law of a member state to carry on a business which is a banking business for the purposes of that member state's law; or
- (c) a firm authorised to carry on a banking or deposit-taking business under the law of any other country or territory which is acceptable to the Authority;

¹ SD 2019/0097 in operation from 31.1.2020 - 'exit day' is defined in the European Union and Trade Act 2019.

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

“cash” includes foreign currency;

“certificates representing securities” has the meaning given in Part 1 of Schedule 2 to the Regulated Activities Order 2011²;

“close relative”, in relation to an individual, means a child, step-child, parent, step-parent, brother, sister, step-brother, step-sister or spouse of that individual;

“closed-ended investment company” means a body corporate —

- (a) which seeks to raise capital from participants for the primary purpose of investing that capital in accordance with a defined investment policy; and
- (b) in which, under the documents constituting the scheme, the rights of participants, represented by shares or securities of that body corporate, are not redeemable out of funds provided by the closed-ended investment company at the election of the holders of the shares or securities;
- (c) but, for the avoidance of doubt, and unless the Authority provides prior consent, an open-ended investment company shall remain open-ended for the purposes of this Order, despite subsequently becoming closed-ended;

“deposit” has the meaning given in Part 1 of Schedule 2 to the Regulated Activities Order 2011;

“functionary” includes the governing body, a member of the governing body and a person appointed to provide services to a collective investment scheme, including (without limitation) a manager, administrator, fiduciary custodian, trustee, custodian, asset manager, investment adviser or promoter;

“governing body” has the same meaning as in the Act but also includes the directors of a scheme which is a closed-ended investment company;

“Government and other public securities” means investments within the meaning given in Part 1 of Schedule 2 to the Regulated Activities Order 2011, and which are issued by or on behalf of —

- (a) the Government of the Island, of the United Kingdom, or of a member state;
- (b) a local authority in the Island, in the United Kingdom, or in any member state;
- (c) the Government of any country or territory; or
- (d) an international organisation the members of which include a member state,

²SD 2011/0884 as amended by SD 2013/0373 and SD 2016/0188

and includes investments which would fall within the meaning given in Part 1 of Schedule 2 to the Regulated Activities Order 2011 if that Part extended to investments guaranteed by the Government of the Island;

“near cash” means money, deposits or investments which fall within any of the following —

- (a) money deposited with an approved bank which is in:
 - (i) a current account; or
 - (ii) a deposit account, if the money can be withdrawn immediately and without payment of a penalty exceeding 7 days’ interest calculated at ordinary commercial rates;
- (b) certificates of deposit issued by an approved bank if immediately redeemable at the option of the holder;
- (c) Government and other public securities, if redeemable at the option of the holder or bound to be redeemed within 2 years;
- (d) a bill of exchange issued by any Government or body which is the issuer of a Government and other public security;
- (e) deposits with a local authority of a kind which fall within paragraph 9 of Part II of Schedule 1 to the Trustee Investments Act 1961³ of Parliament, and equivalent deposits with any local authority in a member state, if the money can be withdrawn immediately and without payment of a penalty as described at (a) above; and
- (f) investments of a kind described in paragraphs 1 and 2 of Schedule 1 to the Trustee Investments Act 1961 of Parliament, and equivalent investments which are issued or guaranteed by any Government of a country or territory;

“member state” means a member state of the European Union or of the European Economic Area;

“securities” has the meaning given in Part 1 of Schedule 2 to the Regulated Activities Order 2011;

“units” has the same meaning as in the Act and also includes shares or securities in a closed-ended investment company; and

“US\$” means United States Dollars and its equivalent in any other currency, and a figure expressed in US\$ includes its equivalent value in that other currency.

³1961 c.62

4 Characteristics of arrangements which do not amount to a collective investment scheme under section 1 of the Act

Arrangements do not amount to a collective investment scheme if —

- (a) the property to which the arrangements relate (other than cash awaiting investment) consists of shares, debentures, government securities, instruments, certificates representing securities, long-term insurance or units in relation to authorised or recognised collective investment schemes (as those terms are defined in Part 1 of Schedule 2 to the Regulated Activities Order 2011);
- (b) each participant is the owner of a part of that property and entitled to withdraw it at any time; and
- (c) the arrangements do not have the characteristics mentioned in section 1(3)(a) of the Act and have those mentioned in section 1(3)(b) only because the parts of the property belonging to different participants are not bought and sold separately except where a person becomes or ceases to be a participant.

5 Arrangements which do not amount to a collective investment scheme under section 1 of the Act

(1) The following are not collective investment schemes —

- (a) arrangements operated by a person otherwise than by way of business;
- (b) arrangements where each of the participants carries on a business (other than investment business as that term is defined in Class 2 of Schedule 1 to the Regulated Activities Order 2011) and enters into the arrangements for commercial purposes related to that business;
- (c) arrangements where each of the participants is a body corporate in the same group as the governing body, manager or administrator;
- (d) arrangements where —
 - (i) each of the participants is a bona fide employee or former employee (or the wife, husband, widow, widower, child or step-child under the age of eighteen of such an employee or former employee) of a body corporate or of another body corporate in the same group as that body corporate; and
 - (ii) the property to which the arrangements relate consists of cash or near cash or of securities in or of a member of that group;

- (e) arrangements where the entire contribution of each participant is a deposit or a sum —
 - (i) paid by a deposit taker;
 - (ii) paid by a person in the course of carrying on a business consisting wholly or mainly of lending money;
 - (iii) paid by one company to another at a time when the same person would be treated as the controller of both of them if, in the definition of controller in section 26 of the Act, the percentage referred to in paragraph (d) of that definition was 50 per cent; or
 - (iv) which is paid by a person who, at the time when it is paid, is the spouse or a close relative of the person receiving it or who is, or is the spouse or a close relative of, a director or controller of that person;
- (f) franchise arrangements, that is to say, arrangements under which a person earns profits or income by exploiting a right conferred by the arrangements to use a trade name or design or other intellectual property or the good-will attached to it;
- (g) arrangements the predominant purpose of which is to enable persons participating in them to share in the use or enjoyment of a particular property or to make its use or enjoyment available gratuitously to other persons;
- (h) arrangements under which the rights or interests of the participants are certificates representing securities ;
- (i) arrangements the purpose of which is the provision of clearing services and which are operated by an authorised person, a recognised clearing house or a recognised investment exchange;
- (j) contracts of insurance;
- (k) occupational pension schemes;
- (l) a limited partnership formed under the law of the Island whose interests are admitted to the Official List of the UK Listing Authority, and in this paragraph “interests” means —
 - (i) limited partnership interests of an irredeemable nature however termed; and
 - (ii) depository receipts or similar certificates representing such interests; or
- (m) bodies incorporated under the law of the Island, or of, or of any part of, the United Kingdom, relating to building societies, credit unions or industrial and provident societies or registered under any such law relating to friendly societies.

- (2) But, without prejudice to the generality of (1), a body corporate will be a collective investment scheme under section 1 of the Act if it meets the provisions of section 1 of the Act, and also meets the provisions of (a), (b) or (c) —
- (a) it is an open-ended investment company;
 - (b) it is a closed-ended investment company and —
 - (i) its units are not listed or admitted to trading on a securities market supervised for the purposes of market abuse by an Ordinary Member of the International Organization of Securities Commissions; and
 - (ii) its units are promoted by, or on behalf of, its board in such a way that it is intended to be available for participation by the public or any section of it; or
 - (c) not without the prior consent of the Authority, it is a closed-ended investment company that does not meet the description in (2)(b) but it has nevertheless elected, by a majority of participants constituting at least 75% of the total number of votes cast, to be a collective investment scheme in the documents constituting the company.
- (3) For the purposes of (2)(b)(ii) and (5)(a), if —
- (a) the documents constituting the company prohibit offers to the public or any section of it and the number of participants is limited to a maximum of 49; or
 - (b) there is a minimum initial investment level for its units of at least US\$ 100,000 for each participant,
- a closed-ended investment company's units are not intended to become available for participation by the public or any section of it.
- (4) For the purposes of (2)(b)(ii) and (5)(a), and without prejudice to the generality, the following shall not be considered to be the public or any section of it —
- (a) a person, body corporate, partnership, trust or other unincorporated association whose ordinary business or professional activity includes acquiring, underwriting, managing, holding or disposing of investments, whether as principal or agent, or giving advice about investments;
 - (b) any director or partner of or consultant to a person referred to in (a);
 - (c) a functionary, or an associate of a functionary, to the closed-ended investment company;
 - (d) an employee, director or shareholder of, or consultant to a person in (c), who is acquiring the investment as part of his

- remuneration, or an incentive arrangement or by way of co-investment;
- (e) a trustee of a family trust settled by or for the benefit of, one or more persons referred to in (c) or (d);
 - (f) a trustee or operator of any employment benefit or executive incentive scheme, or trust established for the benefit of persons referred to in (c) or (d), or their dependents;
 - (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 of at least US\$1,000,000 available for investment;
 - (i) an individual with a net worth, or joint net worth with their spouse, greater than US\$ 1,000,000, excluding their principal place of residence.
- (5) For the avoidance of doubt, and despite (2)(b), a closed-ended investment company established before the coming into operation of this Order (“that date”) shall only be a collective investment scheme if —
- (a) it accepts investments in units from the public or any section of it, or persons who are not existing holders of units in the closed-ended investment company on or after that date; or
 - (b) it elects to become a collective investment scheme under 2(c) on or after that date.

6 Revocation

The Collective Investment Schemes (Definition) Order 2008⁴ is revoked.

MADE 15 SEPTEMBER 2017

KAREN BADGEROW

Chief Executive of the Isle of Man Financial Services Authority

G.F. KARRAN

Member of the Isle of Man Financial Services Authority

⁴SD 462/2008

EXPLANATORY NOTE***(This note is not part of the Order)***

This Order specifies the type of arrangements which do not amount to a collective investment scheme under section 1 of the Collective Investment Schemes Act 2008.