

**A Consultative Paper
Licensing Policy for certain Functionaries of
Collective Investment Schemes**

21st September 2007



Financial Supervision Commission Barrantee Oaseiry's

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SECTION I - INTRODUCTION

1.1 Background

In March 2007, in an initiative sponsored by Isle of Man Treasury, the Funds Review Group (“FRG”) published a report which looked at the future opportunities for the Island’s funds industry. Amongst its recommendations, the FRG advocated appropriate streamlined licensing be introduced to support the new Specialist Fund and Qualifying Fund and to attract new fund operations to the Island.

The Financial Supervision Commission (“the Commission”), which was represented on the FRG Committee, was tasked with reviewing the regulatory implications of the FRG recommendations and addressing the required legislative changes.

This consultative paper sets out -

- The criteria for assessing whether another jurisdiction can be treated as “acceptable” for the purposes of certain functionalities of the new fund types;
- The proposed licensing criteria and required changes to existing licensing policy to introduce -
 - Associated Asset Managers
 - Specialist Asset Managers
 - Managers of Qualifying Funds who are managed by a Category 3(b) or 4 Investment Business Licenceholders
 - Promoters of Qualifying Funds and their equivalent (including necessary legislation for this purpose).

1.2 Cost and Impact

In formulating their recommendations, the FRG considered the Island’s fund offering in comparison to those available in other jurisdictions. The Commission does not believe that the revised licensing policy will bring additional costs to existing licenceholders.

1.3 Consultation

The Commission views open dialogue with Industry as an essential element in developing an optimal regulatory framework. The Commission therefore appreciates the time that respondents will spend in reading and commenting upon these proposals.

The specific proposals are set out in the appendices to this consultation document.

The closing date for comments is **19 October 2007**. Due to pressures in implementing the regime, we would be most grateful if comments could be received as soon as possible and no later than this date.

Responses to:

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SECTION 2 - FUNDS REVIEW GROUP PROPOSALS

2.1 The FRG Report

In September 2006 the Funds Review Group (“FRG”) was established under the auspices of the Isle of Man Finance Steering Group. The Terms of Reference approved by the Treasury for the FRG were:

“To review the Isle of Man’s investment funds industry in the context of the international investment funds arena and to identify reforms and enhancements which will secure the future growth and development of the industry.”

In March 2007 the FRG published its conclusions in the “Smith Report” which states that:

“The vision of the Isle of Man Funds Review Group is that by 2010, the Isle of Man funds industry will have \$100 billion of funds under administration and \$50 billion of funds under management on the Island. A significant increase over today’s levels but an attainable target if the recommendations contained within this report are adopted.”

The FRG aims to position the Isle of Man as a premier location for the domicile of specialist institutional funds and to be a preferred location for the establishment of front and middle office operations for global asset managers. If achieved, this will secure the sector’s long term prospects by capitalising on market opportunities in the international investment funds arena, particularly in the alternative and institutional sectors.

To achieve these aims, the FRG recommended amongst other things that:

- (a) A new specialist investment fund be created targeting institutional investors with a minimum investment of US\$100,000;
- (b) A new type B International Scheme be created targeting non retail investors;
- (c) Existing EIFs should convert to one of the above types , redomicile or close;
- (d) A new Schemes Bill be introduced which modernises the legislation and provides the Commission with appropriate regulatory powers; and
- (e) Appropriate licensing is introduced for functionaries acting for the new scheme types.

This paper sets out proposals for introducing a revised licensing policy under (e) under powers contained in the Investment Business Act 1991.

You should note that the new Collective Investment Schemes Bill (d), which streamlines and modernises the Schemes legislation will be consulted upon in the near future. This Bill will operate in conjunction with the Financial Services Bill 2007 which is currently progressing through the legislature. Once implemented, the Acts will streamline licensing and regulatory requirements and provide a more user friendly regulatory framework for licenceholders.

The FRG report can be found at:

<http://www.gov.im/lib/docs/iomfinance/reports/isleofmanfundsreviewreportmar0.pdf>

Appendix A The criteria for assessing whether another jurisdiction can be treated as “acceptable” for the purposes of certain functionalities of the new fund types.

I. Application of the Criteria

Under the Specialist and Qualifying Fund Orders and the licensing policy for Associated and Specialist Asset Managers, the following functionalities are required to be located in an acceptable jurisdiction.

Specialist Fund

- Overseas Administrator;
- In certain circumstances, the trustee of a unit trust.

Qualifying Fund

- Custodian;
- Promoter;
- In certain circumstances, the trustee of a unit trust.

(These criteria are also applied to equivalent functionalities of a continuing Experienced Investor Fund)

Associated Asset Manager

- The jurisdiction in which the relevant regulatory permission is held by the “group” to which the associated asset manager is associated;
- Location of relevant staff;
- Location of off-island “4-eyes”.

Specialist Asset Manager

- Location of off-island “4-eyes”.

2 Minimum criteria applied by the Financial Supervision Commission when assessing whether a jurisdiction is an acceptable jurisdiction

- Is there a memorandum of understanding between the Commission and its equivalent regulatory body providing, inter alia, for mutual assistance and cooperation in relation to fund management/administration and associated activities?
- Are licenceholders in that jurisdiction licensed on the basis of a “Fit and Proper” assessment?
- Are there adequate arrangements in place in the jurisdiction for the supervision of its licenceholders?
- Are there adequate powers for enforcement and remedial action at the disposal of the regulatory body (equivalent to those of the Commission)?

In considering these questions the Commission may take into account:

- any relevant international assessment reports which consider the jurisdiction’s compliance with international regulatory standards and cooperation principles (including those of the International Monetary Fund);
- participation in international cooperation initiatives (such as the IOSCO Multi-lateral Memorandum of Understanding);
- any experience of regulatory cooperation with that jurisdiction.

Appendix B – Draft Licensing Policy

Licensing Policy for Asset Managers of Specialist Funds and their equivalent

I Introduction

This policy document is directed at asset managers of Specialist Funds and their equivalent (which may include hedge funds), who are considering re-locating some or all of their operations to the Isle of Man. The Financial Supervision Commission's ("the Commission") aim is to streamline the process for licensing such operations by outlining the factors that the Commission will take into account when considering such applications.

The Commission recognises that specialist investment activity may warrant a different style of regulatory oversight as opposed to conventional investment business, subject to certain conditions being met. This approach does not equate to a lowering of regulatory standards.

Fund and asset managers and their advisers are encouraged to meet with the Commission's Authorisations team before submitting any licence application to discuss the application of the principles set out in this policy document and how they could apply in their particular circumstances, with a view to expediting the licensing process. It should also be borne in mind that not all fund and asset management activities are licensable; for instance, intra-group arrangements, technology provision and certain consultancy services may not require a licence.

2 Licensing Background

Fund and asset management activities carried on in or from the Isle of Man require the operator to obtain a licence under the Investment Business Act 1991 ("IBA"). Under the regulatory codes ("Codes") and current licensing policy, licences under the IBA are issued with reference to various categories, depending on the nature of the activities proposed to be undertaken. The regulatory requirements applicable to investment business licenceholders vary depending on the category of licence in question. However, the Commission has the power to impose conditions on licences, and to grant specific dispensations from regulatory requirements to licenceholders, on a case-by-case basis.

Fund and asset managers are usually required to hold category 3(b) licences under the IBA and, as a result, are subject to requirements relating to, inter alia, quarterly financial reporting, professional indemnity insurance ("PII"), the need for at least two senior officers ("4-eyes" requirements), financial resources requirements and a material local business presence.

3 Streamlined Licensing Process

The regulatory requirements for investment business licenceholders are currently being updated as part of the Commission’s objective to consolidate and modernise the regulatory framework.

In the interim, this policy document describes the criteria which are appropriate to the licensing of certain alternative asset management operations which provide services to specialist funds and their equivalent in other jurisdictions (“specialist type funds”). In particular, the criteria in this document will be used by the Commission when considering applications for category 3(b) investment business licences:

- (a) in circumstances where the applicant only proposes to provide services in relation to specialist type funds and is either a member of a group of companies of which an associated member is regulated for activities of this nature, e.g. as an alternative asset management operation, in a jurisdiction that the Commission has approved for the purpose (an “acceptable jurisdiction¹”) or is under common control with an entity which is regulated for equivalent activities in an acceptable jurisdiction – such an applicant is referred to in this document note as an “associated asset manager”; and
- (b) in circumstances where the applicant is not an associated asset manager but only proposes to provide services in relation to specialist type funds – such an applicant is referred to in this document as a “specialist asset manager”.

It is anticipated that, as their business develops, associated asset managers and specialist asset managers may wish to establish more substantial operations providing services to a broader class of funds and as such may become full category 3(b) managers.

The Commission’s approach to applications by prospective associated asset managers and specialist asset managers is set out below.

4 “Associated Asset Managers”

4.1 The key features of the **licensing process** for a prospective associated asset manager are as follows:

- (a) Streamlined licensing process – the Commission aims to process applications within 2 months of receipt of all required documentation and information.
- (b) Applicant must be part of a group (or under common control) where an associated member is regulated in an acceptable jurisdiction for activities of this nature, e.g. as an alternative asset management operation.

¹ In order to qualify as an acceptable jurisdiction, the Commission will determine whether the jurisdiction complies with the criteria set out in Appendix A to this consultation paper. The Commission proposes to publish a list of jurisdictions currently approved by the Commission as acceptable jurisdictions for this purpose.

- (c) The competence element of an applicant's "fit and proper" evaluation will be determined by reference to the relevant experience of the officers and controllers of the applicant. This is a category of business in which the Commission would consider licensing start-up operations. It is not essential that the applicant or the relevant regulated entity should have a business track record of its own if this can be demonstrated by the officers and controllers individually.
- (d) The applicant must be an Isle of Man incorporated company and must have at least one local resident director.

4.2 A successful applicant for an associated asset manager licence will be granted a category 3(b) licence which will also exempt the associated asset manager from the following regulatory requirements:

- (a) Whilst the associated asset manager will be required to ensure there are sufficient persons of appropriate seniority performing the regulated activities in the Isle of Man, they will not be subject to prescriptive requirements as to the number and seniority of staff located in the Isle of Man. Arrangements will be considered on a case by case basis and may take into account the contribution of staff in an acceptable jurisdiction.
- (b) The associated asset manager will be permitted to be established as a "managed" entity. In such circumstances the associated asset manager:
 - i must be managed by an Isle of Man investment business licenceholder who is permitted to provide services to such managed entities, has a track record in providing services to specialist type funds and can demonstrate competence and experience to act as manager of the managed entity (including the provision of adequate systems, controls and resources) to the Commission's satisfaction;
 - ii the managed entity will not be required to have separate Isle of Man based "4-eyes", as this oversight will be provided by the licenceholder managing the entity.
- (c) Where the associated asset manager is not managed by an Isle of Man investment business licenceholder, there must be a real presence on the Island and one of the required "4-eyes" must be Isle of Man based, however the other may be based in an acceptable jurisdiction from which effective oversight can be maintained.
- (d) The annual statutory audit and reporting requirements will apply, but the associated asset manager will not be required to provide quarterly financial returns.
- (e) The prescriptive financial resources requirements will not apply, but the associated asset manager must meet an ongoing solvency requirement.
- (f) The associated asset manager may operate under the PII cover of a group or affiliated entity.

4.3 The licence of an associated asset manager will be subject to **conditions** as follows:

- (a) The associated asset manager may only provide services in relation to specialist type funds.

- (b) The associated asset manager will be prohibited from holding clients' monies or investments.
- (c) Any outsourcing must be undertaken within the principles of the Commission's Guidance on Outsourcing / Delegations of Functions.
- (d) The associated asset manager will be required to meet an ongoing solvency requirement.

5 "Specialist Asset Managers"

5.1 The key features of the **licensing process** for a prospective specialist asset manager are as follows:

- (a) Streamlined licensing process – the Commission aims to process applications within 2 months of receipt of all required documentation and information.
- (b) Applicant need not be part of a group or under common control with a regulated entity.
- (c) Applicant required to have real presence on the Island but is exempt from prescriptive requirements as to the number and seniority of staff located in the Isle of Man. However, the specialist asset manager will be required to have "4-eyes" at least one of which is Isle of Man based. Any non Isle of Man based "4-eyes" must be based in an acceptable jurisdiction from which they can maintain effective oversight.
- (d) The "fit and proper" status of the applicant will be determined by reference to the relevant experience of the officers and controllers of the applicant. This is a category of business in which the Commission would consider licencing start-up operations. It is not essential that the applicant should have a business track record of its own if this can be demonstrated by the officers and controllers individually.
- (e) The applicant must be an Isle of Man incorporated company and must have at least one local resident director.

5.2 A successful applicant for a specialist asset manager licence will be granted a category 3(b) licence.

5.3 The licence of a specialist asset manager will be subject to the **condition** that they only provide services in relation to specialist type funds.

6 Important Notes

It should be noted that the regulatory requirements for investment business licenceholders are currently being updated as part of the Commission's objective to consolidate and modernise the regulatory framework. Consequently, it should be appreciated that this licensing policy will be subject to further review.

The contents of this policy document note should not be interpreted as binding on the Commission; its licensing regime requires it to exercise discretion in each case and, accordingly, the manner in which it does so will be governed by the particular circumstances of any case in point.

The Commission cannot provide legal advice to applicants, who are urged to seek appropriate legal advice on their particular circumstances.

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Appendix C - Required changes to licensing policy to introduce Managers of Qualifying Funds and Associated Asset Managers who are managed by a Category 3(b) or 4 Investment Business Licenceholder

I Introduction

This document considers the criteria which the Financial Supervision Commission (“the Commission”) will apply to applicants for a category 3(b) investment business licence to act as a managed manager of a qualifying fund or its equivalent (for the purpose of this paper referred to as a “managed category 3(b) licenceholder”).

2 Managed category 3(b) Investment Business Licence

The Commission’s general licensing policy will be applied to applicants for a managed category 3(b) investment business licence.¹

A managed category 3(b) investment business licence will allow the managed manager to be appointed as manager to a qualifying fund or a qualifying type experienced investor fund.

3 Licensing Policy

In line with the general licensing policy, when assessing the fitness and propriety of a “managed category 3(b) licence” applicant, the Commission will apply its usual licensing policy in respect of the managed business itself *and in addition*, will pay special attention to the arrangements under which the proposed manager intends to carry out its management functions. All relevant regulatory codes will apply.

A managed category 3(b) licenceholder may be managed by a category 4 investment business licenceholder or a category 3(b) investment business licenceholder which can demonstrate its competence and experience to provide services to the entity (including the provision of adequate systems, controls and resources) to the Commission’s satisfaction.

4 Important Notes

It should be noted that, the regulatory requirements for investment business licenceholders are currently being updated as part of the Commission’s objective to consolidate and modernise the regulatory framework. Consequently, it should be appreciated that this licensing policy will be subject to further review.

The contents of this policy document should not be interpreted as binding on the Commission; its licensing regime requires it to exercise discretion in each case and, accordingly, the manner in which it does so will be governed by the particular circumstances of any case in point.

The Commission cannot provide legal advice to applicants, who are urged to seek appropriate legal advice on their particular circumstances.

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¹ The required updates to the Tables in Appendix I of that policy are set out in Appendix I to this document.

Consequent changes to the Commission’s licensing policy in relation to Managers of funds

Since the main body of the Commission’s licensing policy is written generically the only update required is in the activity specific tables in appendix 1. The required changes are as follows:

Table A - Classes and Categories of Licence

Class and Category of licence	Regulated Activities (Carried on in or from the Isle of Man, by way of business)
<i>Investment Business – Category 2 Group (b)</i>	<ul style="list-style-type: none"> ▪ “managed managers” who are managers of international collective investment schemes (apart from experienced and professional investor funds, Specialist Funds, Qualifying Funds and Overseas Funds (EIFs, PIFs, SFs, QFs or overseas funds)), where manager is administered by a third party fund administrator (Category 4 Licenceholder).
<i>Investment Business – Category 3 Group (a)</i>	<ul style="list-style-type: none"> ▪ Portfolio managers who are permitted to control clients' money and assets on a discretionary basis; ▪ Managers of international collective investment schemes (apart from EIFs, PIFs, SFs, QFs or overseas funds), not administered by a third party fund administrator; ▪ Managers of more than one “exempt international collective investment scheme” (see Financial Supervision Act 1988, s.11(7)).
<i>Investment Business – Category 3 Group (b)</i>	<ul style="list-style-type: none"> ▪ Managers or fund administrators of PIFs, EIFs, SFs, QFs or overseas funds; ▪ Investment manager with discretionary powers of investment re collective investment schemes or occupational pension schemes, established in the Isle of Man or in another jurisdiction; ▪ Managers of authorised collective investment schemes; ▪ Managed managers of a qualifying type EIF or a QF, where the manager is managed by a third party fund administrator (Category 4 Licenceholder) or a category 3(b) licenceholder who can demonstrate appropriate competence and experience and sufficient systems, controls and resources to act in this capacity (“Managed managers”). ▪ Licenceholders who provide services to managers of PIFs, EIFs, SFs, QFs or overseas funds and to Associated Asset Managers. ▪ Associated Asset Managers of Specialist Funds and their equivalent. ▪ Specialist Asset Managers of Specialist Funds and their equivalent. ▪ Managers of Associated Asset Managers, (nb the manager is required to demonstrate appropriate competence and experience and sufficient systems, controls and resources to act in this capacity) ▪ Administrators of managed portfolio managers; ▪ Investment businesses, other than those included in Categories 1, 2, 3(a), 4 and 5.
<i>Investment Business – Category 4</i>	<ul style="list-style-type: none"> ▪ Third party fund administrators who provide administrative services to managers of authorised and/or international collective investment schemes including PIFs, EIFs, SFs, QFs or overseas funds (except as provided for in Categories 2 and 3 above). ▪ They may also directly administer PIFs, EIFs, SFs, QFs or overseas funds. ▪ They may also act as manager to Associated Asset Managers.

NB There will be other consequential changes required to the tables contained in the schedules to the Consolidated Licensing Policy to reflect these licence categories.

Appendix D - Draft Licensing Policy for Promoters of Funds where a regulated promoter is required (including necessary legislation for this purpose)

I Introduction

This policy details the criteria which the Financial Supervision Commission (“the Commission”) will apply to applicants applying for a category I(c) investment business licence to act as Isle of Man promoters of funds which statutorily require a regulated promoter to be appointed.

2 Category I(c) Licence Activity

The Commission’s general licensing policy will be applied to applicants for a category I(c) investment business licence.

A category I(c) investment business licence will allow a Promoter¹ to act for funds that statutorily require the appointment of a regulated promoter. As such they:

- will be allowed to prepare or distribute, or cause the preparation or distribution of an offering document or associated marketing material for a fund that requires the appointment of a regulated promoter (such as a Qualifying Fund).
- will not be permitted to control clients' money or assets.

The Financial Supervision Commission Advertising Regulatory Code 1991 is particularly relevant to the activities of promoters. In particular, promoters will be required to ensure that they do not issue, or allow the issue of, misleading advertisements on behalf of the fund and that any advertising done in other jurisdictions is in accordance with the law and regulations in that jurisdiction. Further guidance on certain issues specific to the conduct of business of promoters will be issued, including the assessment of “acceptable financial advisers” for the purpose of the Financial Supervision (Qualifying Fund) (Exemption) Order 2007 and the Financial Supervision (Experienced Investor Fund) (Exemption) Order 1999.

3 Licensing Policy

The main tenets of the licensing policy in respect of applications for category I(c) investment business licences will be:

- (a) The Commission’s fit and proper test – applicants must demonstrate to the Commission that they have the necessary integrity, competence and solvency to act.
 - i. Key persons will also be required to demonstrate that they are fit and proper.
 - ii. In demonstrating competence relevant experience and the adequacy of procedures will be considered.

¹ Promoter, as defined in the qualifying fund means a person (wherever located) who prepares or distributes, or who causes the preparation or distribution of an offering document or associated marketing material, but does not include a professional adviser acting for or on behalf of that person

- (b) Applicants will be required to demonstrate real presence through their own staff, systems and premises and to demonstrate that management and control is located in the Isle of Man. A category I(c) licence will not be issued to a “Managed” business.
- (c) Branch operations and start-up operations may be permitted.
- (d) Track record must be demonstrated by a minimum of 3 years experience either at corporate level or individual level.
- (e) Normal PII requirements will apply.
- (f) The financial resources, solvency and reporting requirements applicable to existing category I investment business licenceholders will apply.

4 Important Notes

It should be noted that, the regulatory requirements for investment business licenceholders are currently being updated as part of the Commission’s objective to consolidate and modernise the regulatory framework. Consequently, it should be appreciated this licensing policy will be subject to further review.

The contents of this policy document should not be interpreted as binding on the Commission; its licensing regime requires it to exercise discretion in each case and, accordingly, the manner in which it does so will be governed by the particular circumstances of any case in point.

The Commission cannot provide legal advice to applicants, who are urged to seek appropriate legal advice on their particular circumstances.

[] 2007**

Financial Supervision Commission

Required changes to the Commission’s licensing policy in relation to Promoters – category I(c) investment business

Since the main body of the Commission’s licensing policy is written generically the only update required is in the activity specific tables in appendix 1. The required changes are as follows:

Table A - Classes and Categories of Licence

Class and Category of licence	Regulated Activities (Carried on in or from the Isle of Man, by way of business)
<i>Investment Business – Category I Group (c)</i>	<p>Acting as a Promoter to funds that statutorily require the appointment of a regulated promoter.</p> <p>A category I Group (c) licenceholder;</p> <ul style="list-style-type: none"> is permitted to prepare or distribute, or cause the preparation or distribution of an offering document or associated marketing material for a fund that requires the appointment of a regulated promoter. is not permitted to control clients' money or assets

Table B - Ownership and Management Structures (Paragraphs 2.2)

Class and Category of licence	Permitted structures	Ownership by trust (subject to para. 2.2.2)	May be a managed business
<i>Investment Business – Category I Group (c)</i>	Company or Branch of company licensed in another jurisdiction to conduct relevant class of investment business in an acceptable jurisdiction.	May be permitted.	No

Table C - Track Record

Class and Category of licence	Track Record/New Business Start-up
<i>Investment Business - Category I Groups (a) (b) and (c)</i>	<p>New start-up firms permitted.</p> <p>It is expected that any individual who advises customers about investment products will hold a relevant qualification.</p> <p>They should also have a proven track record (a minimum of 3 years experience) and have adequate procedures.</p>

Table D - Staffing (Paragraphs 2.4)

Class and Category of licence	Staffing/4-eyes requirement	Locum required	Individuals subject to the “fit and proper” test
<i>Investment Business</i> – Category I Groups (a) (b) and (c)	No 4-eyes requirement. However, may be required to have a locum. MLRO Company – Managing Director & Secretary (Generally, the role of Managing Director and Secretary should not be undertaken by the same individual.)	May apply depending on size of business	Directors, chief executive, managers and controllers. This includes the secretary, 4-eyes (if any) and MLRO.

Table E - Financial resources and professional indemnity insurance

Class and Category of licence	Financial Resources Requirement	Professional Indemnity Insurance (PII)
<i>Investment Business</i> – Category I Groups (a) (b) and (c)	Minimum Net Tangible Assets of £5,000 (to be deposited in a segregated bank account with no right of lien or set-off). Partnerships and companies –Minimum Net Tangible Assets of £10,000 (which may be deposited in a segregated bank account with no right of lien or set-off).	Aggregate of claims in 1 year: £250,000 or 3 x total revenue, whichever is the greater. Excess should not exceed £5,000 plus 0.75% of aggregate cover in excess of £1 million

Statutory Document Number: []



INVESTMENT BUSINESS ACTS 1991 TO 1993

Financial Supervision Commission (Financial Resources and Compliance Reporting) (Amendment) Regulatory Code 2007

*Approved by Tynwald
Coming into operation*

Coming into operation

In exercise of the powers conferred on the Financial Supervision Commission ("the Commission") by section 6 of the Investment Business Act 1991¹, and of all other enabling powers, the following Code is hereby made:

Citation and commencement

1. This Code may be cited as the Financial Supervision Commission (Financial Resources and Compliance Reporting) (Amendment) Regulatory Code 2007 and shall come into operation on 1st November 2007.

Interpretation

2. In this Code -

"the Act" means the Investment Business Act 1991; and

"the 2002 Code" means the Financial Supervision Commission (Financial Resources and Compliance Reporting) Regulatory Code 2002².

Amendments

3. In paragraph 1(4) of the 2002 Code -

(a) insert the following definitions:

"continuing EIF" has the meaning given in the Financial Supervision (Experienced Investor Fund) (Exemption) Order 1999³;

"promoter" means a person (wherever located) who prepares or distributes, or who causes the preparation or distribution of, an offering document or associated marketing

¹ 1991 c.18

² SD 345/02

³ SD 603/99 amended by SD 407/00, SD 80/03 SD 347/03 and SD 806/07

material, but does not include a professional adviser acting for or on behalf of that person;

“qualifying fund” has the meaning given in the Financial Supervision (Qualifying Fund) Order 2007;¹

“qualifying type experienced investor fund” has the meaning given in the Financial Supervision (Experienced Investor Fund) (Exemption) Order 1999;

“specialist fund” has the meaning given in the Financial Supervision (Specialist Fund) Order 2007²

(b) in the definition of “limited transactions” (b)(ii) , after the words “professional investor funds” insert the words “, continuing EIFs, qualifying funds and specialist funds”;

4. In paragraphs 1(6) of the 2002 Code replace the words “11 and 12” with the words “11, 12 and 12A”

5. After paragraph 12 of the 2002 Code insert the following -

“ **Category 1 group (c)**

12A Category 1 group (c) consists of a person acting as a promoter to a qualifying fund, a qualifying type experienced investor fund or any other collective investment scheme where a regulated promoter is statutorily required.”

6. In paragraph 16 of the 2002 Code -

(a) in (b) after the words “professional investor funds” insert the words “, continuing EIFs, qualifying funds and specialist funds”;

(b) after “(e)” insert -

“(f) act as “managed manager” of a qualifying fund where the managed manager is administered by -

- (i) a category 4 licenceholder or
- (ii) a category 3(b) licenceholder who has appropriate competence and experience to act in this capacity;

(g) act as administrator who provides administrative services to managers and asset managers of continuing experienced investor funds and qualifying funds. ”

6. In paragraph 17 of the 2002 Code after the words “professional investor funds” insert the words “, continuing EIFs, qualifying funds and specialist funds”.

¹ SD 808/07

² SD 807/07

Made by the Financial Supervision Commission on this day of

_____ *Chairman*

_____ *Chief Executive*

Explanatory Note
(This note is not part of the Order)

This Order amends the Financial Supervision Commission (Financial Resources and Compliance Reporting) Regulatory Code 2002 to introduce a new class (1) (c) of investment business licenceholder for persons acting as promoter to certain types of collective investment scheme and to modify the activities falling within category 3(b). It also makes minor consequential amendments.

Statutory Document Number: []



INVESTMENT BUSINESS ACTS 1991 TO 1993

Investment Business (Amendment) Order 2007

Approved by Tynwald
Coming into operation 1st November 2007

Coming into operation

In exercise of the powers conferred on the Treasury by section 1(2) of the Investment Business Act 1991¹, and of all other enabling powers, the following Order is hereby made:

Citation and commencement

1. This Code may be cited as the Investment Business (Amendment) Order 2007 and shall come into operation on [1st November 2007].

Interpretation

2. In this Code -

“the Act” means the Investment Business Act 1991; and

“the 2004 Order” means the Investment Business Order 2004².

Amendments

3. In Schedule 1 Article 2 Part II Exclusions of the 2004 Order insert the following after paragraph 24 –

“Promoters of Collective Investment Schemes other than where the scheme is statutorily required to have a regulated promoter

25. The activity of acting as a promoter to collective investment schemes shall be an excluded activity unless there is a legislative requirement in the Isle of Man or in another jurisdiction for the appointed promoter to be regulated for that activity.”

4. In Schedule 3 article 4 paragraph 1 of the 2004 Order insert the following after the definition of professional dealer –

¹ 1991 c.18

² SD 673/04

" (OO) "promoter" means a person (wherever located) who prepares or distributes, or who causes the preparation or distribution of, an offering document or associated marketing material for a collective investment scheme, but does not include a professional adviser acting for or on behalf of that person; "

Made

Treasury Minister

Explanatory Note
(This note is not part of the Order)

This Order amends the Investment Business Order 2004 by introducing an exclusion for promoters of collective investment schemes in all cases except where the collective investment scheme is statutorily required to have a regulated promoter.