

MUTUAL FUNDS (FOREIGN FUNDS) REGULATIONS

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MUTUAL FUNDS (FOREIGN FUNDS) REGULATIONS – SECTION 62

(S.I. 81/2019)

Commencement

[31 December 2019]

PRELIMINARY PROVISIONS

Citation

1. These Regulations may be cited as the Mutual Funds (Foreign Funds) Regulations.

Interpretation

2. (1) In these Regulations, unless the context otherwise requires—

“Act” means the Securities and Investment Business Act; “Commission” means the Financial Services Commission established under section 3(1) of the Financial Services Commission Act;

“Commission” means the Financial Services Commission established under section 3(1) of the Financial Services Commission Act;

“regulatory status”, in relation to a recognised foreign fund, means the type of authorisation granted to a recognised foreign fund by a Regulatory Authority in the jurisdiction where the recognised foreign fund is constituted; and

“Regulatory Authority” means an authority that is responsible for the authorisation and supervision of a foreign fund in the jurisdiction in which the recognised foreign fund is constituted;

Fund administration services

3. For the purposes of the definition of “fund administrator” in section 40(1) of the Act, “fund administration services” includes the following activities—

- (a) acting as registrar or transfer agent with respect to mutual funds; and
- (b) providing accounting services for, or with respect to, mutual funds, excluding the provision of audit and related services.

PART I

RECOGNISED FOREIGN FUNDS

Application for recognition

Application for recognition as foreign fund

4. (1) An application to the Commission for the recognition of a foreign fund shall be in the approved form and shall specify the following—

- (a) the address of the fund’s place of business in the Virgin Islands;
- (b) the regulatory status of the fund;

- (c) the name and address of the fund's Regulatory Authority;
 - (d) the name and address of the fund's authorised representative;
 - (e) the name, address and details of each of the fund's directors;
 - (f) if the fund is a unit trust, the name, address and details of the trustee;
 - (g) if the fund is a limited partnership, the name, address and details of the general partners;
 - (h) the name, address and details of each of the fund's functionaries;
 - (i) the name and address of the fund's auditor;
 - (j) the place or places where the fund's financial and other records will be kept;
 - (k) the name and address of persons in the Virgin Islands that will be responsible for promoting and selling shares in the fund; and
 - (l) such other information as may be required by the approved form.
- (2) An application under sub-regulation (1) shall be accompanied by the following—
- (a) a copy of the fund's constitutional documents;
 - (b) a copy of the fund's certificate of incorporation, formation or registration or equivalent document, if any;
 - (c) evidence of the fund's regulatory status;
 - (d) a copy of the fund's issued or proposed prospectus; and
 - (e) a copy of the fund's valuation policy.
- (3) The Commission may require any documents submitted under sub-regulation (2)(a) and (b) to be certified in such manner as it considers appropriate.

Prospectus

Prospectus

5. (1) For the purposes of this section, a prospectus issued by a recognised foreign fund shall comply with the requirements of the Public Funds Code, as if the recognised foreign fund was registered as a public fund under the Act.
- (2) A prospectus issued by a recognised foreign fund shall—
- (a) state prominently at the head of the first page or on the cover, that it is prepared in accordance with the Act, these Regulations and the Public Funds Code;
 - (b) be accompanied by, or contain reference to, the availability of financial statements for the last financial year of the fund and the auditor's report on those accounts, if the fund has completed a financial year in operation;
 - (c) be accompanied by such other documents as may be prescribed in the Public Funds Code; and
 - (d) contain such other matters as the Commission may require.

(3) Subject to sub-regulations (4) and (5), a recognised foreign fund shall not issue a prospectus or amended prospectus unless it has given the Commission at least 7 days prior notification of the intended issuance.

(4) A notification under sub-regulation (3) shall include submission of the copy of the prospectus or amended prospectus to be issued by the recognised foreign fund.

(5) The Commission may agree to accept a shorter notification period than that specified in sub-regulation (3).

Obligations on recognised foreign funds

Directors

6. (1) A recognised foreign fund shall at all times have not less than 2 directors, at least one of whom shall be an individual.

(2) Where a recognised foreign fund is in breach of sub-regulation (1), it shall notify the Commission of that fact within 7 days after the breach occurred.

(3) Subject to sub-regulation (4), no person shall be appointed as a director of a recognised foreign fund unless at least 7 days prior notification of the proposed appointment has been given to the Commission.

(4) The Commission may agree to accept a shorter period of notice than that specified in sub-regulation (3).

Functions of recognised foreign funds

7. (1) Subject to sub-regulation (2), a recognised foreign fund shall at all times have—

- (a) a fund manager;
- (b) a fund administrator; and
- (c) a custodian.

(2) The Commission may, on written application made by or on behalf of a recognised foreign fund, exempt the fund from the requirement to appoint a custodian.

(3) An application under sub-regulation (2) may be made together with the application for recognition or at any subsequent time.

(4) The custodian of a recognised foreign fund shall—

- (a) be a person who is functionally independent from the fund manager and the fund administrator; or
- (b) where the custodian is the same person as the fund manager or fund administrator, be a company having systems and controls that ensure that the persons fulfilling the custodial function are functionally independent from the persons fulfilling the fund management or fund administration functions.

(5) Subject to sub-regulation (6), no person shall be appointed as a functionary of a recognised foreign fund unless at least 7 days prior notification of the proposed appointment has been given to the Commission.

(6) The Commission may agree to accept a shorter period of notice than that specified in sub-regulation (5).

Functionary ceasing to hold office

8. (1) A recognised foreign fund shall give written notice to the Commission within 7 days, or such other period as the Commission may specify, after a functionary of the fund—

- (a) resigns;
- (b) has his or her appointment terminated; or
- (c) otherwise ceases to act as a functionary of the fund.

(2) The notice provided under sub-regulation (1) shall include a statement of the reason for the person ceasing to act as functionary of the fund and a written notice shall be deemed not to be provided under that sub-regulation if it does not include such a statement.

(3) Where a functionary of a recognised foreign fund ceases to hold office on any of the grounds specified in sub-regulation (1), the fund does not contravene regulation 7(1) if another person is appointed to act as functionary within 14 days of the original functionary ceasing to act.

Valuation fund property

9. (1) A recognised foreign fund shall maintain a clear and comprehensive policy for the valuation of fund property with procedures that are sufficient to ensure that the valuation policy is effectively implemented.

(2) A recognised foreign fund shall ensure that its administrator or such other person having responsibility for the valuation of fund property, values fund property in accordance with the valuation policy.

(3) The valuation policy and procedures of a recognised foreign fund shall—

- (a) be appropriate for the nature, size, complexity, structure and diversity of the fund and fund property;
- (b) be consistent with the provisions concerning valuation in its constitutional documents and prospectus;
- (c) require valuations to be undertaken on at least an annual basis;
- (d) include procedures for preparing reports on the valuation of fund property; and
- (e) specify the mechanisms in place for disseminating valuation information and reports to investors.

(4) Subject to sub-regulation (5), a recognised foreign fund shall ensure that the persons controlling the fund's manager, or such other person having responsibility for the investment function, are independent from the persons controlling the fund's administrator, or such other person having responsibility for the valuation process.

(5) Where a recognised foreign fund determines that the fund's manager, or such other person having responsibility for the investment function must have an involvement in the valuation of fund property, the recognised foreign fund shall—

- (a) identify, manage and monitor any potential conflicts of interest that may arise; and
- (b) disclose to investors in the fund—
 - (i) that the fund's manager or such other person having responsibility for the investment function has an involvement in the valuation of fund property; and
 - (ii) details of how any potential conflicts of interest will be managed.

Financial statements and audit

Preparation and audit of financial statements

10. (1) A recognised foreign fund shall prepare financial statements that comply with—

- (a) the International Financial Reporting Standards, promulgated by the International Accounting Standards Board;
- (b) UK GAAP;
- (c) US GAAP;
- (d) Canadian GAAP; or
- (e) such other internationally recognised and generally accepted accounting standards equivalent to the accounting standards referred to in subparagraphs (a) to (d).

(2) A recognised foreign fund shall appoint, and at all times have, an auditor for the purposes of auditing its financial statements.

(3) Subject to sub-regulation (4), no person shall be appointed as an auditor of a recognised foreign fund unless at least 7 days prior notification of the proposed appointment has been given to the Commission.

(4) The Commission may agree to accept a shorter period of notice than that specified in sub-regulation (3).

(5) The auditor of a recognised foreign fund shall—

- (a) audit the fund's financial statements and prepare his or her report in accordance with—
 - (i) US Generally Accepted Auditing Standards;
 - (ii) International Standards on Auditing (UK);
 - (iii) International Standards on Auditing;
 - (iv) Hong Kong Standards on Auditing;
 - (v) Canadian Auditing Standards; or
 - (vi) such other recognised international auditing standards as may be approved by the Commission on a case by case basis;
- (b) certify the fund's compliance with such obligations and matters as may be specified in the Act and these Regulations;

- (c) provide such certifications or confirmations as may be specified by the Commission in a written notice sent to the fund and the auditor; and
- (d) carry out such other duties as may be required of the auditor by the Act or these Regulations.

(6) A recognised foreign fund shall provide a copy of its audited financial statements to the Commission within 6 months after the financial year end to which the financial statements relate or, subject to sub-regulation (7), such extended period not exceeding, in aggregate, 15 months as the Commission may approve in writing.

(7) The Commission shall not grant an extension under sub-regulation (6) of more than 9 months unless it is satisfied that a further extension is justified by exceptional circumstances.

Other requirements

Status with Regulatory Authority

11. Where a recognised foreign fund ceases to be regulated by its Regulatory Authority, it shall, within 5 days after the occurrence—

- (a) provide written notification to the Commission, of the reason it is no longer regulated by its Regulatory Authority; and
- (b) cease to offer shares of the fund in the Virgin Islands.

Notifications

12. (1) A recognised foreign fund shall provide written notice to the Commission in accordance with this regulation of—

- (a) the appointment of an authorised representative or auditor;
- (b) a director, authorised representative or auditor ceasing, for whatever reason, to hold office;
- (c) any change in the address of the fund's place of business, whether in or outside the Virgin Islands;
- (d) any change in the place or places where the fund's financial and other records are kept;
- (e) any proposed amendment to its constitutional documents;
- (f) any proposed amendment to its valuation policy; and
- (g) any enforcement action against the fund by its Regulatory Authority or any other regulator outside the Virgin Islands.

(2) Notification of the matters specified in sub-regulation (1) shall be provided as follows—

- (a) in the case of a notice provided in accordance with sub-regulation (1)(a), (b), (c) or (d), within 14 days after the date of the occurrence of the matter to be notified, or such shorter period as the Commission may approve in writing;
- (b) in the case of a notice provided in accordance with sub-regulation (1)(e) or (f), no less than 7 days prior to the issue of the proposed

constitutional document, or the proposed valuation policy, as the case may be, or such shorter period as the Commission may approve in writing; and

- (c) in the case of a notice provided in accordance with sub- regulation (1)(g), within 5 days after the occurrence of the matter to be notified.

PART II

MISCELLANEOUS PROVISIONS

Register

13. (1) The Register maintained by the Commission and the information contained in any document filed may be kept in such manner as the Commission considers fit including, either wholly or partly, by means of a device or facility—

- (a) that records or stores information magnetically, electronically or by other means; and
- (b) that permits the information recorded or stored to be inspected and reproduced in legible and usable form.

(2) The register required to be maintained under the Act shall—

- (a) specify the following information with respect to each fund—
- (i) the address of the place of business and address for service in the Virgin Islands of the person who applied for recognition (“the applicant”);
- (ii) the applicant’s authorised representative;
- (iii) the address of the place of business that the applicant may have outside the Virgin Islands;
- (iv) the date of recognition of the fund;
- (v) the status of the recognition, if cancelled, and the date of cancellation;
- (vi) whether fees payable by the fund for the current year have been paid and the date on which they were paid; and
- (vii) such other information as the Commission considers to be appropriate.

Transitional provisions

14. The transitional provisions specified in the Schedule shall have effect.

SCHEDULE*(Regulation 14)***TRANSITIONAL PROVISIONS****Interpretation**

1. In this Schedule “existing foreign fund” means a mutual fund that, immediately before the coming into force of these Regulations, was recognised as a recognised foreign fund under the Act.

Effective Date

2. The provisions of these Regulations shall take effect in relation to an existing foreign fund on 1st July 2020.
