

Directions applying modified investor declarations to a particular Specialist Fund, Qualifying Fund or Experienced Investor Fund

The Financial Supervision Commission (“the Commission”) has recently been approached and asked to consider whether it would agree to modify the investor certifications required in relation to Specialist, Qualifying and Experienced Investor Funds. The Commission has considered the investor certifications to ensure that they achieve their objective of ensuring investors fully certify their acceptance of the risks and their competence to invest in such funds, whilst not unnecessarily restricting legitimate sales avenues.

The Commission has considered the impact of allowing such modifications against its regulatory objectives of:

- (a) securing an appropriate degree of protection for the customers of persons carrying on a regulated activity;
- (b) the reduction of financial crime; and
- (c) supporting the Island’s economy and its development as an international financial centre,

and has concluded that it is appropriate to allow an immediate revision of the investor certifications for schemes that wish to adopt them.

The Commission has resolved that where:

- a Specialist Fund consents to a direction in line with Modification A;
- a Qualifying Fund consents to a direction in line with Modification B; or
- an Experienced Investor Fund consents to a direction in line with Modification C,

being applied to it and has agreed to make the necessary changes to its documentation the Commission will issue a direction applying the modification to the fund.

Before directing that a Modification A, B or C will apply in respect of a particular fund, the Commission must receive written consent from the fund:

- (a) stating that they agree to the modification being applied to the fund; and
- (b) confirming that all necessary changes will be made to the offering document and application form to implement the modification.

Financial Supervision Commission
27 July 2009

MODIFICATION A

Specialist Fund - Alternative certifications which a scheme may use in its application form in specified circumstances

- I. The Commission has agreed that it will use its powers in section 24(7) of the Collective Investment Schemes Act 2008 to allow a specialist fund which has –
 - consented to be subject to the following modification to the Financial Supervision (Specialist Fund) (Exemption) Order 2007¹; and
 - agreed to meet the conditions in paragraph 2.

MODIFICATION

- a) Schedule 6 of the Order will be replaced by the following:

“SCHEDULE 6

Certifications to be contained in the specialist fund’s application form

Part 1 Certification - This certification is to be completed by all applicants. The investor confirmations (a) to (d) apply to all applicants. The investor confirmation (e) applies to all applicants except those who are signing a Part 2 certification.

“I/we confirm that —

- (a) I am/we are a specialist investor as defined on page [] of the offering document of [name of fund] dated []; and
- (b) I am/we are sufficiently experienced to understand the features and risks associated with an unauthorised and unapproved fund of this type; and
- (c) I/we have read and fully understood the offering document, including in particular the information on the risks associated with the fund (contained on pages [X – X] of the offering document), before deciding to invest in the fund; and
- (d) I/we confirm that, where appropriate, I/we have taken independent advice on the suitability of this investment within my/our overall investment portfolio; and
- (e) I/we personally accept all the risks associated with this investment and particularly that my/our investment in the [name of fund] involves risks that could result in a loss of a significant proportion or all of the sum invested.

[Signed]

[Dated]”.

Part 2 Certification –

- (I) The following certification is to be completed by any investor who is investing on behalf of another person.

¹ SD 807/07

“I/We confirm that I am/we are investing in the specialist fund on behalf of another person/ other persons and have certification(s) signed by such person/persons to show that each such person is a specialist investor and understands and accepts the risks associated with this type of investment including the risk that investment could result in a loss of a significant proportion or all of the sum invested.

[Signed] [Dated]”.

- (2) The following certification is to be completed by an investor who is a life assurance company investing assets comprised within its long term business fund where the [XYZ fund] has been selected by the policyholder of a particular policy as the basis for determining the benefit of that policy (as appropriate).

“We confirm that we are investing assets comprised within our long term business fund and—

- (a) we have procedures and controls in place to obtain client declarations from our policyholders which include confirmation from the policy holder to the effect that —
 - (i) the policyholder has the opportunity to read the offering documents for funds of this nature, where they wish to do so, and as such has information about and accepts the levels of risks associated with this type of investment including the risk that investment could result in a loss of a significant proportion or all of the sum invested; and
 - (ii) the policyholder, where necessary, meets the minimum criteria of a class of investor in a fund of this nature;
- (b) we confirm no investment in this type of fund is made without a client declaration being obtained from relevant policyholders.

[Signed] [Dated]” ”.

- b) **Statement in the offering document** The fund’s offering document must clearly state that the fund has consented to comply with terms of this modification.

2 Conditions

Before directing that the modification in paragraph 1 applies to the fund the Commission must receive:

- a) written consent from the fund for the modification to apply to the fund; and
- (b) confirmation that all necessary changes will be made to the offering document and application form to implement the modification.

(Once changes have been made the normal notification process must be followed).

MODIFICATION B

Qualifying Fund - Alternative certifications which a scheme may use in its application form in specified circumstances

- I. The Commission has agreed that it will use its powers in section 24(7) of the Collective Investment Schemes Act 2008 to allow a qualifying fund which has –
 - consented to be subject to the following modification to the the Financial Supervision (Qualifying Fund) (Exemption) Order 2007²;and
 - agreed to meet the conditions in paragraph 2.

MODIFICATION

- a) Schedule 6 of the Order will be replaced by the following:

“SCHEDULE 6

Certifications to be contained in the qualifying fund’s application form

Part 1 Certification - This certification is to be completed by all applicants. The investor confirmations (a) to (d) apply to all applicants. The investor confirmation (e) applies to all applicants except those who are signing a Part 2 certification.

“I/we confirm that —

- (a) I am/we are a qualifying investor as defined on page [] of the offering document of [name of fund] dated []; and
- (b) I am/we are sufficiently experienced to understand the features and risks associated with an unauthorised and unapproved fund of this type; and
- (c) I/we have read and fully understood the offering document, including in particular the information on the risks associated with the fund (contained on pages [X – X] of the offering document), before deciding to invest in the fund; and
- (d) I/we confirm that, where appropriate, I/we have taken independent advice on the suitability of this investment within my/our overall investment portfolio; and
- (e) I/we personally accept all the risks associated with this investment and particularly that my/our investment in the [name of fund] involves risks that could result in a loss of a significant proportion or all of the sum invested.

[Signed]

[Dated]”.

Part 2 Certification –

- (I) The following certification is to be completed by any investor who is investing on behalf of another person.

² SD 808/07

“I/We confirm that I am/we are investing in the qualifying fund on behalf of another person/ other persons and have certification(s) signed by such person/persons to show that each such person is a qualifying investor and understands and accepts the risks associated with this type of investment including the risk that investment could result in a loss of a significant proportion or all of the sum invested.

[Signed] [Dated]”.

- (2) The following certification is to be completed by an investor who is a life assurance company investing assets comprised within its long term business fund where the [XYZ fund] has been selected by the policyholder of a particular policy as the basis for determining the benefit of that policy (as appropriate).

“We confirm that we are investing assets comprised within our long term business fund and—

- (a) we have procedures and controls in place to obtain client declarations from our policyholders which include confirmation from the policy holder to the effect that —
 - (i) the policyholder has the opportunity to read the offering documents for funds of this nature, where they wish to do so, and as such has information about and accepts the levels of risks associated with this type of investment including the risk that investment could result in a loss of a significant proportion or all of the sum invested; and
 - (ii) the policyholder, where necessary, meets the minimum criteria of a class of investor in a fund of this nature;
- (b) we confirm no investment in this type of fund is made without a client declaration being obtained from relevant policyholders.

[Signed] [Dated]”.

Part 3 Certification – This certification is to be completed by the financial adviser who has advised the investor where that investor qualifies as a qualifying investor only by virtue of Schedule I paragraph (h) —

“I confirm that —

- (a) I am the appointed financial adviser for the above named client; and
- (b) I have discussed the features and risks attendant to an investment in a non-regulated fund of this type with the client; and
- (c) I have discussed the specific risks attendant to an investment in the [name of qualifying fund] as set out in the offering document dated [] ; and
- (d) the client has confirmed that they understand these risks and wish to proceed with the investment.

I am not aware of any information that would lead me to believe that the client does not understand and accept these risks.

[Signed]

[Dated]

[Business name]

[Regulated status]" “

- b) **Statement in the offering document** The fund’s offering document must clearly state that the fund has consented to comply with terms of this modification.

2 **Conditions**

Before directing that the modification in paragraph 1 applies to the fund the Commission must receive:

- a) written consent from the fund for the modification to apply to the fund; and
- (b) confirmation that all necessary changes will be made to the offering document and application form to implement the modification.

(Once changes have been made the normal notification process must be followed).

MODIFICATION C

Experienced Investor Fund - Alternative certifications which a scheme may use in its application form in specified circumstances

- I. The Commission has agreed that it will use its powers in section 24(7) of the Collective Investment Schemes Act 2008 to allow a specialist fund which has –
 - consented to be subject to the following modification to the Financial Supervision (Experienced Investor Fund) (Exemption) Order 1999³; and
 - agreed to meet the conditions in paragraph 2.

MODIFICATIONS

- a) Schedule 10 of the Order will be replaced by the following:

“SCHEDULE 10

- A Certifications to be contained in the Application Form of a qualifying type experienced investor fund as required in schedule 3 paragraph 12 of this Order

Part 1 Certification - This certification is to be completed by all applicants. The investor confirmations (a) to (d) apply to all applicants. The investor confirmation (e) applies to all applicants except those who are signing a Part 2 certification.

“I/we confirm that —

- (a) I am/we are a qualifying investor as defined on page [] of the offering document of [name of fund] dated []; and
- (b) I am/we are sufficiently experienced to understand the features and risks associated with an unauthorised and unapproved fund of this type; and
- (c) I/we have read and fully understood the offering document, including in particular the information on the risks associated with the fund (contained on pages [X – X] of the offering document), before deciding to invest in the fund; and
- (d) I/we confirm that, where appropriate, I/we have taken independent advice on the suitability of this investment within my/our overall investment portfolio; and
- (e) I/we personally accept all the risks associated with this investment and particularly that my/our investment in the [name of fund] involves risks that could result in a loss of a significant proportion or all of the sum invested.

[Signed]

[Dated]”.

Part 2 Certification –

³ SD603/99 amended by SD 407/00, SD 80/03 SD 347/03 and SD 806/07

- (1) The following certification is to be completed by any investor who is investing on behalf of another person.

“I/We confirm that I am/we are investing in the qualifying type experienced investor fund on behalf of another person/ other persons and have certification(s) signed by such person to show that each such person/persons is a qualifying investor and understands and accepts the risks associated with this type of investment including the risk that investment could result in a loss of a significant proportion or all of the sum invested.

[Signed] [Dated]”.

- (2) The following certification is to be completed by an investor who is a life assurance company investing assets comprised within its long term business fund where the [XYZ fund] has been selected by the policyholder of a particular policy as the basis for determining the benefit of that policy (as appropriate).

“We confirm that we are investing assets comprised within our long term business fund and—

- (a) we have procedures and controls in place to obtain client declarations from our policyholders which include confirmation from the policy holder to the effect that —
 - (i) the policyholder has the opportunity to read the offering documents for funds of this nature, where they wish to do so, and as such has information about and accepts the levels of risks associated with this type of investment including the risk that investment could result in a loss of a significant proportion or all of the sum invested; and
 - (ii) the policyholder, where necessary, meets the minimum criteria of a class of investor in a fund of this nature;
- (b) we confirm no investment in this type of fund is made without a client declaration being obtained from relevant policyholders.

[Signed] [Dated]”.

Part 3 Certification – This certification is to be completed by the financial adviser who has advised the investor where that investor qualifies as a qualifying investor only by virtue of Schedule I paragraph (h) —

“I confirm that —

- (a) I am the appointed financial adviser for the above named client; and
- (b) I have discussed the features and risks attendant to an investment in a non-regulated fund of this type with the client; and
- (c) I have discussed the specific risks attendant to an investment in the [name of fund] as set out in the offering document dated [] ; and
- (d) the client has confirmed that they understand these risks and wish to proceed with the investment.

I am not aware of any information that would lead me to believe that the client does not understand and accept these risks.

[Signed] [Dated]

[Business name]

[Regulated status]" "

B Certifications to be contained in the Application Form of a Legacy Experienced Investor Fund as required in schedule 4 paragraph 10 of this Order

Part 1 Certification - This certification is to be completed by all applicants. The investor confirmations (a) to (d) apply to all applicants. The investor confirmation (e) applies to all applicants except those who are signing a Part 2 certification.

"I/we confirm that —

- (a) I am/we are an experienced investor as defined on page [] of the offering document of [name of fund] dated []; and
- (b) I am/we are sufficiently experienced to understand the features and risks associated with an unauthorised and unapproved fund of this type; and
- (c) I/we have read and fully understood the offering document, including in particular the information on the risks associated with the fund (contained on pages [X – X] of the offering document), before deciding to invest in the fund; and
- (d) I/we confirm that, where appropriate, I/we have taken independent advice on the suitability of this investment within my/our overall investment portfolio; and
- (e) I/we personally accept all the risks associated with this investment and particularly that my/our investment in the [name of fund] involves risks that could result in a loss of a significant proportion or all of the sum invested.

[Signed] [Dated]"

Part 2 Certification –

- (1) The following certification is to be completed by any investor who is investing on behalf of another person.

"I/We confirm that I am/we are investing in the experienced investor fund on behalf of another person/ other persons and have certification(s) signed by such person/persons to show that each such person is an experienced investor and understands and accepts the risks associated with this type of investment including the risk that investment could result in a loss of a significant proportion or all of the sum invested.

[Signed] [Dated]"

- (2) The following certification is to be completed by an investor who is a life assurance company investing assets comprised within its long term business fund

where the [XYZ fund] has been selected by the policyholder of a particular policy as the basis for determining the benefit of that policy (as appropriate).

“We confirm that we are investing assets comprised within our long term business fund and—

- (a) we have procedures and controls in place to obtain client declarations from our policyholders which include confirmation from the policy holder to the effect that —
 - (i) the policyholder has the opportunity to read the offering documents for funds of this nature, where they wish to do so, and as such has information about and accepts the levels of risks associated with this type of investment including the risk that investment could result in a loss of a significant proportion or all of the sum invested; and
 - (ii) the policyholder, where necessary, meets the minimum criteria of a class of investor in a fund of this nature;
- (b) we confirm no investment in this type of fund is made without a client declaration being obtained from relevant policyholders.

[Signed] [Dated]” ”.

- b) **Statement in the offering document** The fund’s offering document must clearly state that the fund has consented to comply with terms of this modification.

2 Conditions

Before directing that the modification in paragraph 1 applies to the fund the Commission must receive:

- a) written consent from the fund for the modification to apply to the fund; and
- (b) confirmation that all necessary changes will be made to the offering document and application form to implement the modification.

(Once changes have been made the normal notification process must be followed).