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Legal Updates

CIMA Rules and Guidance for Corporate Governance for Regulated Funds

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The Cayman Islands Monetary Authority (“**CIMA**”) published a new Rule - Corporate Governance for Regulated Entities (“**Rule**”) and a new Statement of Guidance relating to Corporate Governance - Mutual Funds and Private Funds (“**Statement of Guidance**”) on 14 April 2023. In essence, both the Rule and the Statement of Guidance apply to Cayman Islands mutual funds and private funds which are registered with and regulated by CIMA (“**Regulated Funds**”). The collective purpose of the Rule and Statement of Guidance is to provide a more robust framework of baseline minimum corporate governance standards pertaining to the operators of a Regulated Fund (“**Operators**”) in order to ensure sound and prudent governance of Regulated Funds.

The Statement of Guidance replaces the Statement of Guidance - Corporate Governance for Regulated Mutual Funds from 2013 and has been expanded in scope to cover private funds.

The Operators of Regulated Funds should carefully consider the Rule and the Statement of Guidance in order to understand the baseline standards for sound and prudent governance of Regulated Funds.

What is meant by the Operators of a Regulated Fund?

The Operators constitute the governing body of a Regulated Fund (i.e. the Board of Directors of a company, the General Partner of a limited partnership, the Manager of an LLC, or the Trustee(s) for a trust).

When do the Rule and Statement of Guidance come into effect?

The Statement of Guidance is in immediate effect from 14 April 2023. The Rule will come into effect on 14 October 2023.

What are the key points for Regulated Funds to consider?

1. *Skill and expertise of the Operators* - The Operators must constitute an appropriate number of individuals with expertise and skill to be competent to operate the Regulated Fund.
2. *Structure* - The governance structure of a Regulated Fund must be appropriate and suitable for effective oversight of the Regulated Fund, having taken into account the size, complexity, structure, nature of business and risk profile of the operations of the Regulated Fund.
3. *Oversight function* - Despite any outsourcing to service providers of the Regulated Fund (“**Service Providers**”), ultimate responsibility for overseeing and supervising the activities of the Regulated Fund remains with the Operators of a Regulated Fund.
4. *Ongoing monitoring* - The Operators should monitor and regularly take steps to satisfy themselves that the Regulated Fund is conducting its affairs in accordance with all applicable law and regulatory measures, in both the Cayman Islands and any other jurisdiction in which the Regulated Fund may operate. Furthermore, the Operators should request appropriate information from the Service Providers (including any Investment Manager) and professional advisors of the Regulated Fund to enable it to satisfy itself that the Regulated Fund is operating in compliance with applicable laws and regulatory measures.
5. *Conflicts of Interest Policy* - A Regulated Fund should have a written conflicts of interest policy, which is commensurate with the size, complexity, structure, nature of business and risk profile of the Regulated Fund. The Conflicts of Interest Policy does not need to be a standalone document – it can be included in the Regulated Fund’s offering document or constitutional documents. The Operators of a Regulated Fund must identify, disclose, monitor and manage all conflicts of interest consistent with the terms of the Conflicts of Interest Policy and additionally, all conflicts of interest should be disclosed in writing at least on an annual basis.
6. *Operators’ Meetings* - The Operators of a Regulated Fund should convene at least once a year. However, we would recommend that the frequency should be assessed by the Operators according to the type of Regulated Fund (e.g. a regulated mutual fund should typically convene more frequent meetings given the asset class, its trading frequency, and open-ended nature), the size, complexity and risk profile of the Regulated Fund. Where necessary, the Service Providers should be invited to meetings to provide any required input. A copy of the signed written minutes of any meeting of the Operators should be retained with the corporate records of the Regulated Fund.

7. *Duties of the Operators* - The Operators of a Regulated Fund should (i) exercise independent judgment (ii) act honestly and in good faith and (iii) always act in the best interests of the Regulated Fund and taking into consideration the interests of its investors as a whole. This requirement of independence still applies even if the Operators also carry out the investment management function of the Regulated Fund. Furthermore, the Statement of Guidance provides that if an Operator takes the decision to take on any additional funds, it should ensure it is able to perform its functions and duties in a responsible and effective way.
8. *Communication with investors* – The Statement of Guidance states that the Operators should communicate contemporaneously adequate information to the investors of the Regulated Fund of any material changes to the Regulated Fund.
9. *Communication with CIMA* – The Statement of Guidance sets out that the Operators are responsible for ensuring that CIMA is notified of any material changes to the appointments of Service Providers, that the Operators should ensure transparency with CIMA and notify CIMA of any matter which could materially and adversely affect the financial soundness of the Regulated Fund and any non-compliance with applicable laws and regulatory measures.
10. *Review of Service Providers* - The Statement of Guidance sets out that the Operators must review the service contracts with Service Providers to ensure that each Service Provider is carrying out its functions and regularly assess the suitability and capability of the Service Providers. The Operators must also regularly monitor whether the Investment Manager is performing in accordance with the investment criteria, strategy and any restrictions set out in the applicable offering document.
11. *Review of financials* - The Statement of Guidance sets out that the Operators should regularly monitor the Regulated Fund's NAV policy and whether the calculation of NAV is being calculated in accordance with such policy.
12. *Other policies* - The Regulated Fund must adopt and oversee a written remuneration policy which must (i) as a minimum apply to the Operators, senior management and employees in control functions and (ii) must not induce excessive or inappropriate risk-taking, align with the corporate cultures and long-term interests of the Regulated Entity and have proper regard to the interests of the relevant stakeholders. Furthermore, the Regulated Fund should have policies on code of conduct, private transactions, self-dealing, preferential treatment of favored internal and external entities and an appropriate succession plan for Directors and senior management.

What action can CIMA take if a Regulated Fund does not comply with the Rule?

CIMA recognizes that application of the requirements of the Rule and the Statement of Guidance is proportionate and may vary subject to the size, complexity, structure, nature of business and risk profile of the Regulated Fund. However as stated above, Operators of Regulated Funds should carefully consider the Rule and the Statement of Guidance. Non-compliance with the Rule can lead to CIMA imposing penalties.

Further Assistance

This publication is not intended to be a substitute for specific legal advice or a legal opinion. If you require further advice relating to your ongoing regulatory compliance obligations, please contact us. We would be delighted to assist.

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