

Guidance Note

Statement of Guidance for Regulated Mutual
Funds

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Introduction

This Guidance Note sets out the registration and continuing obligations of a virtual asset service provider registered with, or licensed by, the Cayman Islands Monetary Authority (“CIMA”) under the Virtual Asset (Service Providers) Act, (2022 Revision) (the “VASPA”).

Statement of Objectives

The Authority expects the oversight, direction and management of a regulated mutual fund, as defined by the Mutual Funds Law (2013 Revision) (the “Mutual Funds Law”), to be conducted in a fit and proper manner. Accordingly it has issued a Statement of Guidance (“Statement of Guidance”) to provide the governing body of a regulated mutual fund (“Governing Body”) and its operators (as defined in the Mutual Funds Law) (“Operators”) with guidance on the minimum expectations for the sound and prudent governance of the regulated mutual fund. Whilst the Statement of Guidance is not directly enforceable by the Authority, the Authority might itself look to the Statement of Guidance as a guide should the Authority need to consider whether the direction and management of a Regulated Mutual Fund (as defined below) has been conducted in a “fit and proper manner” (pursuant to the Authority’s power to take action under section 30(1) (d) the Mutual Funds Law).

The Statement of Guidance sets out the key corporate governance principles pertaining to the Governing Body and Operators of a regulated mutual fund. The Statement of Guidance is not intended as a prescriptive or exhaustive guide to the Authority’s expectations with regard to the governance of a regulated mutual fund. All existing duties of a Director of a mutual fund remain unchanged (please see our separate guidance note on Directors’ Duties for more information).

The governance structure of a regulated mutual fund must be appropriate and suitable to enable the effective oversight of a regulated mutual fund. The size, nature and complexity of a regulated mutual fund are fundamental factors in determining the adequacy and suitability of its governance framework. Factors determining the size, nature or complexity of the regulated mutual fund could include, but are not limited to: assets under management, number of investors, complexity of the regulated mutual fund structure, nature of investment strategy and nature of the operations.

Who is Affected

The Statement of Guidance applies to all regulated mutual funds as defined by section 2 of the Mutual Funds Law and includes funds licensed or administered under section 4(1) or registered under section 4(3) of the Mutual Funds Law (“Regulated Mutual Fund”).

The Governing Body

The Governing Body of a Regulated Mutual Fund is regarded as the board of directors where the Regulated Mutual Fund is a corporate entity, the general partners where the Regulated Mutual Fund is an exempted limited liability partnership, and the trustees where the Regulated Mutual Fund is a unit trust.

The Statement of Guidance states that the Governing Body should monitor and regularly



Statement of Guidance for Regulated Mutual Funds

take steps to satisfy itself that the Regulated Mutual Fund is conducting its affairs in accordance

with all applicable laws, regulations, rules, statements of principles, statements of guidance and anti-money laundering or combating terrorist financing requirements, including those of the Cayman Islands and the Authority (“Applicable Governance”). The Governing Body should regularly take steps to satisfy itself that the Regulated Mutual Fund’s service providers (“Service Providers”) are monitoring compliance with the Applicable Governance.

The Governing Body should request appropriate information from the Service Providers and/or professional advisors of the Regulated Mutual Fund to enable it to satisfy itself regularly that the Regulated Mutual Fund is operating in compliance with the Applicable Governance.

Where required, the Governing Body should provide appropriate directions to the Service Providers to rectify any non-compliance with the Applicable Governance.

The Governing Body should require regular reporting from the Regulated Mutual Fund’s investment manager and other Service Providers to enable it to make informed decisions and to adequately oversee and supervise the Regulated Mutual Fund.

Conflicts of Interest

The Governing Body of the Regulated Mutual Fund and its Operators must suitably identify, disclose, monitor and manage all its conflicts of interest.

The Governing Body of the Regulated Mutual Fund must document the disclosed conflicts of interest.

Governing Body Meetings

The Governing Body of the Regulated Mutual Fund should meet at least twice a year in person or via a telephone or video conference call. Where the circumstances or size, nature and complexity of the Regulated Mutual Fund necessitates it, the Governing Body should meet more frequently than this so as to enable it to fulfil its responsibilities effectively.

Where necessary, the Governing Body shall request the presence of its Service Provider/s at its Governing Body meetings.

Operator’s Duties

The Statement of Guidance is not intended to be an exhaustive guide, but sets out a number of duties that the Authority considers applicable to an Operator, including:

1. The Operator must be independent and exercise independent judgement always acting in the best interests of the Regulated Mutual Fund and taking into consideration the interests of its investors as a whole and/or, where applicable, the creditors of the Regulated Mutual Fund.
2. The Operator must operate with due skill, care and diligence.
3. The Operator must make relevant enquires where issues are raised with it on matters fully within the scope of the Operator’s responsibility as an operator of a Regulated Mutual Fund and be satisfied that appropriate and timely course of action is being taken.
4. The Operator should communicate adequate information to the Regulated Mutual Fund’s investors where it is properly able to disclose.
5. The Operator must act honestly and in good faith at all times.



Statement of Guidance for Regulated Mutual Funds

6. The Operator must ensure it has sufficient capacity to apply its mind to overseeing and supervising each Regulated Mutual Fund of which it is an Operator and to all matters falling within the scope of its responsibilities as an Operator of each Regulated Mutual Fund. Consequently, before taking on any additional funds, the Operator should always ensure that it is able to perform the functions and duties of an operator in a responsible and effective manner in accordance with relevant laws, regulations, rules, statements of principles and the provisions of this Statement of Guidance.

7. Upon registration of a Regulated Mutual Fund with the Authority, and on a continuing basis, the Operator is responsible for:

- ensuring or receiving confirmation that the constitutional and offering documents of the Regulated Mutual Fund comply with Cayman Islands law, and for licensed funds, the Rule on Contents of Offering Documents;
- ensuring the investment strategy and conflicts of interests policy of the Regulated Mutual Fund are clearly described in the offering documents; and
- ensuring that the offering documents describe the equity interest in all material respects and contains such other information as is necessary to enable a prospective investor to make an informed decision as to whether or not to subscribe for or purchase the equity interest.

8. The Operator is responsible for approving the appointment and removal of the Regulated Mutual Fund's Service Providers and the terms of the contracts with each of its Service Providers.

9. The Operator is responsible for ensuring that its investors and the Authority are notified of any changes to these appointments.

10. The Operator retains ultimate responsibility for functions delegated to Service Providers and should regularly monitor and supervise the delegated functions.

11. The Operator should review all of its Service Provider contracts to ensure roles and responsibilities

are clearly defined and that the responsibilities are clearly divided between each Service Provider. The Operator should make sufficient enquiries to enable it to properly understand the scope and nature of the responsibilities of each Service Provider.

12. The Operator must satisfy itself that the various professional Service Providers to whom it has delegated a function/s are performing their functions in accordance with the terms of their respective contracts.

13. Upon registration of the Regulated Mutual Fund with the Authority, and on a continuing basis, the Operator of the Regulated Mutual Fund is responsible for regularly assessing the suitability and capability of its Service Providers.

14. The Operator should regularly verify or seek confirmation from the Service Providers that they are acting in accordance with the Regulated Mutual Fund's constitutional and offering documents.

15. The Operator must regularly monitor whether the investment manager is performing, in accordance with the defined investment criteria, investment strategy and restrictions.

16. The Operator should, as necessary, and at all material times inform itself of the Regulated Mutual Fund's investment activities, performance and financial position.

17. The Operator should review and approve the Regulated Mutual Fund's financial results and audited financial statements.

18. The Operator should regularly monitor the Regulated Mutual Fund's net asset valuation policy and that the calculation of its net asset value is being calculated in accordance with this policy.

19. An Operator should ensure that it has sufficient and relevant knowledge and experience to carry out its duties as an Operator.

20. Each Operator should assess whether it has, together with any other Operator of the Regulated Mutual Fund, sufficient and relevant collective knowledge and experience



Statement of Guidance for Regulated Mutual Funds

to perform the duties imposed upon the Operator of the Regulated Mutual Fund.

21. Each Operator must perform its function with the care, skill and diligence that would be exercised by a reasonably diligent person with the general knowledge, skill and experience that such an Operator has.

Relations with the Authority

The Operator should conduct the Regulated Mutual Fund's affairs with the Authority in a transparent and honest manner always disclosing to the Authority:

- any matter which could materially and adversely affect the financial soundness of the Regulated Mutual Fund; and
- any non-compliance with the Applicable Governance, including those of the Cayman Islands and the Authority.

Where the Operator is uncertain whether to make a disclosure to the Authority, it should take a prudent and diligent approach by communicating the information.

Risk Management

The Operator should ensure it provides suitable oversight of the risk management of the Regulated Mutual Fund, ensuring the Regulated Mutual Fund's risks are always appropriately managed and mitigated, with material risks being discussed at the Governing Body meeting and the Governing Body taking appropriate action where necessary.

Conclusion

The new Statement of Guidance affects all registered funds and sets a benchmark for all Cayman Islands funds generally. Regular meetings must be held (as least two each year) and it would be advisable to have a representative from the key service providers present at the meeting to give the Governing Body an opportunity to ask questions and seek confirmation that they are acting in accordance with the Statement of Guidance. All conflicts of interest must be properly disclosed and recorded and we would suggest that the Investment Manager maintain a log of all conflicts disclosed.

An Operator of a Regulated Mutual Fund should take this opportunity to undertake a review of the fund's corporate governance arrangements and practices, in light of the Statement of Guidance.

Cayman Islands counsel can assist in ensuring all Regulated Mutual Fund's are conducting their affairs in accordance with all relevant Cayman Islands laws, regulations, rules, statements of principles, the Statements of Guidance and anti-money laundering or combating terrorist financing requirements of the Cayman Islands and the Authority.



Statement of Guidance for Regulated Mutual Funds

Guidance

This publication is for general guidance and is not intended to be a substitute for specific legal advice. Specialist advice should be sought about specific circumstances. If you would like further information, please contact:

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Statement of Guidance for Regulated Mutual Funds

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