



Council of the  
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### OUTCOME OF PROCEEDINGS

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From: General Secretariat of the Council  
To: Code of Conduct Group (Business Taxation)  
Subject: The EU list of non-cooperative jurisdictions for tax purposes  
– Cayman Islands: final legislation and assessment under criterion 2.2  
= Revised Rule on Segregation of Assets for Regulated Mutual Funds

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## Rule Segregation of Assets - Regulated Mutual Funds

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### Rule

#### Segregation of Assets – Regulated Mutual Funds

#### 1. Statutory Authority

- 1.1. These Rules are issued pursuant to section 34 of the Monetary Authority Law (2020 Revision) ("MAL"), which provides that the Cayman Islands Monetary Authority (the "Authority") may, after private sector consultation, issue or amend rules or statements of principle or guidance concerning the conduct of licensees and their officers and employees, and any other persons to whom and to the extent that the regulatory laws may apply.
- 1.2. These Rules should also be read in conjunction with the Authority's Rule on Contents of Offering Documents of Regulated Mutual Funds.

#### 2. Objective

- 2.1. To set out the Authority's rules on the Segregation of Assets - Regulated Mutual Funds (each subparagraph of paragraph 5 below referred to as a "Rule", and collectively, the "Rules"), pursuant to the MAL.

#### 3. Scope

- 3.1. These Rules apply to all funds licensed or registered under section 4 of the Mutual Funds Law (2020 Revision) ("MFL"), except those to which the Retail Mutual Funds (Japan) Regulations (as amended) (the "Japanese Regulations") may apply.

#### 4. Definitions

- 4.1. *Control Relationship* means the relationship that exists between a person ("A") and the mutual fund's manager or Operator if — (a) A is a controller<sup>1</sup> of the mutual fund's manager or Operator; (b) the mutual fund's manager or Operator is a controller of A; or (c) a controller of A is also a controller of the mutual fund's manager or operator;

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<sup>1</sup> means a person who, in relation to another person (the "controlled entity"), holds, directly or indirectly, more than fifty percent of the economic interests or voting power in the controlled entity



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- 4.2. Operator(s) means the directors of a Fund that is a company, the general partner(s) of a Fund that is a partnership, the trustee of a Fund that is a unit trust, and the managing member(s) of a Fund that is an LLC.
- 4.3. Portfolio means all financial assets and liabilities of a Fund and any part thereof, including "investor funds" and "investments" as those terms are used in the definition of "mutual fund" in section 2 of the MFL.
- 4.4. Regulated Mutual Fund (hereafter referred to as 'Fund') means any mutual fund licensed or registered under section 4 of the MFL.
- 4.5. Recognised Overseas Regulatory Authority means a regulatory authority included in the list issued and gazetted by the Authority as required by section 2 of the Securities Investment Business Law (2020 Revision).
- 4.6. Service Provider includes an administrator, auditor, custodian, investment advisor, investment manager, Operator, prime broker, promoter, or registrar, or any of their delegates, to a Fund.

### 5. Segregation of Assets

- 5.1. A Fund shall appoint a Service Provider with regard to ensuring safekeeping of the Fund's Portfolio.
- 5.2. The Portfolio must be segregated and accounted for separately from any assets of any Service Provider.
- 5.3. A Fund must ensure that any Service Provider that holds or manages the Portfolio complies with Rule 5.2.
- 5.4. A Fund licensed under the MFL must ensure by contract that any Service Provider that holds or manages the Portfolio is regulated by the Authority, a Recognised Overseas Regulatory Authority, or by another regulator approved by the Authority.
- 5.5. The overriding requirement of Rule 5.2 is that a Fund must ensure that none of its Service Providers use the Portfolio to finance their own or any other operations in any way.
- 5.6. For the purposes of Rule 5.5 the following shall not in itself, constitute the financing of the Service Providers own operations:
  - 5.6.1 remitting to the relevant investors redemption or distribution proceeds being paid on behalf of the Fund;



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- 5.6.2 paying fees, charges and expenses that are payable by an investor in connection with the purchase, conversion, holding, transfer or redemption of equity interests of the Fund;
  - 5.6.3 acquiring or disposing of assets for investment purposes in accordance with the Fund's constitutive documents and offering document;
  - 5.6.4 paying fees, charges, expenses and taxes that are properly payable by the Fund and as disclosed in and in accordance with the Fund's constitutive documents or the offering document or as otherwise disclosed to investors; or.
  - 5.6.5 transfer and reuse of assets as consented to by or on behalf of the Fund, provided that a description of the arrangements entered into with any Service Provider allowing for the possibility of transfer and reuse (and the maximum permitted level of transfer and reuse) is disclosed in the offering document or otherwise disclosed to investors before they invest, and that any material changes thereto are also disclosed to investors.
- 5.7. The Operators of a Fund must establish, implement, and maintain, (or oversee the establishment, implementation, and maintenance of) strategies, policies, controls, and procedures to ensure compliance with these Rules, consistent with the Fund's offering document and appropriate for the size, complexity, and nature of the Fund's activities and investors.
- 5.8. The Operators of a Fund must ensure that verification, based on information provided by the Fund and available external information, that the Fund holds title to Fund assets and maintenance of a record of those Fund assets, is carried out by:
- 5.8.1 an administrator or other independent third party; or
  - 5.8.2 the manager, Operator or person who has a Control Relationship with the manager or Operator, provided that such function is carried out independently from the portfolio management function or that potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the Fund.

## 6. Enforcement

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## **Rule Segregation of Assets - Regulated Mutual Funds**

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- 6.1. Whenever there has been a breach of the Rule, the Authority's regulatory policies and procedures as contained in its Enforcement Manual will apply, in addition to any other powers provided in the MFL and the MAL.