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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Code of Conduct Group (Business Taxation)
Subject: The EU list of non-cooperative jurisdictions for tax purposes
– Bahamas: final legislation and assessment under criterion 2.2
= Bahamas: final legislation on collective investment funds and
assessment under criterion 2.2
= Investment Funds Act, 2019 (Part 3)

- (4) The Commission may, for good cause, waive any additional fee imposed under subsection (2).

44. Investment funds register.

- (1) The Commission shall maintain an investment funds register to show details of all regulated persons under this Act.
- (2) The register under subsection (1) shall contain information to include —
- (a) the name of the regulated person;
 - (b) the contact information for all parties related to an investment fund;
 - (c) any conditions, under which the licence or registration was granted;
 - (d) a listing of any related master funds and feeder funds; and
 - (e) any other information as may be prescribed by the Commission.
- (3) It shall be the duty of the Commission to keep the register current.
- (4) A person may, upon payment of the prescribed fee, inspect and make copies of or take extracts from the register.

45. Fees.

For the purpose of carrying out its powers or functions, the Commission may, by rule, prescribe the fees payable to the Commission.

**PART III - ADMINISTRATION, ACCOUNTS, REPORTS AND
AUDITING**

INVESTMENT FUNDS

46. Directors and general partners of fund.

Where an investment fund is a company or a partnership, the Commission shall prescribe the minimum number of directors or general partners required by an investment fund.

47. Books and accounting records.

- (1) An investment fund shall cause reliable accounting records to be kept in relation to —
- (a) all sums of money received and expended by the investment fund and the matter in respect of which such receipt and expenditure takes place, inclusive of all sales, purchases and other transactions; and
 - (b) the assets and liabilities of the investment fund.

- (2) For the purposes of subsection (1), accounting records shall —
 - (a) correctly explain all transactions;
 - (b) enable the financial position of the investment fund to be determined with reasonable accuracy at any time;
 - (c) represent results of operations, changes in owner's equity and cash flows;
 - (d) allow financial statements to be prepared; and
 - (e) include relevant underlying documentation, as may be necessary to facilitate compliance with paragraphs (a), (b) and (c).
- (3) Accounting records maintained under this section shall be kept for a minimum period of six years from the date of the transaction to which such records relate.
- (4) An investment fund shall not destroy, conceal or alter books of accounts, records and other documents relating to the operations required to be kept under this section for the purpose of an audit or examination by the Commission or its staff or agents.

48. Reconciliations.

- (1) An investment fund shall perform reconciliations as often as necessary to ensure the accuracy of its records, and shall perform reconciliations at least once every month —
 - (a) on all balances with banks; and
 - (b) on all balances with a custodian;
- (2) An investment fund shall immediately correct any differences discovered as a result of a reconciliation performed under subsection (1).

49. Winding up, dissolution and termination.

A regulated investment fund, investment fund manager, AIFM or investment fund administrator shall inform the Commission of its intent to wind up, dissolve or terminate within thirty days or such other time period as may be prescribed by the Commission before the formal winding up, dissolution or other termination procedure has commenced.

50. Commission may apply to court or present petition.

- (1) Where a regulated person's licence, registration or approval has been suspended or revoked by the Commission, the Commission may —
 - (a) in the case of a company, present a petition to the court for the winding up of the company in accordance with the Companies Act, (*Ch. 308*) or the International Business Companies Act (*Ch. 309*);

- (b) in the case of a partnership, apply to the court for a decree of dissolution in accordance with the Exempted Limited Partnership Act (*Ch. 312*);
 - (c) in the case of an investment condominium, present a petition for a decree of dissolution to the court in accordance with the Investment Condominium Act, 2014 (*No. 38 of 2014*);
 - (d) in the case of a unit trust, apply to the court to terminate the unit trust.
- (2) Where an investment fund is established as a unit trust, the trust deed under which the unit trust is established shall be deemed to provide that the Commission may apply to the court to terminate the unit trust where the licence of the investment fund has been suspended or revoked.

51. Commission may attend proceedings.

- (1) Where a petition for the winding-up of —
 - (a) a regulated person; or
 - (b) a person who has at any time been a regulated person,
 is presented by a person other than the Commission, the Commission shall be served by the petitioner with a copy of the petition and may appear at the hearing of the petition and the provisions of subsections (3) and (4) shall apply.
- (2) Where an application for a dissolution or termination of —
 - (a) a regulated person; or
 - (b) a person who has at any time been a regulated person,
 is presented by a person other than the Commission, the Commission shall be served by the applicant with a copy of the application and may appear at the hearing of the application and the provisions of subsections (3) and (4) shall apply.
- (3) A document that relates to a petition for winding-up or an application for a dissolution or termination and that is required to be sent to any person specified in subsections (1) or (2) or to any of their respective creditors, shall be sent to the Commission.
- (4) A person appointed for the purpose by the Commission may attend a meeting of —
 - (a) creditors of a person specified in subsections (1) or (2);
 - (b) a committee, established to discuss a compromise or arrangement of a person specified in subsections (1) or (2),
 and make representations as to any matter for decision at any such meeting.

INVESTMENT FUND ADMINISTRATOR

52. Obligations of an investment fund administrator.

An investment fund administrator appointed under section 34 shall —

- (a) provide the principal office for an investment fund that it administers in or from The Bahamas;
- (b) pay the fees for each investment fund for which it provides the principal office in The Bahamas;
- (c) make such reports to the Commission regarding the investment funds for which it acts as the investment fund administrator as the Commission may require.

53. Minimum number of directors.

The Commission shall prescribe the minimum number of directors required by an investment fund administrator.

54. Annual fees.

- (1) An investment fund administrator shall be deemed to be providing the principal office of the investment fund immediately upon the licensing of such investment fund.
- (2) An investment fund administrator shall on or before the 31st day of January in each year pay the prescribed annual licence fee for its own licence, and submit to the Commission, in writing, a declaration that all information filed with the Commission is current and applicable.
- (3) If an annual fee referred to in subsection (2) is not paid on or before the 31st day of January, there is payable an additional fee equal to the annual fee for each month or part of a month during which the annual fee and any additional fee imposed by virtue of this subsection remains unpaid, up to the 1st day of April of the relevant year.
- (4) Where the investment fund administrator has failed to pay the fee required by subsection (2) and the additional fee imposed under subsection (3) on or before the 1st day of April, of the relevant year, the Commission may revoke the licence of the investment fund administrator.
- (5) The Commission may, for good cause, waive an additional fee imposed under subsection (3).

55. Termination of administration agreement.

- (1) An investment fund administrator shall notify the investment fund in writing of its intention to terminate its administration agreement with the investment fund in accordance with the terms of the administration agreement, and shall at the same time notify the Commission in writing of such intention.
- (2) An investment fund may dismiss its investment fund administrator by notice in writing from the operators of the fund —
 - (a) if the investment fund administrator goes into liquidation, becomes bankrupt or has a receiver appointed over its assets;
 - (b) if investors whose equity interests carry voting rights representing at least fifty percent in value of the equity interests outstanding, deliver to the operators of the investment fund a written request to dismiss the investment fund administrator, setting out good and sufficient reason for the requested dismissal; or
 - (c) for any other good and sufficient reason, that the operators of the investment fund think fit.
- (3) Where an investment fund administrator has given notice of its intention to terminate its administration agreement under subsection (1), the investment fund shall —
 - (a) appoint another investment fund administrator upon the expiration of the notice period provided under the administration agreement;
 - (b) immediately notify the Commission of the appointment of the new investment fund administrator; and
 - (c) seek the Commission's written approval of the appointment of the new investment fund administrator.
- (4) Where the investment fund has dismissed the investment fund administrator under subsection (2), the operators of the investment fund shall within fourteen days of the dismissal —
 - (a) notify the Commission of the dismissal of the investment fund administrator;
 - (b) appoint a new investment fund administrator;
 - (c) seek the Commission's written approval of the appointment of the new investment fund administrator; and
 - (d) notify the Commission of the prescribed particulars regarding the appointment of the new investment fund administrator.
- (5) Where an investment fund has not appointed an investment fund administrator in accordance with subsections (3) or (4), the investment fund may apply to the Commission —

- (a) before the expiration of the notice period under the administration agreement; or
- (b) before the expiration of the fourteen-day period under subsection (4).

for an extension of time, not to exceed sixty days, within which to appoint a new investment fund administrator.

- (6) An investment fund that has obtained an extension of time under subsection (5), shall, upon the expiration of the notice period or the fourteen-day period under subsection (4) —

- (a) report to the Commission its failure to appoint a new investment fund administrator; and
- (b) refuse to accept any new subscription or process any redemption of shares,

and its licence shall be automatically suspended.

- (7) An investment fund that fails to appoint a new investment fund administrator under subsections (3) or (4) and fails to obtain from the Commission an extension of time under subsection (5) or within any period of extension granted under subsection (5), shall upon the expiration of the notice period under the administration agreement, the expiration of the fourteen-day period under subsection (4) or the expiration of any period of extension granted by the Commission under subsection (5), cease operations as an investment fund, surrender its licence and submit a wind-up plan to the Commission.

56. Name of investment fund administrator restricted.

No person other than an investment fund administrator shall carry on or attempt to carry on business in or from The Bahamas with the words "fund administrator" in its name or title and shall not represent in any way that it is carrying on business in or from The Bahamas as an investment fund administrator.

57. Transfer or disposal of shares.

An investment fund administrator shall not issue shares and no person owning or having an interest in shares in the investment fund administrator shall transfer or otherwise dispose of such shares or deal in such shares or such interest unless —

- (a) the Commission has given its approval for the issue, transfer, disposal or dealing in such shares or such interest, as the case may be; or

- (b) the Commission has waived the obligation to obtain that approval, and any conditions of the approval or waiver are complied with; and
- (c) the prescribed fee has been paid.

58. Requirements for paid up capital and professional indemnity insurance.

- (1) If the Commission is satisfied that there is reasonable cause to do so or if the shareholders' equity of an investment fund administrator is less than any amount prescribed by the Commission, it may direct the investment fund administrator to —
 - (a) provide such guarantee or professional indemnity insurance coverage or other financial support as the Commission shall think fit; or
 - (b) increase its shareholders' equity to such amount as the Commission shall consider appropriate.
- (2) If the investment fund administrator fails to comply with a direction given under subsection (1) the Commission shall —
 - (a) request other financial guarantees acceptable to the Commission to be supplied by the investment fund administrator within ninety days; or
 - (b) where the investment fund administrator is unable to provide the guarantees under paragraph (a), revoke the licence.

59. Annual audit of investment fund administrator.

An investment fund administrator shall —

- (a) have its financial statements audited annually by an auditor within one hundred and twenty days of the end of its fiscal year; and
- (b) submit its audited financial statements in respect of the financial year of the investment fund administrator to the Commission within six months of the end of that financial year or within such extension of that period as the Commission may reasonably allow.

60. Requirement to report certain matters.

If an investment fund administrator knows or has reason to believe that an investment fund for which it provides a principal office, or a promoter or operator of such an investment fund —

- (a) is or is likely to become unable to meet any of its obligations as they fall due;

- (b) is carrying on or attempting to carry on business otherwise than in accordance with this Act or any other applicable law; or
- (c) is carrying on or attempting to carry on business in a manner that is or is likely to be prejudicial to investors or creditors of the investment fund,

the investment fund administrator shall immediately give the Commission written notice of its knowledge or belief, giving its reason for such knowledge or belief.

OPERATOR

61. Operator to ensure investment fund compliance.

An operator of an investment fund shall ensure that the investment fund does not carry on or attempt to carry on business as an investment fund contrary to the provisions of this Act.

INVESTMENT FUND MANAGER

62. General duties of an investment fund manager.

- (1) An investment fund manager appointed under section 24 shall —
 - (a) act honestly and fairly, with due skill, care and diligence in conducting its activities;
 - (b) act in the best interests of each investment fund or the investors of each investment fund it manages and the integrity of the market;
 - (c) have and employ effectively the resources and procedures that are necessary for the proper performance of its business activities;
 - (d) take all reasonable steps to avoid conflicts of interest and, when they cannot be avoided, to identify, manage and monitor and, where applicable, disclose those conflicts of interest in order to prevent them from adversely affecting the interests of each investment fund and its investors and to ensure that each investment fund it manages is fairly treated;
 - (e) comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of each investment fund or the investors of each investment fund it manages and the integrity of the market;
 - (f) treat all investment fund investors fairly and ensure that no investor in an investment fund shall obtain preferential treatment, unless

- such preferential treatment is disclosed in the relevant investment fund's constitutive documents; and
- (g) be responsible for ensuring compliance with the provisions set out in this Sub Part.
- (2) Where an investment fund has not appointed a custodian under section 68(1) the investment fund manager shall ensure that —
 - (a) the sale, issue, repurchase, redemption and cancellation of equity interests effected on behalf of an investment fund are carried out in accordance with the offering documents and constitutive documents of the fund;
 - (b) the value of the equity interests is calculated in accordance with the offering documents and constitutive documents of the fund; and
 - (c) the income of an investment fund is applied in accordance with the offering documents and constitutive documents of the fund.
 - (3) Where an investment fund manager is unable to ensure compliance with the requirements of this section for which an investment fund or another entity on its behalf is responsible, it shall immediately inform the Commission of the investment fund concerned and shall forthwith take the necessary steps to remedy the situation.
 - (4) Where there is further non-compliance, the Commission shall require that the investment fund manager resign as investment fund manager of that investment fund.

63. Requirements for capital, own funds and professional indemnity insurance.

- (1) A licensed investment fund manager shall have an initial capital as prescribed by the Commission.
- (2) An investment fund manager shall —
 - (a) have own funds or additional own funds which are appropriate to cover potential liability risks arising from professional negligence; or
 - (b) hold a professional indemnity insurance against liability arising from professional negligence which is appropriate to the risks covered.

64. Protection of interests.

An investment fund manager shall take all reasonable steps to ensure that the investment fund is not carrying on its business in a manner which is or is likely to be prejudicial to investors or creditors of the investment fund.

65. Delegation of investment fund manager's functions.

- (1) An investment fund manager that intends to delegate its functions to a third party shall notify the Commission before the delegation takes effect.
- (2) An investment fund manager may delegate its functions to third parties where —
 - (a) the investment fund manager is able to justify its entire delegation structure on objective reasons;
 - (b) the delegate has sufficient resources to perform the delegated functions;
 - (c) the persons who effectively conduct the business of the delegate are fit and proper, are of good repute and are sufficiently experienced to perform the functions delegated to them;
 - (d) the delegation does not prevent the effectiveness of supervision of the investment fund manager and, in particular, does not prevent the investment fund manager from acting, or the investment fund from being managed, in the best interests of its investors.
- (3) The investment fund manager must be able to demonstrate to the Commission that —
 - (a) the delegate is qualified and capable of undertaking the functions in question;
 - (b) the delegate was selected for appointment with all due care;
 - (c) the investment fund manager is in a position to effectively monitor the delegated activity;
 - (d) the investment fund manager is able at any time to give the delegate further instructions;
 - (e) the investment fund manager is able at any time to revoke the delegation with immediate effect when this is in the best interests of investors.
- (4) The investment fund manager must review the services provided by each delegate on an ongoing basis.
- (5) An investment fund manager must not delegate, and a delegate must not sub-delegate, portfolio management or risk management functions to —
 - (a) a custodian or a delegate of the custodian;
 - (b) any other undertaking whose interests may conflict with those of the investment fund manager or the investors of the investment fund,unless such undertaking has functionally and hierarchically separated its portfolio management or risk management functions from its other potentially conflicting functions, and the potential conflicts of interest are

properly identified, managed, monitored and disclosed to the investors of the investment fund.

- (6) An investment fund manager must not delegate its functions to the extent that it becomes a letter-box entity and can no longer be considered to be the manager of the investment fund.
- (7) For the purposes of subsection (1)(d), delegation shall be deemed to prevent the effective supervision of the investment fund manager where —
 - (a) the investment fund manager, its auditors and the Commission do not have effective access to data related to the delegated functions and to the business premises of the delegate, or the Commission is not able to exercise those rights of access;
 - (b) the delegate does not cooperate with the Commission or the investment fund manager in connection with the delegated functions;
 - (c) the investment fund manager does not make available on request to the Commission all information necessary to enable the Commission to supervise the compliance of the performance of the delegated functions.
- (8) An investment fund manager shall not delegate its portfolio management or risk management functions without the approval of the Commission.
- (9) Notwithstanding subsection (7), the Commission may allow an investment fund manager to delegate either its portfolio management or risk management functions upon approval, but not both.

66. Sub-delegation.

- (1) A delegate may sub-delegate any of the functions delegated to it provided that —
 - (a) the delegate has received consent from the investment fund manager prior to the sub-delegation;
 - (b) the investment fund manager has notified the Commission in writing before the arrangements have become effective; and
 - (c) in relation to the conditions set out in section 65, on the understanding that all references to the “delegate” include references to a “sub-delegate”.
- (2) A delegate or sub-delegate which has delegated such functions must review on an ongoing basis the services and functions provided by the delegate or sub-delegate.

67. Liability following delegation.

Notwithstanding any contractual arrangements that provide otherwise, any liability of an investment fund manager towards the investment fund it manages or towards investors of such an investment fund is not affected by —

- (a) the delegation by the investment fund manager of any of the investment fund manager functions;
- (b) any sub-delegation of such functions by the delegate to another person; or
- (c) any further sub-delegation of such functions by a sub-delegate.

CUSTODIAN

68. Appointment of custodian.

- (1) An investment fund shall appoint one or more persons as custodian of the assets of the investment fund.
- (2) The custodian shall satisfy requirements as prescribed by the Commission from time to time.

69. Independence of custodian.

An investment fund shall have a custodian that is independent of the investment fund administrator, the investment fund manager and the operator of the fund.

70. Obligations of a custodian.

A custodian of an investment fund shall ensure that —

- (a) the sale, issue, re-purchase, redemption and cancellation of equity interests of the investment fund is carried out;
- (b) the values of the equity interests of the investment fund are calculated;
- (c) the instructions of the investment fund manager are carried out;
- (d) in transactions involving the sale of the investment fund's assets, any consideration is remitted to the investment fund without delay;
- (e) an investment fund's income is applied,

in accordance with this Act, the constitutive documents and offering documents of the investment fund, and the law of the jurisdiction where the investment fund is authorised or established.

71. Segregation of investment fund assets.

- (1) A custodian that holds assets on behalf of an investment fund, including cheques and other similar instruments, must hold the assets separate and apart from its own property and in trust for the investment fund.
- (2) A custodian that holds cash on behalf of an investment fund must hold the cash separate and apart from the property of the custodian in a designated trust account with a bank holding an unrestricted licence under the Banks and Trust Companies Regulation Act (*Ch. 316*) or other deposit-taking institution outside The Bahamas as may be approved by the Commission or an unrestricted investment fund administrator for this purpose.
- (3) A custodian may allow a registered marketplace or clearing facility to hold or control cash belonging to an investment fund for the purpose of —
 - (a) a transaction for the investment fund with or through that marketplace or facility; or
 - (b) meeting the investment fund's obligation to provide collateral for a transaction, provided that the investment fund is notified that the cash may be so held or controlled.

AIFM

72. Notification to the Commission.

- (1) A person who prior to the coming into operation of this Act, was —
 - (a) marketing an investment fund or EU AIF in the EU;
 - (b) managing an EU AIF, whether or not the EU AIF is marketed in the EU,and who continues to market an investment fund or EU AIF in the EU or manage an EU AIF in the EU or elsewhere under the authority of an NPPR, shall notify the Commission in the prescribed manner.
- (2) A person that fails to comply with subsection (1) commits an offence and is liable on conviction to a fine of five thousand dollars.

73. Obligations and duties of an AIFM.

- (1) An AIFM shall satisfy all requirements as prescribed by the Commission.
- (2) An investment fund may appoint an external AIFM or an internal AIFM.
- (3) For the purposes of this Sub Part —
 - (a) an external AIFM means the legal person appointed by the investment fund, or on behalf of the investment fund, and who is responsible for managing the investment fund;

- (b) an internal AIFM means the investment fund itself, where the legal form of the investment fund permits it and where the operator of an investment fund chooses not to appoint an external AIFM.
- (4) An internal AIFM under subsection (3)(b) shall be required to be licensed as an AIFM.

74. Requirements for capital, own funds and professional indemnity insurance.

- (1) An AIFM shall have an initial capital as prescribed by the Commission.
- (2) Where the value of the portfolios of investment funds managed by the AIFM exceeds the amount prescribed by the Commission, the AIFM shall provide an additional amount of own funds as prescribed by the Commission.
- (3) For the purposes of determining under subsection (2) the value of the portfolios of investment funds managed by the AIFM, investment funds for which the AIFM has delegated functions in accordance with section 88. shall be deemed to be the portfolios of the AIFM but not investment fund portfolios that the AIFM is managing under delegation.
- (4) An AIFM shall —
 - (a) have additional own funds which are appropriate to cover potential liability risks arising from professional negligence; or
 - (b) hold a professional indemnity insurance against liability arising from professional negligence which is appropriate to the risks covered.
- (5) Own funds, including any additional own funds referred to in subsections (2) and (4) shall be invested in liquid assets or assets readily convertible to cash in the short term and shall not include speculative positions.
- (6) The Commission may prescribe measures specifying —
 - (a) the risks the additional own funds or the professional indemnity insurance must cover;
 - (b) the conditions for determining the appropriateness of additional own funds or the coverage of the professional indemnity insurance; and
 - (c) the manner of determining ongoing adjustments of the additional own funds or of the coverage of the professional indemnity insurance.
- (7) Where an external AIFM is unable to ensure compliance with the requirements of this Sub Part for which an investment fund or another entity on its behalf is responsible, it shall immediately inform the Commission and, if applicable, the competent authority of the investment

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fund concerned and shall take the necessary steps to require the investment fund or other entity to remedy the situation.

- (8) Where there is further non-compliance, the Commission shall require that —
- (a) the AIFM resign as the AIFM of that investment fund;
 - (b) the investment fund no longer be marketed in The Bahamas.

75. Confirmation of status.

- (1) The Commission may provide confirmation of the status of an AIFM where the AIFM has satisfied the requirements of this Act.
- (2) For the purposes of this section “confirmation of status” means the method as prescribed by the Commission, by which the Commission may confirm the status of an AIFM to an overseas regulatory authority or a Member State.

76. Compliance with this Act.

The Commission, with respect to an AIFM, may request information from or about the AIFM to comply with any obligation that the Commission may have under a memorandum of understanding entered into with any Member State.

77. General organisational requirements.

- (1) An AIFM shall at all times use adequate and appropriate human and technical resources that are necessary for the proper management of the investment funds that it manages.
- (2) The AIFM must in particular adopt —
 - (a) sound administrative and accounting procedures;
 - (b) control and safeguard arrangements for electronic data processing;
 - (c) adequate internal control mechanisms including, in particular—
 - (i) policies and procedures for personal transactions by its employees,
 - (ii) policies and procedures for the holding or management of investments in order to invest on its own account,
 - (iii) ensuring, at least, that each transaction involving an investment fund may be reconstructed according to its origin, the parties to it, its nature, and the time and place it was effected,
 - (iv) ensuring that the assets of the investment fund managed by the AIFM are invested in accordance with the law of the jurisdiction where the investment fund is authorised,

registered, or established, and the constitutive documents and offering documents of the investment fund.

- (3) The Commission shall prescribe measures specifying the procedures and arrangements referred to in subsections (1) and (2).

78. General operating conditions.

- (1) An AIFM shall at all times —
- (a) act honestly and fairly, with due skill, care and diligence when conducting its activities;
 - (b) act in the best interests of the investment fund, or the investors of the investment fund it manages;
 - (c) have and employ the resources and procedures that are necessary for the performance of its business activities;
 - (d) take all reasonable steps to avoid conflicts of interest and where this cannot be avoided, ensure that those conflicts of interest are disclosed in order to prevent them from adversely affecting the interests of the investment fund and its investors;
 - (e) comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of the investment fund, the investors of the investment fund, and the integrity of the market;
 - (f) ensure that the investment fund and its investors are treated fairly;
 - (g) except where disclosed in the investment fund's constitutive documents and offering documents, ensure that no investor in an investment fund should receive preferential treatment.
- (2) Where an AIFM undertakes to carry on portfolio management on a discretionary basis which was not approved as one of the conditions of licensing by the Commission, it must notify the Commission.
- (3) An AIFM whose licence permits it to perform portfolio management services on a discretionary basis must not invest all or part of the investment fund's portfolio in equity interests of any investment fund that it manages —
- (a) without having first obtained the investment fund's approval to do so; and
 - (b) without giving the Commission notice of at least fourteen days, of its intention to do so.

79. Remuneration.

- (1) An AIFM shall establish and maintain remuneration policies and practices as prescribed, for persons whose professional activities have a material impact on the risk profile of the AIFM.
- (2) Remuneration policies shall —
 - (a) be consistent with the risk management policy of the AIFM;
 - (b) promote sound and effective risk management;
 - (c) not encourage risk-taking which is inconsistent with the risk profiles or constitutive documents of the investment fund the AIFM manages.
- (3) In this section, “persons whose professional activities have a material impact on the risk profile of the AIFM” include, but are not limited to, chief executive officers, senior executives or any employee carrying out a risk related activity and whose remuneration puts them in the same category as senior executives.

80. Conflicts of interest.

- (1) An AIFM shall establish and maintain policies and procedures relating to identifying, preventing, managing and monitoring conflicts of interest in accordance with subsection (2).
- (2) An AIFM shall, in the course of managing investment funds, identify conflicts of interest that may arise between —
 - (a) the AIFM, including its managers, employees or any person directly or indirectly connected to the AIFM by control, and the investment fund managed by the AIFM or the investors in that investment fund and the investment fund or any of its investors;
 - (b) the investment fund or the investors of that investment fund and another investment fund or the investors in that investment fund,
 - (c) the investment fund or the investors of that investment fund another investment fund managed by the AIFM; or
 - (d) two investment funds managed by the AIFM.
- (3) An AIFM shall segregate, within its own operating environment, tasks and responsibilities that may be regarded as incompatible with each other or that may potentially generate systematic conflicts of interest.
- (4) An AIFM shall regularly assess whether its operating conditions may involve any other material conflicts of interest and disclose them to the investors of the investment fund it manages.
- (5) Where the organisational arrangements made by an AIFM to identify, prevent, manage and monitor conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to investors’

interests will be prevented, the AIFM shall disclose the general nature or sources of conflicts of interest to the Commission, the investment fund and its investors, before undertaking business on behalf of the investment fund and shall develop appropriate policies and procedures.

- (6) Where the AIFM on behalf of an investment fund engages the services of a prime broker, the terms of such engagement shall be set out in writing.
- (7) Where an engagement for services under subsection (6) has been entered into, the AIFM must inform the custodian of an investment fund of such engagement.
- (8) An AIFM must exercise due skill, care and diligence in the selection of a prime broker.
- (9) Any provisions that enable the transfer and re-use of investment fund assets shall be set out in the terms of the engagement under subsection (6) and must be consistent with the investment fund's constitutive documents and offering documents.

81. Risk management.

- (1) An AIFM shall —
 - (a) functionally and hierarchically separate the function of risk management from its operating units, including from the function of portfolio management;
 - (b) ensure that specific safeguards against conflicts of interest allow for the independent performance of risk management activities and that the risk management process satisfies the requirements of this section;
 - (c) implement adequate risk management systems, policies and procedures in order to identify, measure, manage and monitor on an ongoing basis all risks relevant to each investment fund's investment strategy and to which each investment fund is or may be exposed;
 - (d) review its risk management systems at least once a year and adapt them when necessary.
- (2) An AIFM shall set a maximum level of leverage which it may employ on behalf of each investment fund it manages and the extent of the right to re-use collateral or guarantees that could be granted under the leveraging arrangement, taking into account —
 - (a) the type of investment fund;
 - (b) the investment strategy of the investment fund;
 - (c) the sources of leverage of the investment fund;