CONTINUING OBLIGATIONS FOR CAYMAN ISLANDS REGULATED MUTUAL FUNDS

This guide briefly sets out the ongoing obligations of Cayman Islands open-ended mutual funds registered pursuant to the Mutual Funds Act (as amended) of the Cayman Islands (the **MFA**). In addition to the MFA, regulatory requirements for such funds are also set out in, among others, the Companies Act (as amended) of the Cayman Islands as well as the Directors Registration and Licensing Act (as amended) of the Cayman Islands (the **DRLA**).

ANNUAL LICENCE FEE

A mutual fund registered with the Cayman Islands Monetary Authority (**CIMA**) must pay an annual licence fee to CIMA. The annual fee is approximately US$4,270 for standalone and feeder funds and US$3,050 for master funds. The annual fee is due and payable on or prior to 15 January of each year, failing which, penalties of one twelfth the annual licence fee will be imposed by CIMA each month during which the annual licence fee and any penalties remain unpaid.

ANNUAL FEE PAYABLE TO THE REGISTRAR OF COMPANIES OF THE CAYMAN ISLANDS (THE REGISTRAR)

An exempted company registered as a regulated mutual fund is also required to pay an annual fee to the Registrar. Such annual fee is charged on a sliding scale based on the authorised share capital of a company, currently ranging from US$854 for a company with an authorised share capital of US$50,000 or less, to US$3,132 for a company with a share capital exceeding US$2,000,000. The annual fee payable to the Registrar is due in January of each year. Failure to pay the annual fee and to submit the annual return to the Registrar by 31 March of each year will result in penalties being imposed by the Registrar. It should be noted however that although the Registrar does not begin to impose penalties until 1 April that a company will not be in good standing until such filing and payment is made. Penalties are assessed as follows:

Dates	**Penalties**
Between 1 April to 30 June	33.33 percent of the annual fee
Between 1 July and 30 September	66.67 percent of the annual fee
Between 1 October to 31 December	100 percent of the annual fee

Annual fees are also payable to the Registrar of Exempted Limited Partnerships, Registrar of Limited Liability Companies and the Registrar of Trusts respectively, for exempted limited partnerships, limited liability companies and unit trusts registered as regulated mutual funds.

CHANGES TO OFFERING DOCUMENT FILED WITH CIMA

Any change that materially affects the information in the offering document filed with CIMA or the prescribed details of a master fund which does not have an offering document, must be filed with CIMA within twenty-one (21) days of such change. Master funds are not required to have an offering memorandum.

Material changes which should be filed with CIMA include, but are not limited to, the following:

(a) change in name of the entity (which is first effected with the relevant Registrar who would issue a Certificate of Change of Name). CIMA requires a copy of this certificate;
(b) resignation and appointment of directors (such changes must also be filed with the Registrar within thirty (30) days, failing which, the Registrar will impose penalties);
(c) change of auditors;
(d) change of administrator;
(e) change of investment manager;
(f) change of trustee (for a fund established as a unit trust);
(g) change of anti-money laundering officers;
(h) change in financial year end;
(i) change in registered office (which is also filed with the relevant Registrar) or change in principal office; and
(j) change in the offering terms.

AUDITED FINANCIAL STATEMENTS AND FUND ANNUAL RETURN

A regulated mutual fund is required to have its accounts audited annually by an auditor approved by CIMA and filed together with a Fund Annual Return within six (6) months of the fund's financial year end. Failure to file audited financial statements could result in fines being imposed by CIMA.

Extensions to submit audited financial statements are considered by CIMA on a monthly basis, up to a maximum of three (3) months after the original audit filing deadline. Audit extensions beyond the first month must be accompanied by a letter from the fund's auditors explaining the rationale for the delay. Filing fees are payable to CIMA with respect to such audit extensions.

CORPORATE GOVERNANCE

CIMA expects the oversight, direction and management of a regulated mutual fund to be conducted in a fit and proper manner. Accordingly, CIMA has issued a Statement of Guidance for Regulated Mutual Funds – Corporate Governance which sets out certain key principles on good governance. This Statement of Guidance is not an exhaustive guide and require the operators of regulated mutual funds, who are regarded as the directing will and mind of a fund, to *inter alia*:

- oversee the activities and affairs of the fund; monitor compliance with applicable legal and regulatory requirements; and to suitably identify, disclose, monitor and manage all conflicts of interest;

- meet at least twice a year in person or via telephone or video conference call or more frequently otherwise as necessary and ensure that a full, accurate and clear written record is kept of all meetings;

- exercise independent judgment, always act in the best interests of the fund taking into consideration the interests of the fund's investors as a whole, operate with due skill, care and diligence;

- provide suitable oversight of risk management of the fund and ensure the fund's risks are always appropriately managed and mitigated.

The governance framework of any mutual fund depends on its size, nature and complexity.

ANTI-MONEY LAUNDERING OBLIGATIONS

The anti-money laundering regime of the Cayman Islands includes, *inter alia*, the Proceeds of Crime Act (as amended), (the **PCA**) Proliferation Financing (Prohibition) Act (as amended), the Anti-Money Laundering Regulations (**AMLRs**), as well as the Guidance Notes on the Prevention and Detection of Money Laundering, Terrorist Financing and Proliferation Financing in the Cayman Islands issued by CIMA (together, the **AML Regime**). The AML Regime requires mutual funds to designate individuals to act as Anti-Money Laundering Compliance Officer **(AMLCO**)**,** Money Laundering Reporting Officer (the **MLRO)** and Deputy Money Laundering Reporting Officer (the **DMLRO)** together the "**AML Officers**" and to ensure that the AML Officers are aware of their respective duties and responsibilities. The AMLCO and MLRO (or DMLRO) may be the same individual, however, the same person cannot serve as both MLRO and DMLRO. The AML Officers must be at managerial level and must be fit and proper to assume the relevant roles.

The role of the AMLCO is to oversee (i) the effectiveness of the fund's AML systems; (ii) compliance with applicable AML legislation and guidance; and (iii) the day-to-day operation of the AML policies and procedures of the fund.

The MLRO and DMLRO act as the point of contact for all suspicious activity reports and are required to report any suspicious activities to the relevant authorities.

The AML Regime also requires all persons engaged in relevant financial business as defined in the PCA to, among other things, (i) adopt a risk-based approach to their anti-money laundering/counterterrorist financing framework; (ii) design and implement policies, controls and procedures to manage and mitigate money laundering and terrorist financing risks; (iii) comply with the identification and record-keeping requirements with respect to client due diligence procedures pursuant to the AMLRs; (iv) observe the list of countries, published by any competent authority, which are non-compliant, or do not sufficiently comply with the recommendations of the Financial Action Task Force; (v) implement suspicious activity reporting procedures; (vi) comply with targeted financial sanctions obligations; and (vii) implement procedures for the ongoing monitoring of business relationships or one-off transactions for the purposes of preventing, countering and reporting money laundering, terrorist financing and proliferation financing; as well as procedures allowing for the identification of assets subject to targeted financial sanctions applicable in the Islands.

Financial service providers who fail to comply with the AML Regime may be subject to administrative fines or to criminal prosecution.

ECONOMIC SUBSTANCE

The International Tax Co-operation (Economic Substance) Act of the Cayman Islands (the **ES Act**) requires every entity to notify the Tax Information Authority annually whether or not it is carrying on a

relevant activity for the purposes of the ES regime of the Cayman Islands. Under the ES regime, "relevant activities" include the following:

(a) banking business;
(b) distribution and service centre business;
(c) financing and leasing business;
(d) fund management business;
(e) headquarters business;
(f) holding company business;
(g) insurance business;
(h) intellectual property business; or
(i) shipping business;

Investment fund business is not included on the list of relevant activities, and as such, regulated mutual funds are not generally required to satisfy the economic substance test promulgated in the ES Act, however, as a prerequisite to filing their annual returns with the relevant Registrar, regulated mutual funds are still required to file an Economic Substance Notification to confirm their status under the ES Act.

AUTOMATIC EXCHANGE OF INFORMATION OBLIGATIONS

Cayman Islands entities classified as Reporting Financial Institutions for the purposes of the United States Foreign Account Tax Compliance Act (**FATCA**) and the Organization for Economic Co-operation and Development's common reporting standard (**CRS**) (together the **AEOI Regime**) are required to comply with the registration, due diligence and reporting requirements of the AEOI Regime, including:

(a) appointment of a Principal Point of Contact and an Authorised Person;

(b) register with the United States Internal Revenue Service (**IRS**) and apply for a Global Intermediary Identification Number from the IRS;

(c) register with, and report to the Cayman Islands Tax Information Authority (**TIA**) and obtain a Cayman identifier number;

(d) implement a due diligence program to facilitate the identification of any reportable account holders;

(e) report to the TIA the relevant information on each of its reportable accounts prior to the applicable deadlines (including submission of a CRS compliance form with respect to each reporting year); and

(f) establish, maintain and implement written policies and procedures in connection with the fund's compliance with the AEOI Regime (even where the fund has delegated performance of its AEOI obligation to a third-party service provider).

DATA PROTECTION

The Cayman Islands Data Protection Act (as amended) of the Cayman Islands, (the **DPA**) prescribes the manner in which a data controller (such as a Cayman Islands regulated mutual fund) processes, uses and retains personal data. The DPA also empower individuals to take control over their personal data and protects against the misuse of personal data. Accordingly, a regulated mutual fund is required to comply with the data protection principles set out in the DPA when processing personal data and to ensure that those principles are observed in relation to personal data processed on the fund's behalf.

The key data protection principles are as follows:

1. Personal data shall be processed fairly.
2. Personal data shall be obtained only for one or more specified lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.
3. Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are collected or processed.
4. Personal data shall be accurate and, where necessary, kept up-to-date.
5. Personal data processed for any purpose shall not be kept for longer than is necessary for that purpose.
6. Personal data shall be processed in accordance with the rights of data subjects under the DPA.
7. Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
8. Personal data shall not be transferred to a country or territory unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

The Office of the Ombudsman in the Cayman Islands is the supervisory body for data protection related matters.

In the event of a personal data breach, a data controller must without undue delay and no longer than five (5) days after being aware of the breach, notify the Ombudsman and any affected data subjects of that personal data breach, describing:

(a) the nature of the breach;

(b) the consequences of the breach;

(c) the measures proposed or taken by the data controller to address the breach; and

(d) the measures recommended by the data controller to the data subjects of the personal data in question to mitigate the possible adverse effects of the breach.

A data controller who fails to notify the Ombudsman and any affected data subjects of a breach commits an offence and is liable on conviction to a fine of CI$100,000 (US$121,951).

SEGREGATION OF ASSETS

Pursuant to CIMA's rule on the segregation of assets applicable to regulated mutual funds (the **Segregation Rule**), regulated mutual funds are required to appoint a service provider to ensure the safekeeping of the fund's portfolio.

The operators must ensure that the fund's assets are segregated and accounted for separately from the assets of any service provider and that none of the fund's service providers use the fund's assets to finance their own or any other operations.

There are certain exceptions to the Segregation Rule, for example, the transfer and reuse of assets is allowed if consented to by the fund and certain disclosures are made to investors. Also, the Segregation Rule does not prohibit prime brokerage/custody arrangements that allow, in accordance with established and accepted industry practice, a custodian/sub-custodian to hold all client assets in a commingled client omnibus account along with the assets of other clients.

Under the Segregation Rule, the operators of a regulated mutual fund are also required to establish, implement, and maintain (or oversee the establishment, implementation, and maintenance of), strategies, policies, controls, and procedures to ensure compliance with the Segregation Rule; and to further ensure verification (based on information provided by the fund and available external information), that the fund holds title to its assets and maintain a record of the fund's assets.

NET ASSET VALUE (NAV) CALCULATION RULE

CIMA has also issued a rule on the calculation of net asset values for regulated mutual funds (the **NAV Calculation Rule**), which requires regulated mutual funds to establish, implement and maintain a NAV Calculation Policy that ensures a fund's NAV is fair, complete, neutral and free from material error and is verifiable. The methodology used to perform the NAV calculation must be consistent with the applicable accounting principles or reporting standards used to prepare the fund's audited financial statements.

The NAV Calculation Rule sets out a number of requirements which the NAV Calculation Policy must adhere to, including the requirement that the NAV Calculation Policy (a) be written and disclosed in the fund's offering document; (b) describe the fund's practical and workable pricing and valuation policies, practices, and procedures; (c) the NAV be calculated regularly, at least quarterly; (d) state when the NAV will be calculated, how it will be used, and when and how it will be published; (e) state the accounting principles or reporting standards that will be followed; (f) define the role and responsibilities of the fund's service providers in the valuation process; (g) identify the price sources for each instrument type and a practical escalation of resolution procedure for the management of exceptions; (h) incorporate internal controls that are appropriate to the size, complexity, and nature of the fund's operations; and (i) other than for hard-to-value securities, the NAV Calculation Policy must require the fund to value the securities within its portfolios using market prices.

The operators have the ultimate responsibility for oversight of the entire valuation process, and must approve, and review at least annually, the NAV Calculation Policy and any pricing models adopted thereunder.

DIRECTOR REGISTRATION, LICENSING AND SURRENDER UNDER THE DIRECTOR REGISTRATION AND LICENSING ACT

The directors of regulated mutual funds must either be registered (in the case of individual directors) or be licensed (in the case of professional and corporate directors) under the DRLA. Such director registration or licensing is effected by the director via the Director Portal on CIMA's website together with payment of the applicable fees. Once registered or licensed, an annual fee is payable by registered, professional and corporate directors to maintain their respective registrations and licenses. Such fees must be paid on or before 15 January in each calendar year to avoid penalties being

imposed by CIMA, failing which, a penalty of 1/12 of the annual fees payable each month will apply until all outstanding amounts have been paid.

If there is any change to the information provided to CIMA in an application for registration or the grant of a license under the DRLA, the relevant director is required to inform CIMA within twenty-one (21) days of such change.

The DRLA does not apply to exempted limited partnerships or unit trusts regulated under the MFA.

In the event a regulated mutual fund de-registers with CIMA, and/or a director resigns and such director does not also act as a director for another covered entity or does not wish to retain such registration as a director with CIMA, steps should be taken by the director to de-register as a director with CIMA. A director who wishes to surrender such registration with CIMA will be required to submit a letter to CIMA confirming that (a) the director has resigned as a director of the covered entity; (b) the director no longer plan to act as a director of a covered entity; and (c) if the director wishes to act for any other covered entity or wish to resume directorship after surrender of registration that the director will re-apply to CIMA under the DRLA. A de-registration fee is also payable by the director to CIMA.

ADMINISTRATIVE FINES

CIMA has the power to issue administrative fines for breaches of the regulatory laws and regulations of the Cayman Islands, including the MFA and the AMLRs as well as for breaches of the rules issued by CIMA. It is therefore imperative that the operators of regulated mutual funds understand their obligations under the various regulatory measures and take all steps necessary to establish, implement and maintain internal controls, strategies, policies and procedures to meet their obligations, as failure to do so could result in the imposition of significant penalties.

Under the Monetary Authority (Administrative Fines) (Amendment) Regulations, breaches are classified as minor, serious or very serious. Minor breaches could result in a fine of CI$5,000 (US$6,100). Fines of up to CI$50,000 (US$60,976) and CI$100,000 (US$121,951) could be imposed on individuals and entities respectively for serious breaches; and fines for very serious breaches could result in discretionary fines of CI$100,000 (US$121,951) for individuals and CI$1,000,000 (US$1.2M) for entities respectively.

For more details on how our experienced and dedicated team can assist you, please contact:

Sharon Nelson
Counsel
e-mail: snelson@mcgrathtonner.com
Tel: +1 345 623 2740-2; +1 345 949 2740
Fax: +1 345 949-0073

November 2022