



Statement of Guidance

Corporate Governance – Mutual Funds and Private Funds

April 2023

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Statement of Guidance

Corporate Governance for Mutual Funds and Private Funds

1. Statement of Objectives

- 1.1 The purpose of this statement of guidance ('Statement of Guidance') is to provide the operators of a regulated mutual fund or a regulated private fund ("Operators") with guidance on the minimum expectations for the sound and prudent governance of the regulated mutual fund or regulated private fund (collectively referred to as a 'regulated fund').
- 1.2 This Statement of Guidance sets out the key corporate governance principles pertaining to the Operators of a regulated fund and is not intended to be a prescriptive or exhaustive guide to the Authority's expectations with regard to governance.
- 1.3 The governance structure of a regulated fund must be appropriate and suitable to enable the effective oversight of the regulated fund. The size, complexity, structure, nature of business and risk profile of the operations of a regulated fund are fundamental factors in determining the adequacy and suitability of its governance framework. Factors determining the size, complexity, structure, nature of business and risk profile of the operations of a regulated fund could include, but are not limited to: assets under management, number of investors, complexity of the structure, nature of investment strategy, or nature of the operations.

2. Application

- 2.1 This Statement of Guidance applies to:
 - 2.1.1 all regulated mutual funds as defined by section 2 of the Mutual Funds Act (as amended) (the "Mutual Funds Act") and includes funds licensed or administered under section 4(1) or registered under section 4(3) of the Mutual Funds Act.
 - 2.1.2 all regulated private funds as defined by section 2 of the Private Funds Act (as amended) (the "Private Funds Act") and includes funds registered under section 6 of the Private Funds Act.

3. Definitions

- 3.1. **"Operator"** - the Operator is considered to be the Governing Body of a Mutual Fund and a Private Fund. For the purposes of this Statement of Guidance, the Operator is defined as "the Board of Directors where the entity is a corporation, the General Partner where the entity is a partnership, the manager (or equivalent) where the entity is a Limited Liability Company, and the Board of Trustees where the entity is a trust business".¹
- 3.2. **"Service Provider"** means a third party (whether related or unrelated) that supplies services or facilities (excluding lease of business premises) pursuant to an outsourcing arrangement.

¹ The Authority acknowledges the difference in the definition of an 'Operator' as provided in this Statement of Guidance versus the MFA and PFA, and is making the requisite recommendation to amend the MFA & PFA to align the definitions.

4. Oversight Function of the Operators

- 4.1 The Operators of a regulated fund hold ultimate responsibility for effectively overseeing and supervising the activities and affairs of the regulated fund.
- 4.2 The Operators of a regulated fund should constitute an appropriate number of individual(s), as required by the relevant regulatory acts and regulations, as applicable, with a diversity of skills, background, experience and expertise to ensure that there is an overall adequate level of competence at the Operators level.
- 4.3 The Operators should monitor, and regularly take steps to satisfy itself, that the regulated fund is conducting its affairs in accordance with all applicable acts, regulations, and regulatory measures of the Cayman Islands and the Authority, including those of jurisdictions where the regulated fund may operate.
 - 4.3.1 The Operators should regularly take steps to satisfy itself that the regulated fund's service providers ('Service Providers') are monitoring compliance with applicable acts, regulations, and regulatory measures.
 - 4.3.2 The Operators should request appropriate information from the Service Providers and/or professional advisors of the regulated fund to enable it to satisfy itself regularly that the fund is operating in compliance with applicable acts, regulations, and regulatory measures.
- 4.4 Where required, the Operators shall provide appropriate directions to the Service Providers to rectify any non-compliance with the applicable acts, regulations, and regulatory measures.
- 4.5 The Operators should require regular reporting from the regulated fund's investment manager and other Service Providers to enable it to make informed decisions and to adequately oversee and supervise the operations of the regulated fund.

5. Conflicts of Interest

- 5.1 The Operators of a regulated fund should have a written conflicts of interest policy commensurate with the size, complexity, structure, nature of business and risk profile of the operations of the business of the regulated fund, which may be documented in the constitutional documents, offering documents or marketing materials, as applicable, of the fund.
- 5.2 The Operators of a regulated fund must suitably identify, disclose, monitor and manage all its conflicts of interest. Disclosures of conflicts of interest must be documented in a manner consistent with the regulated fund's constitutional documents, offering documents or marketing materials, as applicable.
- 5.3 The Operators should record in its meeting minutes, all disclosed conflicts of interest relevant to a meeting during which a matter is being decided or approved. Additionally, all conflicts of interest should be disclosed at least on an annual basis.

6. Operators Meetings

- 6.1 The Operators of a regulated fund should convene at least once a year.
- 6.2 Where the circumstances of size, complexity, structure, nature of business and risk profile of its operations of the regulated fund necessitates it, the Governing Body should meet more frequently than suggested in paragraph 6.1 so as to enable it to fulfil its responsibilities effectively.
- 6.3 Where necessary, the Operator shall request the attendance of its Service Provider(s) at its Operators' meetings.

7. Duties of Operators

- 7.1 The Operators must exercise independent judgement, always acting in the best interests of the regulated fund (other than where lawfully permitted or required to consider other interests) and taking into consideration the interests of its investors as a whole.²
- 7.2 The Operators must make relevant enquiries where issues are raised on matters fully within the scope of the Operators' responsibility and be satisfied that an appropriate and timely course of action is being taken. Concerns raised and related corrective action should be documented.
- 7.3 The Operators should communicate adequate information to the regulated fund's investors, including any material changes to the fund.
- 7.4 The Operators should communicate and evidence said communication of material changes relating to investor rights to the investor(s) of the regulated fund at the time the changes are being made or on an ongoing basis.
- 7.5 The Operators must always act honestly and in good faith.
- 7.6 The Operators must oversee and supervise each regulated fund for which it functions and all matters falling within the scope of its related responsibilities. Consequently, before taking on any additional funds, the Operators should always ensure that it is able to perform its functions and duties in a responsible and effective manner in accordance with applicable acts, regulations, and regulatory measures.
- 7.7 Upon registration or licensing of a regulated fund with the Authority, and on a continuing basis, the Operators are responsible for ensuring:
 - 7.7.1 or receiving confirmation that the constitutional documents, offering documents or marketing materials, as applicable, of the regulated fund comply with applicable acts, regulations, and regulatory measures issued by the Authority from time to time;

² The Authority recognises that the Operators may consist of members from the parent company, group or business associates of the regulated fund, or any person providing, directly or indirectly, the investment management or investment advisory services with respect to such mutual fund or private fund, but expects all members to exercise independent judgement and objectivity in the decision making of the Operators.

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- 7.7.2 the investment strategy and conflicts of interests policy of the regulated fund are clearly described in the constitutional documents, offering documents or marketing materials, where applicable; and
- 7.7.3 that the constitutional documents, offering documents or marketing materials, as applicable, describe the equity and/or investment 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 and/or investment interest.
- 7.8 The Operators are responsible for approving the appointment and removal of the regulated fund's Service Providers and the terms of the contracts with each of its Service Providers, and where they delegate this authority to another Service Provider, they will nonetheless retain overall responsibility for overseeing any outsourced functions. The Operators are responsible for ensuring that its investors and the Authority are notified of any material changes to these appointments.
- 7.9 The Operators retain ultimate responsibility for functions delegated to Service Providers and should regularly monitor and supervise the delegated functions.
- 7.10 The Operators should review all material Service Provider contracts to ensure roles and responsibilities are clearly defined and that the responsibilities are clearly divided between each Service Provider. The Operators should also ensure thorough understanding of the scope and nature of the responsibilities of each Service Provider.
- 7.11 The Operators must satisfy itself that the various Service Providers to whom it has delegated a function(s) are performing their function(s) in accordance with the terms of their respective contracts.
- 7.12 Upon registration or licensing of the regulated fund with the Authority, and on a continuing basis, the Operator of the regulated fund is responsible for regularly assessing the suitability and capability of its Service Providers.
- 7.13 The Operators should regularly verify or seek confirmation from the Service Providers that they are acting in accordance with the regulated fund's constitutional documents, offering documents and marketing materials, as applicable.
- 7.14 The Operators must regularly monitor whether the investment manager is performing in accordance with the defined investment criteria, investment strategy and restrictions.
- 7.15 The Operators should, as necessary, and at all material times inform itself of the regulated fund's investment activities, performance, and financial position.
- 7.16 The Operators should review and approve the regulated fund's financial results and audited financial statements.
- 7.17 The Operators should regularly monitor the regulated fund's net asset valuation policy and whether the calculation of its net asset value is being calculated in accordance with the said policy.

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- 7.18 An Operator should ensure that it has sufficient and relevant knowledge and experience to carry out its duties as an Operator.
 - 7.19 Each Operator should assess whether it has, together with any other Operator(s) of the regulated fund, sufficient and relevant collective knowledge and experience to perform the duties imposed upon the Operators of the regulated fund.
 - 7.20 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 of such an Operator.

8. Documentation

- 8.1 The Operators are responsible for ensuring that a full, accurate and clear written record is kept of the Operators meetings and/or determinations.
- 8.2 The records of the Operators meetings and/or determinations should include:
 - 8.2.1 The agenda items and circulated documents;
 - 8.2.2 A list of attendees present at the meeting and whether that attendance was in person or via telephone or video conference;
 - 8.2.3 The matters considered and decisions made;
 - 8.2.4 The information requested from, and provided by, Service Providers and advisors; and
 - 8.2.5 A declaration of conflicts of interest.

9. Relations with the Authority

- 9.1 The Operators should conduct the regulated fund's affairs with the Authority in a transparent and honest manner always disclosing to the Authority:
 - 9.1.1 any matter which could materially and adversely affect the financial soundness of the regulated fund (i.e., the regulated fund's ability to continue as a going concern); and
 - 9.1.2 any non-compliance with the applicable acts, regulations, and regulatory measures, including those of the Cayman Islands and the Authority.
- 9.2 Where the Operator is uncertain whether to communicate information in accordance with paragraph 9.1 above to the Authority, it should be prudent and diligent and communicate the information.

10. Risk Management

- 10.1 The Operators should ensure it provides suitable oversight of the risk management of the regulated fund, ensuring the fund's risks are always



appropriately managed and mitigated, with material risks being discussed at the Operators meeting and the Operators taking appropriate action where necessary.



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