

New CIMA Rules for Registered Mutual Funds

The Cayman Islands Monetary Authority ("CIMA") has issued new rules that apply to mutual funds regulated under the Mutual Funds Law (2020 Revision)¹. The new rules relate to: (i) the contents of Offering Documents (the "Content Rules"); (ii) the Segregation of Assets (the "Segregation Rules"); and (iii) the Calculation of Asset Values (the "NAV Calculation Rules") (collectively, the "Rules").

Content Rules

All regulated mutual funds with a new or ongoing offering made pursuant to an offering document are required to comply with the Content Rules. The disclosures required by the Content Rules largely reflect existing disclosure practices for Cayman Islands funds and, in many respects, simply codify what the industry had already understood to be CIMA's requirements for inclusion in the offering document of a regulated mutual fund. Critically, the new Content Rules do not impact any existing duty of disclosure under the general law or as required under the Mutual Funds Law.²

We expect the amendments required to the offering documents of most regulated mutual funds as a result of the new Content Rules to be relatively minor. One amendment that will affect all regulated mutual funds is the inclusion of a new disclaimer

relating to the consequence of registration by CIMA that is required to be included in all offering documents in the exact form appearing in the Content Rules.

Although the Content Rules are currently in force and apply to all funds with an ongoing offering, CIMA has not prescribed a timeframe that existing offering documents should be updated and our current view is that existing regulated mutual funds should not need to immediately update their offering materials for compliance with the Content Rules. Instead, we recommend that offering materials be updated when next up for review (either by supplement or full update).

Segregation Rules

The Segregation Rules require that a regulated mutual fund appoint a service provider with regard to ensuring the safekeeping of the fund's portfolio. The definition of service provider includes an administrator, auditor, custodian, investment advisor, investment manager, operator, i.e. the directors of a corporate fund, the GP of a partnership or the trustee of a unit trust, prime broker, promoter or registrar. Accordingly, it is not a requirement to engage a third party service provider with respect to this function and the operator could perform the role.

¹ Similar Rules have been issued with respect to private funds regulated under the Private Funds Law, 2020. <https://maples.com/en/Knowledge-Centre/Industry-Updates/2020/11/New-CIMA-Rules-for-Registered-Private-Funds>

² The Mutual Funds Law (2020 Revision) requires an offering document to:

(a) describe the equity interests in all material respects; and (b) contain such other information as is necessary to enable a prospective investor in the mutual fund to make an informed decision as to whether or not to subscribe for or purchase the equity interests.

The Segregation Rules require that a regulated mutual fund's portfolio be segregated and accounted for separately from the assets of any service provider, and also require the fund to ensure that none of its service providers use the fund's portfolio to finance their own or any other operations. However, the Segregation Rules set out certain permitted derogations from this requirement – for example, the transfer and reuse of assets (e.g. in connection with rehypothecation) is permitted if consented to by the fund and certain disclosures are made to investors. In addition, CIMA also issued a notice confirming that comingling of client assets in the context of custody or sub-custody arrangements in accordance with established and accepted industry practice is not prohibited by the Segregation Rules.

The Segregation Rules also require a regulated mutual fund to establish, implement and maintain strategies, policies, controls and procedures to ensure compliance with the Segregation Rules, and to ensure verification that the fund holds title to its assets and a record of the fund's assets. We expect the verification function will already be undertaken by a regulated mutual fund's administrator and auditor as part of their existing processes but otherwise the fund's manager or operator (or their affiliates) may also perform the verification function subject to the function being carried out independently from the portfolio management function and any conflicts being properly identified, managed and disclosed to investors.

NAV Calculation Rules

The NAV Calculation Rules require regulated mutual funds to have in place a net asset value ("NAV") calculation policy that ensures the fund's NAV is fair, complete, neutral and free from material error and is verifiable, with the methodology used to perform the NAV calculation based on the applicable accounting standards.

The NAV Calculation Rules set out a number of requirements the NAV calculation policy must adhere to, although deviations are permitted, provided they are disclosed in the fund's marketing materials, unless there is a satisfactory reason not to do so. There is also a requirement to disclose to investors any deviations that have an effect on the reported NAV.

The fund's NAV is required to be calculated by a service provider independent of the fund's investment manager or operators, although the investment manager may be involved in the calculation of NAV, provided this is disclosed in the fund's offering document (and additionally that the investment manager provide supporting information and the service provider responsible for calculating NAV take steps to verify the information to the extent reasonably possible). There is also a requirement to disclose any conflicts of interest caused by the investment manager's involvement in the NAV calculation process.

In addition, the operator must approve and review at least annually, the fund's NAV calculation policy and any pricing models adopted.

Actions Required

Most regulated mutual funds will likely already have the systems and existing service providers in place in order to comply with the Segregation Rules and the NAV Calculation Rules. In addition, domestic regulation of service providers such as prime brokers, custodians, administrators and auditors will mean that such service providers should already be in compliance with the requirement to segregate / monitor segregation of assets, and be under a duty to ensure that NAV is calculated in accordance with applicable accounting standards.

Nevertheless, funds should review their policies and procedures around the segregation of assets and the calculation of NAV to identify any inconsistencies with the Rules. These policies and procedures may then either need to be modified or,

depending on the relevant requirement, certain disclosures made to investors. For good corporate governance purposes, funds should also memorialise how they currently comply with the Rules and how they will ensure ongoing compliance.

Further Assistance

If you would like further information, please reach out to your usual Maples Group contact or any of the persons listed below.

Cayman Islands

Michael Richardson

+1 345 814 5532

michael.richardson@maples.com

Jon Fowler

+1 345 814 5526

jon.fowler@maples.com

Gwyneth Rees

+1 345 814 5220

gwyneth.rees@maples.com

Christie Walton

+1 345 814 5349

christie.walton@maples.com

Chris Capewell

+1 345 814 5666

chris.capewell@maples.com

Dan Beckett

+1 345 814 5207

dan.beckett@maples.com

Dubai

Tahir Jawed

+971 4 360 4071

tahir.jawed@maples.com

Hong Kong

Anthony Webster

+852 2971 3001

anthony.webster@maples.com

Ann Ng

+852 3690 7475

ann.ng@maples.com

London

Harjit Kaur

+44 20 7466 1655

harjit.kaur@maples.com

Singapore

Tom Katsaros

+65 6922 8403

tom.katsaros@maples.com

November 2020

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