

Alert

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

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The Cayman Islands Monetary Authority (CIMA) has recently issued a number of Rules relating to registered private funds (other than “alternative investment vehicles”¹ or AIVs) including in respect of the segregation of assets, calculation of net asset value, and contents of marketing materials.

Segregation of Assets – Registered Private Funds: July 2020

[The Rule](#) provides that all financial assets and liabilities of a fund must be segregated and accounted for separately from any assets of the manager, operator² or custodian in order that such service providers do not use the fund assets to finance their own or any other operations. The use or transfer of assets can be consented to by the fund so long as this is disclosed in the fund offering documents or otherwise disclosed to investors.

It is necessary for the operator 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.

CIMA provided clarification in its [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) – Registered Private 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, 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 and should be reviewed and approved by the fund operator at least annually.

The NAV Calculation Policy must:

- be written and disclosed in the fund’s constitutional documents, marketing materials or other form of investor communication;
- require the valuing of assets regularly, at least annually, using fair value;
- define the role and responsibilities of the person appointed by the fund to perform asset valuations;
- identify the price sources for each investment type and a practical escalation of resolution procedure for the management of exceptions;
- 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; and

¹ “alternative investment vehicle” means a company, unit trust, partnership or other similar vehicle that – (a) is formed in accordance with the constitutional documents of a private fund for the purposes of making, holding and disposing of one or more investments wholly or mainly related to the business of that private fund; and (b) only has its members, partners or trust beneficiaries, persons that are members, partners or trust beneficiaries of the private fund.

² “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.

- incorporate internal controls that are appropriate to the size, complexity and nature of the fund's operations.

Deviations from the NAV calculation policy must be disclosed in the fund's marketing materials and where they are likely to have an effect on the reported NAV, disclosed to the investors and agreed by the operator in advance of the determination of the NAV. Any limitations or conflicts should also be disclosed in the fund's constitutional documents or marketing materials.

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

Audit Requirements Update

CIMA has advised by [Notice of 12 August 2020](#) that for registered private funds with financial year ends (FYE) that fall between February and May 2020 that completed their audit prior to the confirmation of their Private Funds Law audit obligations for 2020, that CIMA will accept the audited accounts for the 2019/2020 financial year without local audit sign off. The overseas audits should be submitted with the fund annual return (FAR) by the local auditor that will be responsible for the private fund's local audit sign off going forward. The local auditor must provide the name(s) of such private fund(s) to CIMA in advance of the filings being made.

Generally the fund audited accounts and FAR should be submitted within six months of the FYE of the fund. However, registered private funds with FYEs that fall between 7 February and 31 July 2020 will be permitted an additional three months in which to file (for example, with a FYE of March 2020, the audited accounts and FAR will be due by December 2020 instead of September 2020).

AIV Registration and Audit Requirements Update

CIMA has advised by [Notice of 12 August 2020](#) that a Cayman AIV that meets the private fund definition but forms part of a non-Cayman main fund structure will be required to register with CIMA as a stand-alone private fund. Such AIVs will therefore also be subject to annual audit and FAR requirements.

Special De-registration Considerations

CIMA has advised by [Notice of 12 August 2020](#) that funds that have registered prior to the 7 August deadline in error/ inadvertently/ prior to the completion of analysis that now indicates that the private fund should not have been registered may de-register without the usual de-registration documents and fee up until **31 August 2020**.

Contents of Marketing Materials – Registered Private Funds: May 2020

[The Rule](#) includes a detailed list of information requirements that must be included in a regulated private fund's marketing materials including, amongst other things, in respect of general formation information, details relating to the fund investment interests, NAV calculation policy and service providers to the fund.

For further details, please contact your usual Conyers contact.

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