

Alert

Recent Regulatory Changes Issued in Respect of Cayman Funds Regulated Under the Mutual Funds Law

Author: Maree Martin, Counsel and Head of Knowledge Management

The Cayman Islands Monetary Authority (CIMA) has recently issued a number of Rules relating to regulated mutual funds including in respect of the segregation of assets, calculation of net asset value, and contents of offering documents.

Segregation of Assets – Regulated Mutual Funds: July 2020

[The Rule](#) provides that all financial assets and liabilities of a fund must be segregated and accounted for separately from the assets of any service provider of the fund so that no service provider uses the fund assets to finance their own or any other operations. Funds are required to appoint a service provider to ensure safekeeping of the fund’s portfolio. The use or transfer of assets can be consented to by the fund so long as this is disclosed in the offering documents or otherwise disclosed to investors.

It is necessary for the operator¹ of the fund to establish, implement and maintain strategies, policies, controls and procedures (or oversee the same) to ensure compliance with this Rule consistent with the fund’s marketing materials and appropriate for the size, complexity and nature of the fund’s activities and investors.

The fund operator must also ensure that the fund holds title to its assets and that a record of such assets is maintained by an administrator or other independent third party or by a manager, operator or person with a control relationship with the fund so long as this is independent from the portfolio management function and that potential conflicts of interest are properly identified, managed, monitored and disclosed to investors.

CIMA clarified by way of [FAQs update of 21 July 2020](#) that the Rule does not prohibit prime brokerage/ custody arrangements that allow, in accordance with established and accepted industry practice, a custodian/ sub-custodian to hold all client assets in a commingled client omnibus account along with the assets of other clients.

Calculation of Net Asset Values (NAV) – Regulated Mutual Funds: July 2020

[The Rule](#) provides that funds must establish, implement and maintain a NAV calculation policy that ensures that the NAV is fair, reliable, complete, neutral and free from material error and is verifiable. Such policy should be calculated in accordance with the International Financial Reporting Standards or generally accepted accounting principles of the United States of America, Japan or Switzerland or a non-high risk jurisdiction. The NAV calculation methodology should be consistent with that used to prepare the fund’s audited financial statements. The operators of the fund should approve and review the NAV policy and any pricing models at least annually.

The NAV Calculation Policy must:

- be written and disclosed in the fund’s offering document;
- require the calculation of the fund’s NAV regularly, at least quarterly;
- state when NAV will be calculated, how it will be used and when and how it will be published;

¹ “Operator” means, in the case of a unit trust, the trustee of that unit trust; in the case of a partnership, a general partner in that partnership; in the case of a company, a director of that company, or in the case of a limited liability company, a manager of the limited liability company.

- define the role and responsibilities of the fund's service providers (with responsibility for the fund's portfolio or operations) in the valuation process;
- describe the fund's practical and workable pricing and valuation policies, practices and procedures;
- state the accounting principles or reporting standards that will be followed;
- incorporate internal controls that are appropriate to the size, complexity and nature of the fund's operations; and
- identify the price sources for each instrument type and a practical escalation of resolution procedure for the management of exceptions.

Funds may use pricing models to determine a fair value for hard to value securities. Service providers that are responsible for applying the NAV calculation policy and any pricing models must do so consistently. Deviations should be disclosed in the fund's marketing materials and where they have an effect on the reported NAV, they should be disclosed to investors and agreed by the operators in advance of the determination of the NAV. There are specific additional rules that apply wherever prices are provided or sourced by the investment manager, advisor or operators of the fund. Where the manager, advisor or operator calculates or assists in calculating the NAV, this must be explicitly detailed in the offering document including an explanation why another service provider could not be responsible for the same. In cases where the NAV is not calculated by an independent third party, CIMA may require the fund to have its valuations verified by an auditor or independent third party.

Any limitations or conflicts inherent in the NAV calculation policy should be disclosed in the fund offering document.

NAVs should be communicated directly to investors by the service provider responsible for NAV calculations.

Contents of Offering Document – Regulated Mutual Funds: May 2020

[The Rule](#) includes a detailed list of information requirements that must be included in a regulated mutual fund's offering document including, amongst other things, in respect of general formation information, details relating to the principal rights and restrictions attaching to the fund's equity interests, NAV calculation policy and service providers to the fund.

For further details, please contact your usual Conyers contact.

Cayman Contacts:

Craig Fulton

Partner

craig.fulton@conyers.com

+1 345 814 7372

Nicholas Pattman

Partner

nicholas.pattman@conyers.com

+1 345 814 7765

Global Contacts:

Piers Alexander

Partner, Hong Kong

piers.alexander@conyers.com

+852 2842 9525

Preetha Pillai

Director, Singapore

preetha.pillai@conyers.com

+65 6603 0707

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For further information please contact: media@conyers.com