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Regulatory Policy

Licensing Mutual Fund Administrators

1. STATEMENT OF OBJECTIVES

- 1.1. This policy sets out the Cayman Islands Monetary Authority's (the "Authority") criteria on licensing mutual fund administrators pursuant to Sections 11 and 12 of the Mutual Funds Law (2015 Revision) ("MFL").
- 1.2. In order to ensure that the Cayman Islands (the "Islands") retains its reputation as a leading and well-regulated international financial centre, it is imperative that all entities required to be licensed under the regulatory laws are licensed in accordance with a clearly defined licensing criteria. The Authority recognises that high standards of licensing are the necessary foundation for effective regulation and supervision. There is therefore a need for rigorous criteria to be applied when processing all applications for licences.
- 1.3. This policy is consistent with the Authority's statutory objectives as prescribed in the Monetary Authority Law (2016 Revision), including:
 - a) promoting and maintaining a sound financial system in the Islands;
 - b) promoting and enhancing market confidence, consumer protection and the reputation of the Islands as a financial centre;
 - c) using its resources in the most efficient and economical way;
 - d) acting in the best economic interests of the Islands;
 - e) facilitating innovation in financial services business; and
 - f) recognising the international character of financial services and markets and the necessity of maintaining the competitive position of the Islands, from the point of view of both consumers and suppliers of financial services, while conforming to internationally applied standards insofar as they are relevant and appropriate to the circumstances of the Islands.

2. SCOPE OF APPLICATION

- 2.1. The Authority will apply this policy, and the requirements of the MFL as well as the Mutual Fund Administrators Licence (Applications) Regulations 2001 (the "Regulations") in assessing all applicants seeking to carry on mutual fund administration in or from within the Islands.
- 2.2. "Mutual fund administration" and "mutual fund administrator", in respect of a mutual fund, are defined terms in the MFL.
- 2.3. Mutual Fund Administration must not be conducted in or from within the Islands without the Authority's prior approval.

- 2.4. This policy should be read in conjunction with the MFL and the Regulations, the Anti-Money Laundering Regulations (2017 Revision) (the "AML Regulations"), the Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands (the "AML Guidance Notes") and any other relevant law, policy or statement of guidance.

3. LICENCE APPLICATION

- 3.1. Persons seeking to conduct mutual fund administration in or from within the Islands must make an application in writing to the Authority for the grant of a licence pursuant to section 12 of the MFL.
- 3.2. Applicants are strongly encouraged to contact the Authority to schedule a meeting to discuss the prospective application and the Authority's requirements prior to submitting an application, if deemed necessary. At the sole discretion of the Authority, in some cases, an applicant may be required to provide the Authority with a formal legal opinion to support the application on how it meets the requirement for a licence.
- 3.3. The application must be accompanied by such documents and information as set out in the Schedule of the Regulations and any other document/s required by the Authority, along with the prescribed fee.
- 3.4. The typical timeframe for processing an application is six (6) to eight (8) weeks for both Mutual Fund Administrators and Restricted Mutual Fund Administrators (RMFA) Licences, or as outlined in the Regulatory Handbook. The application processing timeframe commences when **all** required documentation, information and the full fee have been received.
- 3.5. The Authority may reject an application if it is of the opinion that granting a licence would not be in the best interest of the public or the interests of the proposed customers or creditors.
- 3.6. In assessing the applicant, the Authority will satisfy itself that the applicant will be able to comply with the requirements of all applicable laws, including the AML Regulations.
- 3.7. As a condition of licensing, the Authority may conduct on-site inspections of the books and records of the applicant in any jurisdiction in which it carries on material activities whether directly or through outsourcing arrangements. The applicant is expected to provide an undertaking to the Authority of its commitment to financing such inspections.

- 3.8. All applicants should familiarise themselves with the relevant Rules, Statements of Guidance, Regulatory Policies and Procedures of the Authority and refer to the Authority's website¹ for a current list.

4. LICENSING CATEGORIES

- 4.1. Licences to conduct mutual fund administration may be granted within two (2) broad categories, that is "Mutual Fund Administrators" and "Restricted Mutual Funds Administrators" licences, which differ mainly as it relates to the number of funds to which fund administration services can be provided.
- 4.2. A Mutual Fund Administrators Licence ("MFAL") authorises the holder of the licence to act or carry on business as a mutual fund administrator in respect of an unlimited number of regulated mutual funds and other investment funds, pursuant to subsection 11(1) of the MFL.
- 4.3. A Restricted Mutual Fund Administrators Licence ("RMFAL") authorises the holder of the licence to act or carry on business as a mutual fund administrator solely in respect of the regulated mutual funds and other investment funds specified from time to time in the licence pursuant to subsection 11(2) of the MFL.
- 4.4. Unless otherwise specified, all criteria outlined in this RPY apply to both categories of licenses. In addition, section 6.4 contains criteria specific to considerations for the grant of a RMFAL.

5. APPLICATION ASSESSMENT CRITERIA

- 5.1. The Authority assesses applications with respect to:
- i) fitness and propriety;
 - ii) ownership and control;
 - iii) financial resources;
 - iv) track record and business plan;
 - v) internal systems, controls and risk management including that related to anti-money laundering and countering the financing of terrorism ("AML/CFT"); and
 - vi) record keeping.
- 5.2. The Authority will consider each application on its own merits and will apply a risk-based approach to its assessment taking into account all relevant factors listed in 5.3 through 5.9 below; and any other factors which are deemed relevant to the application.

5.3. Fit and Proper Criteria and Management

¹ www.cima.ky

- 5.3.1 The Authority will apply the Regulatory Policy and Regulatory Procedure on Fitness and Propriety when determining whether persons are fit and proper.
- 5.3.2 Applicants must demonstrate that they are controlled and managed by a sufficient number of directors and senior managers who are fit and proper and pose no undue risk to the applicant, its shareholders, creditors, the public, the stability of the financial system and the reputation of the Islands.
- 5.3.3 An applicant must demonstrate that its directors, senior management, officers and controllers are competent and have the necessary skills and experience in relevant financial operations commensurate with the intended activities of the mutual fund administrator.
- 5.3.4 An applicant must confirm any record of criminal activities, adverse regulatory judgments or any past actions or conduct, and the related circumstances that may make a director or senior manager unfit to hold such positions within the mutual fund administrator. A decision regarding suitability should be based on the criteria outlined in the *Regulatory Policy – Fitness and Propriety*.²
- 5.3.5 An applicant must demonstrate that its directors will be able to apply independent judgement to the governance of the mutual fund administrator in an informed way, free from any conflicts of interest.
- 5.3.6 An applicant must demonstrate that its directors have collective sound knowledge of the material activities that the mutual fund administrator intends to pursue, and the associated risks.
- 5.3.7 The business of all mutual fund administrators should be conducted by at least two (2) individuals, who have sound fund administration experience. A minimum of two (2) directors are required for applicants that are companies. The Authority will generally require each director to have a minimum of five (5) years of relevant experience at a senior level. Any changes in directors and senior officers must be approved by the Authority.
- 5.3.8 Applicants must demonstrate that their officers will provide a sufficient range of skills and experience to manage the applicant’s affairs in a sound and prudent manner evidenced by the attainment of relevant qualifications or by having sufficient relevant experience for the functions they are charged with performing.

² https://www.cima.ky/upimages/commonfiles/RegulatoryPolicy-FitnessandPropriety-May2016_1515620161.pdf

- 5.3.9 Applicants should be guided by the Authority's Statement of Guidance on Corporate Governance with respect to the management of their affairs.

5.4. **Ownership and Control**

- 5.4.1 The Authority will apply the Regulatory Policy - Criteria for Approving Changes in Ownership and Control when assessing shareholding and control updates/amendments.
- 5.4.2 The legal, managerial and ownership structures of the applicant and its wider group must be transparent and must not hinder effective cross-border and consolidated supervision or the effective implementation of corrective measures in the future.
- 5.4.3 The Authority must be able to identify all intermediate and ultimate owners and, if the applicant's corporate structure is overly complex or lacks transparency, the applicant must adequately explain and justify the rationale for having such a structure. The Authority will assess the information provided and make a determination on suitability. Generally, the Authority will not consider applicants that:
- i) have complex structures that prevent a clear view of their business or the group's business, as applicable;
 - ii) do not allow the Authority to clearly determine the ultimate beneficial owner;
 - iii) have significant parts of the group's operations being conducted in jurisdictions where supervision and regulation are weak; and
 - iv) do not have a clearly identified natural home base for the group.
- 5.4.4 Where the Authority believes that an applicant has an overly complex or a parallel-owned structure, the Authority may require a change in the group structure as a condition to its licence.
- 5.4.5 Applicants must provide a corporate chart showing all entities under common ownership or management, including non-financial entities.
- 5.4.6 Applicants may be required to provide further information on any member of the group, including a non-financial entity.
- 5.4.7 An applicant must ensure that its shareholders fulfil all the requirements prescribed within the Schedule to the Regulations.
- 5.4.8 Applicants must provide a Personal Questionnaire together with the documentation outlined in the Regulatory Procedures on Assessing Fitness and Propriety, on shareholders holding 10% or more of the shares or voting power of the mutual fund administrator and the mutual fund administrator's holding company, if applicable. If there are no

shareholdings or voting power exceeding 10%, applicants must provide the shareholding or voting power of each of the ten (10) largest shareholders, identifying family or related shareholders, where applicable.

- 5.4.9 Where an applicant is to be held by a trust, the trustee must be regulated in a jurisdiction satisfactory to the Authority. Applicants must provide the trust deed to the Authority and must disclose:
- i) the trustee(s);
 - ii) the settlor, the protector and the beneficiaries of the trust; and
 - iii) any person (in relation to the applicant, its administration or ownership) that may influence or have the power to make decisions with respect to the trust.
- 5.4.10 The Authority may require applicants to provide additional information on the legal arrangement of a trust to assess the risks, transparency, know your customer function and the fitness and propriety of the beneficiaries (where appropriate).
- 5.4.11 Applicants must demonstrate that adequate controls will be in place with respect to group shareholders and related entities to avoid undue risks in regard to related party transactions and credit risks.
- 5.4.12 Applicants must demonstrate that proper controls will be in place to prevent the shareholder or persons in senior positions from overriding policies and procedures in a manner that would be prejudicial to investors, creditors or the public interest.
- 5.4.13 The applicant must provide:
- i) a written commitment that there will be an independent audit function; and
 - ii) for those applicants with two (2) or fewer shareholders, details of their succession plan which should aim to minimise disruption to the mutual fund administrator's business operations and any negative impact on the mutual fund administrator's clients. This plan should include, at a minimum, specifics with respect to the:
 - a) death of the shareholder(s); and
 - b) critical illness or incapacity of the shareholder(s).
- 5.4.14 The applicant must demonstrate that the risk management function will be sufficiently independent of the business units whose activities and exposures it reviews.
- 5.4.15 The applicant must demonstrate that all significant management decisions will be made by more than one person ("four eyes" principle) (generally, any such decision that could impact the applicant's ability to meet its financial resource, legal and regulatory requirements as well as impact

investors and creditors negatively). The “four eyes” criterion is to be met on a continual basis and those persons must demonstrate a balance of appropriate qualifications, skills and experience and form or be a part of the overall management team.

5.4.16 The Authority must be satisfied that where “dual hatting” occurs (i.e. where resource constraints may make overlapping responsibilities necessary), these roles will be compatible³ and not weaken checks and balances within the mutual fund administrator.

5.4.17 Where applicable, the Authority may perform checks with regulators in other jurisdictions on the good standing of the applicant, related entities and their principals.

5.5. Financial Resources

5.5.1 The Authority will assess the applicant’s sources of initial capital, its sources of funds, sources of wealth and its financial strength in accordance with the requirements of the MFL, relevant regulations, rules, policies and statements of guidance. To assist with the Authority’s assessment, acceptable documents to be provided, would include but not limited to net worth statements for individuals, audited financial statements for companies or unaudited management accounts to be signed off by a certified accountant.

5.5.2 Applicants for a MFAL are required to prove a net worth⁴ of at least four hundred thousand dollars (\$400,000)⁵. The Authority may waive this requirement giving due consideration to, amongst other things, the financial soundness and capacity of the shareholders to provide capital resources to the licensee, as needed.

5.5.3 There are no prescribed net worth requirements for holders of a RMFAL. As such, the Authority will assess the nature, scale and complexity of an applicant’s business as well as its risk profile to determine the required net worth.

5.5.4 The Authority must be satisfied that the applicant will have, and will continue to have, financial resources (whether actual or contingent) that are adequate for the nature and scale of the business and for its risk profile.

³ For example, the Chief Risk Officer may also have lead responsibility for a particular risk area.

⁴ Calculated as the value of total assets less all outstanding liabilities.

⁵ Or the equivalent in another currency.

- 5.5.5 The Authority will assess the financial strength of the applicant's owner(s) to ensure that the applicant's owner(s) have sufficient financial strength to support the applicant.
- 5.5.6 The Authority may increase its minimum net worth requirement for the applicant depending on the applicant's risk profile and the complexity of its business.

5.6. Track Record and Business Plan

- 5.6.1 In determining competence and capability, the Authority will consider whether the applicant's beneficial owners have a proven track record in running a business.
- 5.6.2 The Authority will require a detailed business plan covering the first five (5) years of projected business activity and which should be reflective of a sound feasible plan. The information should identify assumptions and qualifications accordingly. The business plan should contain details of the reasons for the business to establish an operation in the Islands, the short and long-term objectives and how these will be achieved.
- 5.6.3 As part of meeting the requirements prescribed within the Schedule to the Regulations, the applicant must be able to demonstrate in its business plan, that it has adequate resources, in terms of manpower, systems and expertise, to meet its objectives and should contain details, including, but not limited to:
- i) rationale for establishing a mutual fund administration operation in the Islands
 - ii) background information: history, management team, number of expected employees, corporate structure, location of the mutual fund administrator, names and percentage of the majority shareholder(s);
 - iii) financial plan: a discussion of the decision making criteria used to approve the plan internally; summary description of the business to be conducted, including short and long term objectives and how these will be achieved;
 - iv) five (5) year pro forma financial statements for the business, including statements of financial position (balance sheets), statements of profit and loss and other comprehensive income (income statements), details regarding significant accounting policies, key assumptions and an identification of major asset, liability, income and expense categories;
 - v) explanation of strategy for risk management and internal controls within the business;
 - vi) marketing strategy;
 - vii) investment policy;

- viii) details of its remuneration plan;
- ix) details and statement of adequacy of domestic operational resources, in particular staff qualifications and experience and information systems including disaster recovery and business continuity arrangements;
- x) information about contracts with affiliates;
- xi) information about outsourcing arrangements;
- xii) corporate governance policy and internal controls to be implemented, including reporting arrangements, where applicable.

5.6.4 The Authority must be satisfied with the applicant's proposed strategic and operating plans and must be assured that its system of corporate governance, risk management and internal controls are appropriate to the expected size and complexity of the business.

5.7. Internal Systems, Controls and Risk Management

5.7.1 The applicant must demonstrate that it will have in place a comprehensive risk management process and internal controls.

5.7.2 The Authority must be satisfied that an applicant's proposed policies, procedures, manuals, systems, and internal controls, relating to all areas of the applicant's risk areas are appropriate for the size, nature, and complexity of its operations and comply with good mutual fund administration practices and all applicable laws and requirements, including the MFL, all relevant regulations, rules, policies and statements of guidance.

5.7.3 Applicants should refer to the rules, policies and statements of guidance issued by the Authority on internal controls and various risk management topics that focus on and uphold key prudential standards and relevant risk management practices for mutual fund administrators to follow.⁶

5.7.4 An applicant must obtain and maintain the necessary level of professional indemnity insurance in relation to its business undertakings that pose the risk of loss arising from claims in respect of civil liability. The Authority's Statement of Guidance on Professional Indemnity Insurance outlines the minimum requirements and expectations.

5.7.5 Applicants must provide an overview of the proposed licensee's information technology governance structure and overview of technology systems and platforms to be used, including type of hardware, type of application software and risk assessment of information technology operations.

⁶ Available on the Authority's website <http://www.cima.ky/investment-funds-regulatory-measures>

- 5.7.6 Applicants should demonstrate that a comprehensive business continuity management framework has been developed and implemented that addresses critical areas including technical and human considerations necessary for its ongoing operations. Applicants should refer to the Authority's Statement of Guidance on Business Continuity Management for additional guidance.
- 5.7.7 An applicant's internal controls should demonstrate that proper oversight of any proposed outsourced functions will be in place. Applicants should refer to the Authority's Statement of Guidance on Outsourcing Regulated entities for further details.

AML/ CFT Risk Management

- 5.7.8 The applicant must demonstrate how it will comply with the requirements of the Proceeds of Crime Law as amended, the Anti-Money Laundering Regulations (2017 Revision), and demonstrate adequate policies, procedures, and systems consistent with the AML Guidance Notes.
- 5.7.9 An applicant's Money Laundering Reporting Officer (the "MLRO") and AML Compliance Officer (the "AMLCO") must be natural persons at management level and should be suitably qualified and experienced members of staff.
- 5.7.10 An applicant should also designate a Deputy Money Laundering Reporting Officer ("DMLRO"), who should be a staff member of similar status and experience to the MLRO, who, in the absence of MLRO, shall discharge the MLRO functions.
- 5.7.11 The licensee may delegate the performance of any of these functions to a person or rely on a person for the performance of the functions. Designation or reliance must be done in accordance with the principles set out in the AML Guidance Notes.
- 5.7.12 Delegation of the performance of the MLRO/DMLRO/AMLCO function to a person or reliance on a person for the performance of these functions should presuppose designation of a natural person as MLRO/DMLRO/AMLCO.

5.8. Record Keeping

- 5.8.1 The Authority must be satisfied as to how and where management information is stored and accessed. Such records should be maintained in a manner that promotes retention and appropriate security and should be adequate to satisfy the requirements of the Authority and the relevant regulations and laws. Applicants must also show that the Authority will have reasonable access to records at all reasonable times.

- 5.8.2 Generally, the Authority will expect licensees to maintain books, records, and other appropriate resources in the Islands. The Authority may consider requests to maintain books, records, and other appropriate resources outside the Islands, depending on the nature, scope, risk and complexity of the proposed activities of the applicant as well as the justification provided by the applicant for making a request to maintain such books and records outside the Islands. Applicants should refer to the Authority's Statement of Guidance on the Nature, Accessibility and Retention of Records and any additional guidance issued by the Authority on this point.

6. OTHER CONSIDERATIONS

6.1. Conditions of the Licence

- 6.1.1 The Authority reserves the right to impose conditions on any licence issued under the regulatory laws.

6.2. Financial Statements

- 6.2.1 All mutual fund administrators are required to have their accounts annually signed off by a local auditor in accordance with the Local Audit Sign-Off Policy and file their audited accounts with the Authority within six (6) months of the end of the financial year, pursuant to section 20 of the MFL. Applicants must supply an Auditor's Letter of Consent as confirmation of the engagement of an auditor to perform this function.

6.3. Physical Presence

- 6.3.1 Applicants for a MFAL should have a place which will be its principal office in the Islands and two individuals or a body corporate resident or incorporated in the Islands to be its agent in the Islands.
- 6.3.2 The Authority expects that holders of a MFAL will have sufficient resources, including staff, offices and supporting facilities in the Cayman Islands to perform their obligations and adequately service the obligations of their clients. Where the holder of a MFAL does not have physical presence in the Cayman Islands and instead appoints an agent in the Islands, the agent should have physical presence in the Cayman Islands, including such staff, knowledge, facilities and regulatory approvals as may be required. The appointment of an agent that provides solely corporate secretarial or related services will generally be deemed insufficient.
- 6.3.3 Applicants for a RMFAL must have a registered office in the Islands. Such registered office may not be provided by the holder of a RMFAL.

6.4. Legal Structure

6.4.1 The Companies Law (2016 Revision) restricts the activities that can be undertaken by an Exempted Company within the Cayman Islands and the use of this legal structure by a licensee, although not prohibited by law, may hinder the Authority from effectively supervising such entity. The legal structure of the licensee must enable the Authority's ongoing supervision, which could include the requirement to maintain and have available certain books and records within the Islands, as well as perform certain functions locally, without being in violation of the Companies Law.

6.5. Granting Restricted Mutual Funds Administrators Licences

6.5.1 RMFALs are granted to entities that intend to only administer funds approved by the Authority in line with the Authority's internally established limits.

6.5.2 The holder of an RMFAL is required to seek approval for all entities that it intends to provide administration services for.

6.5.3 The Authority will approve the number of funds that a restricted mutual fund administrator can include in its licence based on a comprehensive review of *inter alia*, the capacity, resource and infrastructural limitations as well as the risk management capabilities of the administrator.

6.5.4 Restricted mutual fund administrator licencees may not act as the registered office for another mutual fund administrator.