

STUARTS WALKER HERSANT HUMPHRIES

Guidance Note

Registration and Continuing Obligations of
Section 4(3) Mutual Funds in the Cayman Islands

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Introduction

This Guidance Note sets out the registration and continuing obligations of a section 4(3) mutual fund registered with the Cayman Islands Monetary Authority (“CIMA”) under the Mutual Funds Act (2021 Revision) (the “MFA”) and its master fund, if any.

Registration

All entities that act as “mutual funds” under the MFA are required to register with, and become regulated by, CIMA, subject to certain exceptions. Master funds of mutual funds are also required to register with, and become regulated by, CIMA. The principal requirement for a section 4(3) mutual fund is that the minimum initial investment made by a prospective investor must be at least US\$100,000.

The MFA defines:

- “mutual fund” as a company, unit trust or partnership that issues equity interests, the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and enabling investors in the mutual fund to receive profits or gains from the acquisition, holding, management or disposal of investments but does not include a person licensed under the Banks and Trust Companies Act (2021 Revision) or the Insurance Act, 2010, or a person registered under the Building Societies Act (2020 Revision) or the Friendly Societies Act (1998 Revision).
- “master fund” as a company, partnership or unit trust that:
 - is established or incorporated, as the case may be, in the Islands;
 - issues equity interests to one or more investors;
 - holds investments and conducts trading activities for the principal purpose of implementing the overall investment strategy of the regulated feeder fund;
 - has one or more regulated feeder funds either directly or through an intermediary entity established to invest in the master fund; and
 - is not licensed under the Banks and Trust Companies Act (2021 Revision) or the Insurance Act, 2010, or registered under the Building Societies Act (2020 Revision) or the Friendly Societies Act (1998 Revision), and for the purposes of this Law such master fund shall be deemed to be a mutual fund;
- “equity interest” as a share, trust unit, partnership interest or any other representation of an interest; that —
 - carries an entitlement to participate in the profits or gains of the company, unit trust or partnership; and



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- is redeemable or purchasable at the option of the investor and, in respect of a company incorporated in accordance with the Companies Act (2021 Revision) (including an existing company as defined in that law), in accordance with but subject to section 37 of the Companies Act (2021 Revision) before the commencement of winding-up or the dissolution of the company, unit trust or partnership, but does not include debt, or alternative financial instruments as prescribed under the Banks and Trust Companies Act (2020 Revision);

Registrations must be made through CIMA's Regulatory Enhanced Electronic Forms Submission ("REEFs") web portal. Stuarts has access to REEFs and will attend to registrations and ongoing filings for our clients. In order to register with CIMA, a section 4(3) mutual fund is required to file: (i) application form ("CIMA Form"); (ii) application fee (US\$366 plus the standard annual fee); (iii) certificate of incorporation/registration; (iv) offering memorandum; (v) a CIMA operator affidavit; (vi) administrator's consent letter; and (vii) auditor's consent letter. A master fund has the same foregoing registration requirements, save for not needing to have its own offering document.

Ongoing Obligations

Annual Fee. There is an annual fee for a section 4(3) mutual fund payable to CIMA of US\$4,268. The annual fee for a master fund, if applicable, is US\$3,048. For funds which are structured as segregated portfolio companies, an additional fee of US\$305 is payable per segregated portfolio. Annual fee(s) must be paid by 15 January subject to penalties.

Operators. Section 4(3) mutual funds and their master funds fund (if applicable) are each subject to the 'four-eyes principle' and require a minimum of two natural persons acting as directors of the fund where it is structured as a company or for the general partner of the fund where it is structured as a partnership.

Director Registration. Directors of section 4(3) mutual funds and master funds fund (if applicable) will be to register with CIMA and maintain such registration on an annual basis pursuant to the Directors Registration and Licensing Act, 2014. Directors must also actively deregister from CIMA where such registration is no longer required (or will be subject to ongoing annual fees until such time as they deregister).

Material Information. Where a section 4(3) mutual fund and any master fund (a) makes any changes, or becomes aware of any changes, that materially affects any information submitted to CIMA under the provisions of the MFA; or (b) changes its registered office or the location of its principal office, the fund shall within twenty-one days after making the change or becoming aware of the change, as the case may be, file with CIMA the details of the changes (e.g. by way of an amended offering document or supplement and updated CIMA Form). CIMA will charge a filing fee of US\$122 for each filing.

Annual Audit. A section 4(3) mutual fund and any master fund shall have their accounts audited annually by an auditor approved by CIMA. Accounts will need to be prepared in accordance with International Financial Reporting Standards or the generally accepted accounting principles of the United States of America, Japan or Switzerland or any non-high-risk jurisdiction. Accounts are required to be filed with CIMA within six months of the financial year end of the section 4(3) mutual fund and any master fund.



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Fund Annual Return. A section 4(3) mutual fund and any master fund will, in respect of each financial year of the fund, be required to submit an annual return in the prescribed form. There is a US\$366 fee payable together with the fund annual return.

Penalties. The MFA provides for a penalty of US\$120,000 for a section 4(3) fund and any master fund failing to comply with the conditions contained in its license or providing false or misleading information to CIMA. The operator of a section 4(3) fund and any master fund which fails to file the fund's annual audit within six months of the financial year end of the fund (subject to extension by CIMA) commits an offence and is liable on conviction to a fine of US\$25,000. Where a person operates a section 4(3) mutual fund and any master fund in contravention of the MFA such person commits an offence and is liable on conviction to a fine of US\$120,000. Where a person represents in any way that he/she is carrying on or attempting to carry on business in or from the Cayman Islands as a section 4(3) mutual fund and any master fund and is not registered with CIMA, such person is guilty of an offence and liable on conviction to a fine of US\$120,000. In addition, CIMA has extensive power to impose a significant administrative fine of up to US\$1.2 million for a breach of the Anti-Money Laundering Regulations (Revised) of the Cayman Islands.

Powers of CIMA. If CIMA determines that a section 4(3) mutual fund and/or its master fund, if any, is (i) or is likely to become insolvent, (ii) carrying on its business fraudulently, (iii) winding up its business in a manner that is prejudicial to its investors or creditors, (iv) not in compliance with the MFA or the Anti-Money Laundering Regulations (2020 Revision as amended), (v) being managed in a manner which is not "fit and proper" or (vi) operated or managed by a person who is not "fit or proper" to hold the position of operator, manager or officer, CIMA may take various punitive actions; including, canceling the section 4(3) mutual fund and master fund's (if applicable) registration, imposing conditions on the fund, appointing a person to advise the fund on proper conduct and requiring removal and replacement of the promoter, directors, general partner or, manager of the fund. Any operator appointed by CIMA will have all the powers necessary to conduct the business and affairs of the fund in the best interests of the fund's investors and creditors. The Grand Court may also grant CIMA authority to take such other action deemed necessary to protect the interests of the fund's investors and creditors. CIMA may communicate directly with the investors of a section 4(3) mutual fund. Costs associated with enforcement, including appointment of advisors and operators, are expenses of the section 4(3) mutual fund and/or master fund, if applicable. General Partners, managers and other operators are responsible for compliance by the section 4(3) mutual fund and any master fund with the MFA.

CIMA Regulatory Measures. In addition to the requirements set out under the MFA, a section 4(3) mutual fund and any master fund are subject to the general regulatory oversight of CIMA which includes the requirement to comply with CIMA's rules, statements of guidance, policies and procedures. Of note, section 4(3) mutual funds and any master funds must comply with the Statements of Guidance on [Corporate Governance](#) and [Nature, accessibility and retention of records](#) each of which can be accessed by clicking on the relevant foregoing link. In addition, CIMA has published the Rule on the Contents of Offering Documents for Regulated Mutual Funds. This Rule sets out the specific content that should be included in offering documents for a regulated mutual fund. Funds are expected to follow this CIMA Rule. If your offering document(s) have not been updated recently, then you should consider updating them to ensure compliance.



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AEOI. Where a section 4(3) mutual fund and any master fund are a ‘financial institution’ for FATCA or CRS purposes it must comply with the automatic exchange of information requirements. Please see our Guidance Note on the [Automatic Exchange of Information](#) for further information.

AML. All section 4(3) mutual funds and any master funds must comply with the anti-money laundering regime in the Cayman Islands. This includes a requirement to adopt, maintain, and regularly review an Anti-Money Laundering Manual together with the following supporting items:

- Training Log in respect of all senior staff and directors (specifically in respect of Cayman AML laws) and training plan for annual training;
- Competent Authority enquiries log;
- Complaints log;
- Decline business log;
- SAR log; and
- PEP log

Please see our Guidance Note on [AML for Funds](#) for further information.

Data Privacy. Under the Cayman Islands Data Protection Act, 2017 ("DPA"), a section 4(3) mutual fund and its master fund are a ‘data controller’ and must comply with the data protection principles set out in the DPA when processing personal data. It must also ensure those principles are complied with where the personal data is processed on behalf of the data controller (e.g., by the administrator of the fund). Please see our Guidance Note on [Data Protection](#) for further information.

Other Requirements. In addition to the polices outlined above, section 4(3) mutual funds must adopt and maintain the following ancillary polices and logs:

- Cybersecurity Policy;
- Succession Plan;
- Remuneration Policy;
- Risk Management Policy;
- Business Plan & Asset Protection Policy;
- Conflicts Log; and
- Board self-assessment.

It may be possible to rely on policies provided by your service providers, but if this is intended then any engagement letters must clearly state that this is the intention, and the outsourced and relied upon policies should be checked and if necessary tailored to be compliant with the specific requirements of Cayman Islands law. Any outsourcing must comply with the Fund’s Outsourcing Policy (and template outsourcing agreement).

Each policy will need to be compliant with CIMA’s requirements, and will need to be formally adopted by the Fund in question. Policies should also be reviewed and revised regularly.



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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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