



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  
– 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 4)

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- (d) any other interlinkage or relationships with other financial services institutions, which could pose systemic risk;
  - (e) the need to limit the exposure to any single counterparty;
  - (f) the extent to which the leverage is collateralised;
  - (g) the asset-liability ratio; and
  - (h) the scale, nature and extent of the activity of the AIFM on the markets concerned.
- (3) Where an AIFM determines that it is no longer operating within the maximum leverage limits disclosed to the Commission at the time of licensing, it shall immediately notify the Commission.
- (4) An AIFM shall establish and maintain qualitative or quantitative risk limits, or both, for each investment fund it manages, taking into account all relevant risks.
- (5) The qualitative and quantitative risk limits for each investment fund shall, at least, cover the following risks—
- (a) market risks;
  - (b) credit risks;
  - (c) liquidity risks;
  - (d) counterparty risks;
  - (e) operational risks.
- (6) Where an AIFM determines that it is no longer operating within its risk limits disclosed to the Commission at the time of licensing or subsequently, it shall immediately notify the Commission.
- (7) An AIFM shall—
- (a) when investing on behalf of an investment fund, establish and maintain a documented and regularly updated due diligence process, according to the investment strategy, the objectives and risk profile of the investment fund;
  - (b) ensure that the risks associated with each investment position of the investment fund and their overall effect on the investment fund's portfolio can be identified, measured, managed and monitored on an ongoing basis, including through the use of appropriate stress testing procedures;
  - (c) ensure that the risk profile of the investment fund corresponds to the size, portfolio structure, investment strategies, and objectives of the investment fund as required under its constitutive documents and offering documents;
  - (d) ensure that the risk profile of the investment fund is disclosed to investors and is consistent with the risk limits set out in this section;

- (e) monitor compliance by the investment fund with the risk limits set out in this section.
- (8) An AIFM shall implement procedures relating to notification of the governing body of the AIFM when the investment fund's risk profile is, or will be, inconsistent with required risk limits.
- (9) An AIFM's procedures shall make provision for periodic updates to be provided to the AIFM's governing body regarding the following matters—
  - (a) consistency between, and compliance with, the risk limits and the risk profile as disclosed to investors of the investment fund; and
  - (b) the adequacy and effectiveness of the risk management process, indicating in particular, whether appropriate remedial measures have been or will be taken in the event of any actual or anticipated deficiencies.
- (10) The procedures required in accordance with subsection (12) shall also make provision for regular updates to be given to senior executives which outline the current level of risk incurred by each managed investment fund and any actual or foreseeable breaches of risk limits.
- (11) When setting risk limits, an AIFM shall take into account—
  - (a) the strategies and assets employed in respect of each investment fund it manages;
  - (b) the law of the jurisdiction where the investment fund is authorised or established; and
  - (c) that the risk limits must also be aligned with the risk profile of the investment fund approved by the investment fund's governing body and disclosed to its investors.
- (12) The Commission shall prescribe measures specifying—
  - (a) the risk management systems to be employed by AIFMs in relation to the risks which they incur on behalf of the investment funds that they manage;
  - (b) the appropriate frequency of review of the risk management system;
  - (c) how the risk management function is to be functionally and hierarchically separated from the operating units, including the portfolio management function;
  - (d) specific safeguards against conflicts of interest;
  - (e) the requirements under subsection (4);
  - (f) that investment funds shall not rely solely or mechanistically on credit ratings for assessing the creditworthiness of the investment fund's assets.

## 82. Liquidity management.

- (1) An AIFM shall, for each investment fund that it manages that is not an unleveraged closed-ended investment fund, employ an appropriate liquidity management system and adopt procedures which enable it to monitor the liquidity risk of the investment fund and ensure that the liquidity profile of the investments of the investment fund complies with its underlying obligations.
- (2) An AIFM shall regularly conduct stress tests, under normal and exceptional liquidity conditions, which enable it to assess and monitor the liquidity risk of the investment fund it manages.
- (3) An AIFM shall ensure that for each investment fund it manages the investment strategy, the liquidity profile, and the redemption policy are consistent with one another.
- (4) The Commission shall prescribe measures specifying —
  - (a) the liquidity management systems and procedures; and
  - (b) the alignment of the investment strategy, liquidity profile and redemption policy.

## 83. Valuation.

- (1) An AIFM shall, for each investment fund that it manages, ensure that —
  - (a) policies and procedures appropriate to the nature, scale and complexity of the business are adopted and implemented so that a proper and independent valuation of the assets of the investment fund can be performed in accordance with the constitutive documents and offering documents of the investment fund;
  - (b) the valuation shall be performed impartially and with all due skill, care and diligence;
  - (c) that the net asset value of the equity interests of an investment fund is calculated and disclosed to the investors of such investment fund in accordance with the constitutive documents and offering documents of the investment fund;
  - (d) the assets of the investment fund are valued and the net asset value of the equity interests is calculated at least once every year.
- (2) Where the investment fund is open-ended, the AIFM shall ensure that such valuations and calculations are carried out at a frequency which is appropriate to the assets held by the investment fund and its issuance and redemption frequency.
- (3) Where an investment fund is closed-ended, an AIFM shall carry out such valuations and calculations in the event of an increase or decrease of the capital by the relevant investment fund.

- (4) An AIFM shall inform investors of the investment fund of the valuation of the investment fund's assets and the calculation of the net asset value as set out in constitutive documents and offering documents of the investment fund.
- (5) The Commission shall prescribe —
  - (a) the criteria concerning the procedures for the proper valuation of the assets and the calculation of the net asset value of the equity interests;
  - (b) the professional guarantees the external valuer must be able to provide to effectively perform the valuation function;
  - (c) the frequency of valuation carried out by an open-ended investment fund that is both appropriate to the assets held by the investment fund and its issuance and redemption policy.

**84. Qualifications of valuer.**

- (1) Where an external valuer performs the valuation function, the AIFM shall ensure and demonstrate that —
  - (a) the external valuer is subject to mandatory registration under the law or to rules of professional conduct;
  - (b) the external valuer can provide sufficient professional guarantees to be able to effectively perform the relevant valuation function in accordance with this Act;
  - (c) the appointment of the external valuer complies with the requirements of section 86. and the delegation of functions under that section.
- (2) For the purposes of this Sub Part an external valuer means a person that is independent of the investment fund, the AIFM and any other persons with close links to the investment fund or the AIFM.

**85. Appointment of valuers.**

- (1) An AIFM shall ensure that the valuation function is performed by—
  - (a) an external valuer; or
  - (b) the AIFM itself, provided that the valuation task is functionally independent from the portfolio management, and the remuneration policy and other measures ensure that conflicts of interest are mitigated and that undue influence upon the employees is prevented.
- (2) An AIFM shall ensure that the AIFMD custodian of an investment fund is not appointed as the external valuer of that investment fund unless it is satisfied that the AIFMD custodian has functionally and hierarchically

separated the performance of its custodian function from its tasks as an external valuer, and that it is able to manage the potential conflicts of interest, and monitor and disclose them to the investors of the investment fund.

- (3) An AIFM shall ensure that a valuer is suitably qualified as set out under section 84.
- (4) Where the Commission is not satisfied that a valuer is suitably qualified under section 84 the Commission may require another valuer to be appointed.
- (5) Where the valuation function is not performed by an external valuer, the Commission may require the AIFM to have its valuation procedures or valuations, or both, verified by an external valuer or, where appropriate, an auditor.

**86. Duties of valuer.**

- (1) An external valuer shall perform the valuation function impartially and with all due skill, care and diligence.
- (2) An external valuer shall not delegate the valuation function to a third party.

**87. Liability of AIFM.**

- (1) An AIFM is responsible for the proper valuation of investment fund assets, the calculation of the net asset value of the equity interests of the investment fund, and the publication of that net asset value.
- (2) The liability of the AIFM to the investment fund and its investors shall not be affected by the appointment by the AIFM of an external valuer in respect of that investment fund.
- (3) Notwithstanding any contractual arrangement that provides otherwise, an external valuer is liable to the AIFM of an investment fund in respect of which the valuer is appointed, for any losses suffered by the AIFM as a result of the external valuer's negligence or intentional failure to perform its tasks.

**88. Delegation of AIFMs functions.**

- (1) An AIFM that intends to delegate its functions to a third party shall notify the Commission before the delegation takes effect.
- (2) An AIFM may delegate its functions to third parties where —
  - (a) the AIFM 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 AIFM and, in particular, does not prevent the AIFM from acting, or the investment fund from being managed, in the best interests of its investors.
- (3) The AIFM 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 AIFM is in a position to effectively monitor the delegated activity;
  - (d) the AIFM is able at any time to give the delegate further instructions;
  - (e) the AIFM is able at any time to revoke the delegation with immediate effect when this is in the best interests of investors.
- (4) The AIFM must review the services provided by each delegate on an ongoing basis.
- (5) An AIFM must not delegate, and a delegate must not sub-delegate, portfolio management or risk management functions to—
- (a) an AIFMD custodian or a delegate of the AIFMD custodian;
  - (b) any other undertaking whose interests may conflict with those of the AIFM 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 AIFM 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 (2)(d), delegation shall be deemed to prevent the effective supervision of the AIFM where —
- (a) the AIFM, 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 AIFM in connection with the delegated functions;
  - (c) the AIFM 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 AIFM 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 AIFM to delegate either its portfolio management or risk management functions upon approval, but not both.

**89. 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 AIFM prior to the sub-delegation;
  - (b) the AIFM has notified the Commission in writing before the arrangements have become effective; and
  - (c) in relation to the conditions set out in section 88, 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.

**90. Liability following delegation.**

- (1) Notwithstanding any contractual arrangements that provide otherwise, any liability of an AIFM towards the investment fund it manages or towards investors of such an investment fund is not affected by—
- (a) the delegation by the AIFM of any of the AIFM 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.
- (2) For the purposes of this Sub Part, “investment fund” includes an EU AIF.



## AIFMD CUSTODIAN

### 91. Appointment of an AIFMD custodian.

- (1) An AIFM shall ensure that a single AIFMD custodian is appointed for each investment fund that it manages.
- (2) Persons eligible to be appointed as an AIFMD custodian are—
  - (a) a bank or trust company licensed under the Banks and Trust Companies Regulation Act (*Ch. 316*); or
  - (b) a person registered under the Securities Industry Act, 2011 (*No. 10 of 2011*);
  - (c) any other institution that is subject to prudential regulation and ongoing supervision in a prescribed jurisdiction; or
  - (d) an undertaking authorised by a competent authority of a Member State to carry out the functions of an AIFMD custodian.
- (3) An AIFMD custodian shall be engaged by written contract which specifies the obligations required for the AIFMD custodian to perform its functions for the investment fund.
- (4) An AIFM shall notify the Commission in writing of any change to the appointment of an AIFMD custodian.
- (5) The Commission may prescribe specific measures in the appointment and obligations of an AIFMD custodian under this Sub Part.

### 92. AIFMD custodian conflicts of interest.

- (1) An AIFM shall not act as the AIFMD custodian of any investment fund that it manages.
- (2) An AIFMD custodian shall act honestly, fairly, professionally, independently and in the best interests of the investment fund and its investors.
- (3) An AIFMD custodian shall not carry out activities with regard to the investment fund or the AIFM on behalf of the investment fund that may create conflicts of interest between the investment fund, the investors in the investment fund, the AIFM and itself, unless the AIFMD custodian has functionally and hierarchically separated the performance of its custodian functions from its other potentially conflicting tasks.
- (4) An AIFMD custodian shall ensure that potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the investment fund.
- (5) An AIFMD custodian shall not re-use assets of the investment fund, or of the AIFM acting on behalf of the investment fund, that have been

entrusted to it for safe-keeping without the prior consent of the investment fund or the AIFM acting on its behalf.

- (6) An AIFM shall not appoint a prime broker, who is acting as counterparty to an investment fund, to be its AIFMD custodian unless it is satisfied that the prime broker —
- (a) has functionally and hierarchically separated its AIFMD custodian function from its prime broker function;
  - (b) is able to properly identify, manage, and monitor conflicts of interest; and
  - (c) will disclose such conflicts of interest to investors of the investment fund.

**93. AIFMD custodian cash flow monitoring**

- (1) An AIFMD custodian shall properly monitor an investment fund's cash flows and must ensure that all payments made by or on behalf of investors of the investment fund upon subscription for equity interests of an investment fund have been received.
- (2) An AIFMD custodian shall ensure that all cash of the investment fund is booked in cash accounts opened in the name of —
  - (a) the investment fund;
  - (b) the AIFM acting on behalf of the investment fund; or
  - (c) the AIFMD custodian acting on behalf of the investment fund.
- (3) Where an AIFMD custodian opens a cash account in its own name, acting on behalf of the investment fund, it must not use the account to book the custodian's own cash.
- (4) The Commission may make regulations in respect of the AIFMD custodian cash flow monitoring under this section.

**94. Safekeeping of assets for financial instruments.**

- (1) The assets of the investment fund, or the AIFM acting on behalf of the investment fund, that comprise financial instruments that can be held in custody, must be entrusted to the AIFMD custodian for safe-keeping under subsection (2).
- (2) The AIFMD custodian must —
  - (a) hold in custody all financial instruments that can be registered in a financial instruments account opened in the AIFMD custodian's books and all financial instruments that can be physically delivered to the AIFMD custodian; ~~and~~
  - (b) ensure that all those financial instruments that can be registered in a financial instruments account opened in the AIFMD custodian's

books are registered in the AIFMD custodian's books within segregated accounts opened in the name of the investment fund, or the AIFM acting on behalf of the investment fund, so that they can at all times be clearly identified as belonging to the investment fund in accordance with the law which applies to the AIFMD custodian in the jurisdiction where it is authorised.

- (3) The Commission may make regulations in respect of the safekeeping of financial instruments under this section.

**95. Safekeeping of other assets.**

- (1) An AIFMD custodian shall —
  - (a) verify that the other assets it holds on behalf of an investment fund, or the AIFM acting on behalf of an investment fund, are owned by the investment fund or the AIFM acting on behalf of the investment fund;
  - (b) maintain a record of all assets that it has verified; and
  - (c) verify ownership on the basis of information and documents provided to it by the investment fund, or the AIFM acting on behalf of the investment fund, or other evidence of ownership available to it.
- (2) An AIFMD custodian shall keep its records up to date.
- (3) The Commission may make regulations in respect of the safekeeping of other assets under this section.

**96. AIFMD custodian general compliance**

An AIFMD custodian of an investment fund, or an AIFM acting on behalf 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 AIFM are carried out;
- (d) in transactions involving the investment fund's assets, any consideration is remitted to the investment fund without delay; and
- (e) the investment fund's income is applied,

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

**97. Delegation of AIFMD custodian functions.**

- (1) An AIFMD custodian shall not delegate its functions, with the exception of those relating to safe-keeping of assets.
- (2) Where an AIFMD custodian delegates any of the activities outlined in sections 94 and 95, the AIFMD custodian shall ensure that —
  - (a) the AIFMD custodian has not delegated any functions to a person if the purpose of the delegation is to enable it to avoid compliance with its obligations under this Act;
  - (b) there are objective reasons for the delegation;
  - (c) the AIFMD custodian has exercised all due skill, care and diligence in the selection and appointment of the delegate, and continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring of any delegate to whom it has delegated some of its tasks, and the arrangements of the delegate in respect of the matters delegated to it; and
  - (d) at all times during the performance of the delegated tasks, the AIFMD custodian satisfies the conditions of subsection (3).
- (3) In addition to obligations under subsection (2) the AIFMD custodian shall ensure that —
  - (a) the delegate has the structure and the expertise that are adequate and proportionate to the nature and complexity of the assets of the investment fund, or of the AIFM acting on behalf of the investment fund, which have been entrusted to it;
  - (b) in relation to custody tasks under sections 94 and 95, the delegate is subject to effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned, and the delegate is subject to an external periodic audit to ensure that the financial instruments are in its possession;
  - (c) the delegate segregates the assets of the AIFMD custodian from the investment fund's assets in such a way that they can, at all times, be clearly identified as belonging to the investment fund;
  - (d) the delegate does not make use of the assets without the prior consent of the investment fund, or the AIFM acting on behalf of the investment fund, and prior notification to the AIFMD custodian; and
  - (e) the delegate complies with the general obligations and prohibitions set out in this Sub Part.
- (4) A delegate to whom functions have been delegated under this section may sub-delegate any or all of the delegated functions to a sub-delegate and, in such a case, the requirements of this section apply *mutatis mutandis* to the sub-delegate.

- (5) Where the law of the jurisdiction where the investment fund is authorised or established requires that assets be held in the custody of a local entity and no local entity satisfies the requirements of subsection (3)(b), the AIFMD custodian may delegate the custody of such financial instruments to the local entity only to the extent required by the law of that jurisdiction and only for as long as there are no local parties that satisfy the delegation requirement but subject to the requirements specified in subsection (6).
- (6) For the purposes of subsection (5) the delegation requirements are —
  - (a) the investors of the relevant investment fund must be duly informed that the delegation is required owing to legal constraints under the law of the jurisdiction where the relevant investment fund is authorised or established, and of the circumstances justifying its delegation prior to their investment; and
  - (b) the investment fund, or AIFM on behalf of the investment fund, must instruct the AIFMD custodian to delegate the custody of such financial instruments to the local entity.
- (7) An AIFMD custodian that intends to delegate its functions to a third party shall notify the Commission before the delegation takes effect.
- (8) The Commission shall prescribe measures specifying —
  - (a) the conditions for fulfilling the requirement set out in subsection (1);
  - (b) the conditions under which an AIFMD custodian shall be deemed to have delegated its functions.
- (9) For the purposes of this Sub Part a local entity means an entity that is incorporated or established in the jurisdiction in which the assets of the investment fund are located or required to be held in custody.

**98. AIFMD custodian liability for loss of financial instrument.**

- (1) This section applies where a financial instrument, held in custody in accordance with this Act by an AIFMD custodian, delegate, or sub-delegate, is lost.
- (2) Subject to subsections (3) and (4), where a financial instrument has been lost, the AIFMD custodian must return a financial instrument of identical type or the corresponding amount to the investment fund, or the AIFM acting on behalf of the investment fund, without undue delay.
- (3) The AIFMD custodian is not required to comply with the obligations in subsection (2) if it can prove that the loss occurred owing to an external event beyond the AIFMD custodian's reasonable control.

- (4) In the case of the loss of a financial instrument held in custody by a delegate, the AIFMD custodian is not required to comply with the obligation in subsection (2) where —
- (a) the conditions around delegation of custody were met in accordance with this Act;
  - (b) a written contract between an AIFMD custodian and the delegate expressly transfers the liability of the AIFMD custodian to that third party and makes it possible for the investment fund, or the AIFM acting on behalf of the investment fund, to make a claim against the delegate in respect of the loss of financial instruments or for the AIFMD custodian to make such a claim on their behalf; and
  - (c) a written contract between the AIFMD custodian and the investment fund, or the AIFM acting on behalf of the investment fund, expressly discharges the AIFMD custodian from liability and establishes an objective reason for such discharge.
- (5) Notwithstanding any contractual arrangements that provide otherwise, the obligation of the AIFMD custodian under subsection (2) or any liability of the AIFMD custodian under subsection (4)(b) is not affected by any delegation or sub-delegation under this Act.

**99. AIFMD custodian liability for other losses.**

- (1) If an investment fund, or investors of an investment fund, have suffered losses other than the loss referred to in section 98, the AIFMD custodian is liable to the investment fund, or investors of the investment fund, if the losses are a result of the custodian's negligent or intentional failure to comply with a provision that applies to it.
- (2) Notwithstanding any contractual arrangements that provide otherwise, any liability of the AIFMD custodian to the investment fund, or to investors of the investment fund, under subsection (1) is not affected by any delegation by the AIFMD custodian of its functions.

**100. Liability of overseas AIFMD custodians.**

- (1) This section applies where —
  - (a) the law of the jurisdiction where the investment fund is authorised or established requires certain financial instruments to be held in custody by a local entity; and
  - (b) there is no local entity that satisfies the delegation requirements in this Act.
- (2) The AIFMD custodian is not liable for a failure to comply with the obligation under section 98 (2), provided that the following conditions are met —

- (a) the constitutive documents of the investment fund concerned expressly allow for a discharge of the obligation;
  - (b) the investors of the investment fund were informed of the discharge and of the circumstances justifying it prior to their investment;
  - (c) the investment fund, or the AIFM on behalf of the investment fund, instructed the AIFMD custodian to delegate the custody of the financial instruments to a local entity;
  - (d) a written contract between the AIFMD custodian and the investment fund, or the AIFM acting on behalf of the investment fund, expressly allows for such a discharge; and
  - (e) a written contract between the AIFMD custodian and the local entity expressly transfers the AIFMD custodian's liability to the third party making it possible for the investment fund, or the AIFM acting on behalf of the investment fund, to make a claim against the local entity with regard to loss of financial instruments or the AIFMD custodian to make such a claim on their behalf.
- (3) Liability to the investors of the investment fund may be invoked directly or indirectly through the AIFM, depending on the legal nature of the relationship between the AIFMD custodian, the AIFM and the investors.
- (4) An AIFM shall provide the AIFMD custodian, upon commencement of its duties and on an ongoing basis, with all relevant information it needs in order to comply with its obligations, including information to be provided to the AIFMD custodian by third parties.
- (5) The Commission shall prescribe measures specifying —
- (a) the particulars that need to be included in the written contract under section 91(3);
  - (b) general criteria for assessing whether the prudential regulation and supervision of other jurisdictions referred to in section 91.(2)(c) have the same effect as the laws of The Bahamas and are effectively enforced;
  - (c) the conditions for performing the AIFMD custodian functions under sections 93, 95 and 96, including —
    - (i) the type of financial instruments to be included in the scope of the custodian's custody duties in accordance with sections 94.(2) and (3);
    - (ii) the conditions subject to which the AIFMD custodian is able to exercise its custody duties over financial instruments registered with a central custodian; and
    - (iii) the conditions subject to which the AIFMD custodian is to safekeep the financial instruments issued in a nominative

form and registered with an issuer or a registrar, in accordance with section 95;

- (d) the due diligence duties of the AIFMD custodian under section 97(2)(c);
- (e) the segregation obligation of the AIFMD custodian under section 97(3)(c);
- (f) the conditions subject to which and circumstances in which financial instruments held in custody are to be considered as lost;
- (g) what is to be understood by external events beyond reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary under section 98;
- (h) the conditions subject to which and circumstances in which there is an objective reason to contract a discharge under section 98(4)(c).

#### 101. Annual report.

- (1) An AIFM shall, in such form as the Commission may require, for each investment fund that it manages and markets, prepare an annual report for each financial year which shall be submitted to the Commission no later than six months following the end of the relevant financial year of the investment fund.
- (2) The annual report shall, where applicable, be submitted to the competent authority of the jurisdiction where the investment fund is authorised or established.
- (3) The annual report shall be provided to investors of the relevant investment fund upon request made to the AIFM.
- (4) The AIFM shall ensure that the information provided in the annual report is presented in a form that provides materially relevant, reliable, comparable and clear information relating to each investment fund.
- (5) The annual report must contain all information investors require in relation to investment fund structures managed by the AIFM.
- (6) In addition to the information required in subsection (5), the annual report shall comprise —
  - (a) a balance-sheet or a statement of assets and liabilities;
  - (b) an income and expenditure account for the financial year;
  - (c) a report on the activities of the financial year;
  - (d) written confirmation of any changes that are material to the information required to be disclosed to investors of the investment fund during the financial year covered by the report;
  - (e) written confirmation of the total amount of remuneration for the financial year, divided into fixed and variable remuneration, paid by



- the AIFM to its staff, and number of beneficiaries, and, where relevant, carried interest paid by the investment fund;
- (f) a description of the aggregate amount of remuneration broken down by senior management and members of staff of the AIFM whose actions have a material impact on the risk profile of the investment fund.
  - (7) The accounting information provided in the annual report must be prepared in accordance with the accounting standards set out in subsection (8) in the case of an investment fund established in The Bahamas, or prepared in accordance with the requirements of the jurisdiction where the investment fund is authorised or established.
  - (8) The accounting information provided in the annual report is required to be audited by one or more persons authorised in accordance with the law of the jurisdiction where the investment fund is authorised or established.
  - (9) A person authorised to provide accounting information in accordance with subsection (8) shall also provide an auditor's report to the AIFM prior to the submission of the annual report by the AIFM to the Commission.
  - (10) The auditor's report required in accordance with subsection (9), which shall include any qualifications made by the auditor, must be reproduced in full in the annual report.

#### **102. Disclosure to investors.**

- (1) An AIFM shall, for each of the investment funds that it manages or markets, make available to the investment fund investors —
  - (a) a description of the investment strategy and objectives of the investment fund;
  - (b) information on where any master fund is authorised or established, and where the underlying funds are authorised or established, if the investment fund is a fund of funds;
  - (c) a description of the types of assets in which the investment fund may invest;
  - (d) the techniques the investment fund may employ and all associated risks;
  - (e) any applicable investment restrictions;
  - (f) the circumstances in which the investment fund may use leverage;
  - (g) the types and sources of leverage permitted and the associated risks;
  - (h) any restrictions on the use of leverage and any collateral and asset re-use arrangements;
  - (i) the maximum level of leverage which the AIFM is entitled to employ on behalf of the investment fund;

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- (j) a description of the procedures by which the investment fund may change its investment strategy or investment policy, or both;
- (k) a description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on —
  - (i) the jurisdiction;
  - (ii) the applicable law;
  - (iii) the existence or not of any legal instruments providing for the recognition and enforcement of judgments in the jurisdiction where the investment fund is authorised or established;
  - (iv) the identity of the AIFM, the AIFM custodian, auditor and any other service providers of the investment fund, and a description of their duties and the investors' rights;
- (l) a description of how the AIFM is complying with the requirements of section 74 regarding professional liability risks;
- (m) a description of any delegated management function by the AIFM, and any safe-keeping function delegated by the AIFMD custodian including identification of the delegate and any conflicts of interest that may arise from such delegations;
- (n) a description of the valuation procedure of the investment fund and of the pricing methodology for valuing assets, including the methods used in valuing hard-to-value assets in accordance with sections 77 to 80;
- (o) a description of the liquidity risk management of the investment fund, including the redemption both in normal and in exceptional circumstances, and the existing redemption arrangements with investors;
- (p) a description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors;
- (q) a description of how the AIFM ensures a fair treatment of investors and, whenever an investor obtains preferential treatment or the right to obtain preferential treatment, a description of that preferential treatment, the type of investors who obtain the preferential treatment and, where relevant, their legal or economic links with the investment fund or AIFM;
- (r) the most recent annual report prepared in accordance with section 101;
- (s) the procedure and conditions for the issue and sale of equity interests;

- (t) the latest net asset value of the investment fund or the latest market price of the equity interests of the investment fund, in accordance with section 83 on valuation principles;
  - (u) where available, the historical performance of the investment fund;
  - (v) the identity of any prime broker and a description of any material arrangements of the investment fund with its prime brokers;
  - (w) the way the conflicts of interest are managed in relation to a prime broker;
  - (x) provision in the contract between a prime broker and an AIFMD custodian on the transfer and re-use of investment fund assets;
  - (y) information about any transfer to the prime broker of any liability of the investment fund;
  - (z) a description of the means and timing of disclosure of information on periodic disclosures and leverage.
- (2) The information under subsection (1) should be disclosed in accordance with the constitutive documents and offering documents of the investment fund and at a minimum, at the same time as the annual report is made available to investors.
  - (3) An AIFM shall inform the investors before they invest in the investment fund of the information under subsection (1) and upon any change that is material to the information.
  - (4) An AIFM shall inform the investors, before they invest in the investment fund, of any arrangement made by the AIFMD custodian to contractually discharge itself of liability under section 94.
  - (5) An AIFM shall immediately inform investors of the investment fund of any changes with respect to the liability of the AIFMD custodian.
  - (6) Where an investment fund is required to publish an offering document in accordance with the investment fund or in accordance with the law of the jurisdiction where it is authorised or established, only such information referred to in this section which is in addition to that contained in the offering document shall be disclosed separately or as additional information in the offering document.
  - (7) An AIFM shall, for each of the investment funds it manages or markets, periodically disclose the following information to investors of the relevant investment fund —
    - (a) the percentage of the investment fund's assets which are subject to special arrangements arising from their illiquid nature;
    - (b) any new arrangements for managing the liquidity of the investment fund;

- (c) the current risk profile of the investment fund and the risk management systems employed by the AIFM to manage those risks.
- (8) An AIFM managing an investment fund employing leverage or marketing in the EU an investment fund employing leverage, must for each such investment fund, periodically disclose to investors of the relevant investment fund within the time periods specified —
- (a) without undue delay, any changes to the maximum level of leverage which the AIFM may employ on behalf of the investment fund as well as any right of re-use of collateral or any guarantee granted under the leverage arrangement;
  - (b) the total amount of leverage employed by the investment fund in accordance with the constitutive documents and offering documents of the investment fund and at least at the same time as the annual report is made available to investors.

### 103. Reporting obligations to the Commission.

- (1) An AIFM must report the following information to the Commission in the manner the Commission may direct, not later than one month after the end of the reporting periods set out in subsection (5) —
  - (a) the main instruments in which it is trading, including a breakdown of financial instruments and other assets, including the investment strategies and the geographical and sectoral investment focus of the investment fund it manages;
  - (b) the markets of which it is a member or where it actively trades;
  - (c) the diversification of the portfolio of the investment fund it manages, including but not limited to, its principal exposures and most important concentrations.
- (2) Where the investment fund is a fund of funds, upon written request by the AIFM to the Commission, the reporting periods set out in subsection (5) may be extended by up to fifteen days by the Commission.
- (3) An AIFM must, for each of the investment funds it manages or markets, report the following information to the Commission in the manner as the Commission may direct, in accordance with the reporting periods set out in subsection (5) —
  - (a) the percentage of the assets of the investment fund which are subject to special arrangements arising from their illiquid nature as disclosed to investors;
  - (b) any new arrangements for managing the liquidity of the investment fund;

- (c) the risk management systems employed by the AIFM to manage the market risk, liquidity risk, counterparty risk and other risks including operational risk;
  - (d) the current risk profile of the investment fund, including —
    - (i) the market risk profile of the investments of the investment fund, including the expected return and volatility of the investment fund in normal market conditions;
    - (ii) the liquidity profile of the investments of the investment fund, including the liquidity profile of the assets of the investment fund, the profile of redemption terms and the terms of financing provided by counterparties to the investment fund;
  - (e) information on the main categories of assets in which the investment fund is investing, including the corresponding short market value and long market value, the turnover and performance during the reporting period; and
  - (f) the results of periodic stress tests, under normal and exceptional circumstances, performed in accordance with sections 81(10)(b) and 82(2).
- (4) An AIFM managing investment funds employing leverage on a substantial basis must make available to the Commission —
- (a) the overall level of leverage employed by each investment fund it manages;
  - (b) a breakdown between leverage arising from borrowing of cash or securities and leverage embedded in financial derivatives;
  - (c) the extent to which the assets of the investment fund have been re-used under leveraging arrangements; and
  - (d) the identity of the five largest sources of borrowed cash or securities for each of the investment funds managed or marketed by the AIFM, and the amounts of leverage received from each of those sources for each of those investment funds.
- (5) The information required in subsection (4) must be reported to the Commission —
- (a) every six months, by an AIFM managing portfolios of investment funds whose assets under management in total do not exceed the equivalent of one billion euros or the equivalent currency acceptable to the Commission, for each of their investment funds;
  - (b) on a quarterly basis, by an AIFM managing portfolios of investment funds whose assets under management in total exceed the equivalent of one billion euros or the equivalent currency acceptable to the Commission, for each of their investment funds;

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- (c) on a quarterly basis, by an AIFM which is subject to the requirements referred to in subparagraph (a), for each investment fund whose assets under management, including any assets acquired through use of leverage, in total exceed the equivalent of five hundred million euros or the equivalent currency acceptable to the Commission, in respect of that investment fund;
  - (d) on an annual basis, by an AIFM in respect of each unleveraged investment fund under its management which, in accordance with its core investment policy, invests in non-listed companies and issuers in order to acquire control.
- (6) The Commission may require all or part of the information required in subsection (5) to be reported within different time frames and in such manner as the Commission may direct.
  - (7) The Commission may require an AIFM to provide it with any of the following documents upon request—
    - (a) an annual report of each investment fund managed by the AIFM for each financial year;
    - (b) a list of all investment funds which the AIFM manages on a quarterly basis;
    - (c) where necessary, for the effective monitoring of systemic risk, the Commission may require other information to be provided to it on a periodic and *ad hoc* basis.
  - (8) For the purposes of this paragraph, “leverage” shall be considered by the Commission to be employed on a substantial basis when the exposure of an investment fund (calculated in accordance with the commitment method) exceeds three times its net asset value.
  - (9) The Commission shall prescribe measures specifying —
    - (a) the quantitative reporting requirements of an AIFM;
    - (b) when leverage is to be considered to be employed on a substantial basis for the purposes of subsection (4); and
    - (c) the obligations to report and provide information provided for in this section.

**104. AIFMs managing leveraged investment funds.**

An AIFM shall ensure and demonstrate that the leverage limits set by it for each investment fund that it manages are appropriate, and that the investment fund complies with such limits at all times.

**105. Limits on leverage.**

- (1) The Commission must —

- (a) assess the risks arising out of the use of leverage by an investment fund managed by an AIFM;
  - (b) if required, impose the measures in subsection (2) on an AIFM, in order to ensure the stability and integrity of the financial system in The Bahamas or the jurisdiction where an investment fund is authorised or established, and to limit the extent to which the use of leverage by an investment fund managed by an AIFM contributes to —
    - (i) the build-up of systemic risk in the financial system; or
    - (ii) the risks of disorderly markets.
- (2) The measures referred to in subsection (1)(b) are—
- (a) to impose limits on the level of leverage that such an AIFM may employ; or
  - (b) to impose other restrictions on the AIFM.
- (3) The Commission may use its powers under section 42 of the Act to impose limits on leverage or other restrictions on an AIFM, but this subsection does not limit the powers of the Commission.
- (4) For the purposes of this Sub Part, “investment fund” includes an EU AIF.

#### GENERAL ADMINISTRATION AND FINANCIAL MATTERS

##### 106. Compliance with directions.

A regulated person shall use reasonable efforts to ensure that it complies with any direction given to it by the Commission in accordance with the provisions of this Act.

##### 107. Approval by the Commission.

- (1) A regulated person shall not appoint or change a director, operator, chief executive officer (or the equivalent position) as the case may be, or any other person for whom initial approval by the Commission was required, unless —
  - (a) the prior written approval of the Commission to the appointment has been obtained; and
  - (b) the prescribed fee has been paid.
- (2) A regulated person shall notify the Commission immediately of any change in the information furnished to the Commission in support of its application.
- (3) A regulated person who contravenes subsection (1) may be required to —

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- (a) cease operations;
  - (b) surrender its licence or registration, as the case may be; or
  - (c) commence winding-up or dissolution,
- as required by the Commission.

**108. Instructions to audit accounts.**

- (1) The Commission may at any time instruct a regulated person —
  - (a) to have its accounts audited by an auditor; and
  - (b) to submit the audited financial statements to the Commission, within such time as the Commission shall specify.
- (2) The audited financial statements referred to in subsection (1) shall be prepared at the expense of the regulated person.

**109. Auditors to report.**

- (1) The regulated person shall have its financial statements audited annually by an auditor.
- (2) The auditor under subsection (1) shall —
  - (a) make an examination of the annual financial statements and other regulatory filings of the regulated person in accordance with generally acceptable auditing standards and shall prepare a report on the audit in accordance with generally accepted accounting principles; and
  - (b) when requested to do so by the Commission, provide a report on any matter relating to the financial affairs of the regulated person.
- (3) The Commission may, where the report of the auditor required by subsection (2)(a) is qualified in any respect or the report required by subsection (2)(b) discloses that there are any material weaknesses or deficiencies in or non-compliance with any of the prescribed requirements, take any action that is deemed necessary until the matters giving rise to the qualified audit report are resolved or the matters giving rise to the weaknesses or deficiencies or non-compliance are rectified.
- (4) Where in the course of performing the duties required by subsection (2), the auditor comes to the view that a matter that could give rise to a qualification in the audit report on the financial statements is present or that there is a material weakness or deficiency in or non-compliance with any of the provisions of the Act relating to the financial affairs of the regulated person, he shall provide notice to the Commission immediately in writing and a copy of the notice must be delivered promptly to the regulated person.
- (5) The Commission may require the auditor of a regulated person to —



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- (a) submit to the Commission such additional information in relation to the audit as the Commission considers necessary;
  - (b) enlarge or extend the scope of the audit of the business and affairs of the regulated person;
  - (c) carry out any other examination or establish any procedure in any particular case;
  - (d) submit a report to the Commission on any of the matters referred to in paragraphs (b) and (c), and the auditor shall carry out such additional duty or duties.
- (6) Except where exempted or waived by the Commission —
- (a) an investment fund shall submit its audited financial statements in respect of a financial year of the investment fund to the Commission within six months of the end of that financial year or within such extension of the period as the Commission may reasonably allow;
  - (b) a regulated person, that is not an investment fund, shall submit its audited financial statements in respect of a financial year of the regulated person to the Commission within four months of the end of that financial year or within such extension of the period as the Commission may reasonably allow.
- (7) The regulated person shall remunerate the auditor in respect of the discharge of such additional duty or duties as the Commission may impose under subsection (5).

**110. General financial reporting.**

A regulated person shall report financial information to the Commission as required by the Commission.

**111. Ongoing statutory reporting obligations**

- (1) A regulated person shall submit documentation and other information as prescribed by the Commission from time to time.
- (2) A regulated person shall deliver to the Commission, within five days of a change, written notice of —
  - (a) any change in any information provided in the regulated person's application for licence, registration or approval; and
  - (b) any change with respect to any other matter as may be set out in the Act.
- (3) In addition to the notice requirements under subsection (2), a regulated person shall deliver to the Commission immediate written notice of the occurrence of any of the following in relation to the regulated person —

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- (a) the commencement of a winding up or a dissolution of any regulated person or a subsidiary or holding company of the regulated person;
- (b) the application by a person for the appointment of a receiver, receiver-manager, administrator or trustee of the regulated person or a subsidiary or holding company of the regulated person;
- (c) the making or any proposal for the making of an arrangement with a creditor or creditors of the regulated person or a subsidiary or holding company of the regulated person;
- (d) the appointment of inspectors by a domestic regulatory authority or overseas regulatory authority to investigate the affairs of the regulated person or a subsidiary or holding company of the regulated person;
- (e) the bringing of any action under the Act against the regulated person or a subsidiary or holding company of the regulated person;
- (f) where applicable, any change to the insurer, any claim made by the regulated person against the insurer, or any change to the amount of coverage of the regulated person's insurance arrangements;
- (g) any resignations or dismissals of directors, officers or senior employees of the regulated person or holding company of the regulated person;
- (h) where the regulated person becomes aware that a director, officer or employee has been engaged in activities involving fraud or other dishonesty;
- (i) any material breakdown of administrative or control procedures, including breakdowns of computer systems or other problems resulting or likely to result in failure to maintain proper records, and the steps that the regulated person proposes to take to correct the problem;
- (j) the date on which the regulated person proposes to cease to carry on business and the reasons for the cessation;
- (k) the inability of the regulated person to perform any of the calculations or re-conciliations required by any regulations or to correct any deficiencies identified by the calculations or re-conciliations;
- (l) a breach by the regulated person of the requirements regarding financial resources, books and records and risk management and internal controls, together with details of the steps that the regulated person is taking to remedy the breach;
- (m) where the regulated person has reason to believe that it may be unable to —

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- (i) submit a financial report as required; or
  - (ii) pay its annual renewal fees to the Commission;
  - (n) the failure of any bank, registered marketplace, clearing facility or other entity with which the regulated person has deposited or to which it has passed money belonging to an investment fund or to the investors in an investment fund;
  - (o) where the regulated person becomes aware of any actual or contingent claim in relation to its investment fund business by or against the regulated person where any amount claimed or disputed is likely to exceed 10 per cent of the regulated person's assets;
  - (p) where the regulated person is the subject of any written customer complaint involving allegations of forgery, fraud, theft or misappropriation of property belonging to the investment fund or an investor;
  - (q) where the regulated person is associated in any way in any business or financial activity with any person who has —
    - (i) been convicted of an offence punishable by one year or more in prison under Bahamian law;
    - (ii) been convicted of an offence punishable by one year or more in prison under any foreign law; or
    - (iii) been barred or suspended by any domestic or overseas regulatory authority;
  - (r) where the regulated person is named as a defendant or respondent in any domestic or foreign criminal or regulatory proceeding;
  - (s) where the regulated person is named as a defendant or respondent in any civil proceeding, exceeding twenty-five thousand dollars; or
  - (t) any other matter relevant to the supervision of the regulated person.
- (4) Upon receipt of a notice under this section, the Commission may review the regulated person's continued fitness for licensing or registration and take any action it deems necessary as a result.
- (5) Where a regulated person fails to submit documentation and other information as required under this section it may be subject to conditions imposed on its licence, registration or approval as prescribed by the Commission.
- (6) For the purposes of this section —
- “failure” means the appointment of a liquidator, receiver, administrator, or trustee in bankruptcy or any equivalent procedure in the relevant jurisdiction;
- “a regulated person” does not include an investment fund.

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**112. Reporting to investors.**

The Commission may require reporting or information to be provided to the investors as prescribed by the Commission.

**113. Complaints.**

- (1) An investment fund shall establish and maintain an effective complaints handling system and procedures that ensure that —
  - (a) adequate records of complaints, including a central register, are established and maintained;
  - (b) all complaints are responded to in writing within fourteen days of receipt of the complaint; and
  - (c) each complaint is effectively and fairly resolved.
- (2) A record of complaints shall be kept by the investment fund administrator acting on behalf of an investment fund.

**114. Anti-money laundering and anti-terrorism financing obligations.**

An investment fund administrator, investment fund manager and an investment fund shall comply with the anti-money laundering and anti-terrorism financing standards as prescribed by the Commission.

## **PART IV - INVESTIGATION AND INSPECTION**

### **INVESTIGATION**

**115. Power to investigate.**

- (1) The Commission may conduct such investigations as it considers necessary or expedient for any of the following purposes —
  - (a) to determine whether any person has contravened, is contravening or is about to contravene the provisions of this Act;
  - (b) for the administration of this Act; or
  - (c) to provide assistance to the regulatory authority of another jurisdiction.
- (2) For the purposes of subsection (1), the Commission may conduct the investigation or may, in writing, appoint another person for that purpose.
- (3) The Commission may, notwithstanding the provisions of any prescribed written law or any requirement imposed thereunder or any rule of law, exercise any of its powers under this Sub Part for the purposes of conducting an investigation under subsection (1).

**116. Power to obtain information for investigation.**

- (1) Where the Commission considers that a person is or may be able to give information or produce a document which is or may be relevant to an investigation, it may —
  - (a) require such person to attend before it at a specified time and place to answer questions, including under oath or affirmation that the statements that the person will make will be true;
  - (b) enter, during reasonable hours, the business premises of such person for the purpose of —
    - (i) inspecting and copying information or documents stored in any form on such premises; and
    - (ii) removing from the premises any information or documents;
  - (c) require such person to give, or procure the giving of, specified information or information of a specified description in such form as the Commission may reasonably require;
  - (d) require such person to produce, or procure the production of, specified documents or documents of a specified description;
  - (e) require such person to give an explanation of or further particulars regarding any information or document produced under paragraphs (c) and (d);
  - (f) require such person to give the Commission all assistance in relation to the investigation that the person is reasonably able to give.
- (2) If a person, acting on behalf of the Commission, enters premises under subsection (1)(b), the person must present proof of his or her authority to do so.
- (3) The Commission may, in exercising its power under this section, seek the assistance of the Commissioner of Police.
- (4) The assistance sought under subsection (3) shall be —
  - (a) for the purpose of investigating the affairs, or any aspect of the affairs, of a person specified by the Commission; and
  - (b) provided in such manner as the Commission may require.
- (5) Any information or document removed under subsection (1)(b) must be returned to the person from whom, or premises from which, it was taken as soon as practicable.