



## FINANCIAL SUPERVISION ACT 1988

### FINANCIAL SUPERVISION (QUALIFYING FUND) (EXEMPTION) ORDER 2007

*Approved by Tynwald* 16<sup>th</sup> October 2007  
*Coming into operation* 1<sup>st</sup> November 2007

In exercise of the powers conferred on the Treasury by section 11(11) of the Financial Supervision Act 1988<sup>1</sup>, and of all other enabling powers, the following Order is hereby made:—

#### **Citation and commencement**

1. This Order may be cited as the Financial Supervision (Qualifying Fund) (Exemption) Order 2007 and shall come into operation on the 1<sup>st</sup> November 2007.

#### **Interpretation**

2.(1) In this Order —

"Act" means the Financial Supervision Act 1988;

"acceptable financial adviser" means a person (wherever located) who advises investors on the suitability of investing in a qualifying fund and who is appointed by the fund's promoter in accordance with article 12;

"acceptable jurisdiction" means a jurisdiction accepted by the Commission as a jurisdiction in which custodians or promoters, as the case may be, of qualifying funds are subject to an appropriate standard of regulation;

"administration" includes the following functions in relation to a fund (insofar as they are relevant thereto) —

- (a) accounting services;
- (b) handling of administrative enquiries from participants;
- (c) valuation of assets and pricing of units;
- (d) maintenance of the register of unit-holders;
- (e) distribution of income;
- (f) issues, transfers and redemptions of units; and
- (g) record keeping;

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<sup>1</sup> 1988 c. 16.

“annual financial statements” means, in relation to a qualifying fund, financial statements prepared in accordance with article 16;

“asset manager” means a person appointed by the governing body of a fund who is responsible for investment management in accordance with the investment objectives and policy of the fund;

“associate” means —

- (a) in relation to an individual —
  - (i) the father, mother, wife, husband, son, stepson, daughter, stepdaughter, brother or sister of the individual;
  - (ii) a body corporate of which that individual is a director; and
  - (iii) a partner or employee of that individual;
- (b) in relation to a body corporate —
  - (i) a subsidiary of that body corporate; and
  - (ii) an employee of any such subsidiary;

“Commission” means the Financial Supervision Commission;

“custodian” means a person who is appointed by the governing body of a fund and who is entrusted with —

- (a) the custody of, or procuring safe custody of, the property of the fund, irrespective of whether or not that person may also be responsible for ensuring that the fund is managed in accordance with its constitutional documents; or
- (b) where applicable, providing prime brokerage services in relation to the fund;

“functionary” means in relation to a qualifying fund, the governing body of the fund (or any member thereof) or any person appointed for the time being to provide services to the fund under a contract for services, including (without limitation) any administrator, manager, custodian, asset manager, investment adviser or promoter;

“governing body” means the person or body of persons for the time being responsible for the general supervision of the affairs of a fund and —

- (a) where the fund is a unit trust fund and the trustee of that fund is a body corporate, shall mean the director(s) of that body corporate;
- (b) where the fund is an open-ended investment company, shall mean the director(s) of that open-ended investment company;
- (c) where the fund is a limited partnership and the general partner is a body corporate, shall mean the director(s) of that body corporate;

“investment adviser” means a person appointed by the governing body of a fund who is responsible for advising the governing body about investments of the fund in accordance with the investment objectives and policy of the fund;

“launch date” means, in relation to a qualifying fund, the date of publication of its initial offering document and, unless the contrary is proved, that date shall be taken to be the date of such offering document;

“manager” means a person appointed by the governing body of a fund who —

- (a) is responsible for the conduct of the administration of the fund; and
- (b) is responsible for determining whether the fund is and continues to be managed and operated in accordance with the fund's constitutional and offering documents;

"offering document" means a document, by whatever named called, which is aimed to inform prospective participants about the fund;

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

"qualifying auditor" means a person or body corporate who has a permanent place of business on the Island, is covered by Professional Indemnity insurance of no less than £20 million and is independent of the fund, having regard to auditing standards and the code of ethics issued from time to time by the body of accountants of which he is a member and —

- (a) is a member of one of the following bodies of accountants —
  - (i) The Institute of Chartered Accountants in England and Wales;
  - (ii) The Institute of Chartered Accountants of Scotland;
  - (iii) The Institute of Chartered Accountants in Ireland;
  - (iv) The Chartered Association of Certified Accountants;
  - (v) The Chartered Institute of Public Finance and Accountancy;
  - (vi) The Association of Authorised Public Accountants; or
- (b) is a member firm of one of the bodies referred to in (a);

"qualifying investor" has the meaning ascribed thereto in Schedule 1;

"qualifying fund" means a collective investment scheme which is constituted under the laws of the Island and which complies with the conditions set out in this Order and "fund" shall be construed accordingly; and

"subsidiary" and "holding company" shall be construed in accordance with section 1 of the Companies Act 1974<sup>2</sup>.

(2) In this Order, any reference to "US\$" is to United States Dollars, the lawful currency of the United States of America, and any figure expressed in United States Dollars shall be taken as including its equivalent in any other currency.

### **Exemptions from the requirements of the Act**

3(1) A qualifying fund shall be exempt from subsections (1), (2)(b) and (7) to (10) (inclusive) of section 11 of the Act.

(2) Subsection (4) of section 11 of the Act shall apply to a qualifying fund as if the following words had been deleted therefrom, namely "6, 7(1) (with the omission of the requirement relating to the advocate's certificate) and (2), 10,".

### **Duties of the governing body of a qualifying fund**

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<sup>2</sup> 1974 c. 30

4(1) The governing body of a qualifying fund shall, in addition to (and without derogating from) any other duties or responsibilities imposed under any applicable law, be responsible for ensuring that —

- (a) the requirements set out in this Order are complied with;
- (b) the offering document and relevant constitutional documents of the fund comply in all respects with the requirements of the Act and this Order;
- (c) the fund is and continues to be managed and operated in accordance with the fund's constitutional documents and offering document;
- (d) the offering document of the fund accurately sets out all material information which, at the date of the offering document, is within the knowledge of the governing body (or which any member of the governing body would have been able to obtain at that time by making reasonable enquiries) which is relevant for the purpose of making an informed judgement about the merits of participating in the fund;
- (e) the offering document is amended to reflect any material changes to the fund or its circumstances in a timely manner and that the manager of the fund is notified of such change(s) and provided with a copy of the amended offering document forthwith;
- (f) within 6 months of the fund's financial year-end, Part 1 of the annual compliance declaration in the form set out in Schedule 3 to this Order is completed and signed by the governing body and, in conjunction with the manager, the completed declaration (including both Part 1 and Part 2) is submitted to the Commission;
- (g) the responsibilities imposed upon the manager under article 8 are discharged; and
- (h) a minimum subscription amount appropriate to the fund is determined jointly with the manager.

(2) The governing body of a qualifying fund or proposed qualifying fund shall sign a statement of responsibility in the form set out in Schedule 2 Part A in relation to the initial offering document of the fund and any amended offering document of the fund. Each statement of responsibility shall be submitted to the Commission by the governing body within 10 working days of the launch date of the fund (in the case of the initial offering document) or within 10 working days of the date of issue of the offering document (in the case of an amended offering document).

### **Composition of the governing body of a qualifying fund**

5(1) With the exception of a fund constituted as a unit trust, the governing body of a qualifying fund shall include —

- (a) at least one natural person who holds such office in a non-executive capacity and who is independent of any promoter of the fund and of any body corporate that is a subsidiary of any promoter of the fund or a subsidiary of any holding company of any promoter of the fund; and
- (b) at least one Isle of Man resident natural person

(2) For the avoidance of doubt, the individuals referred to in paragraphs (1)(a) and (1)(b) may be one and the same person.

(3) Where a qualifying fund is constituted as a unit trust, the governing body shall be a trustee who is a different person from the manager and who is —

- (a) an authorised person for the purpose of the Act who is permitted to undertake this activity;
- (b) licensed to act as a trustee in an acceptable jurisdiction and whose licence extends to acting as a trustee to funds of this type;
- (c) a corporate trustee with a natural person resident in the Isle of Man acting as co-trustee; or
- (d) a corporate trustee whose board includes a non executive director who is a natural person resident in the Isle of Man.

#### **Notification of removal of, resignation of or failure to reappoint a member of the governing body of a qualifying fund**

6. Where a member of the governing body of a qualifying fund is removed from such office, resigns from such office or is not reappointed at the end of his/her term of office that person shall give notice to the Commission in writing forthwith together with the reasons (if any) for that removal, resignation or failure to reappoint.

#### **The manager of a qualifying fund**

7. A qualifying fund shall have a manager who is the holder of a licence under the Investment Business Act 1991<sup>3</sup> which permits it to undertake this activity.

#### **Responsibilities of a manager of a qualifying fund**

8. The manager of a qualifying fund shall —
- (a) notify the Commission forthwith if it determines that the fund has not been managed and operated in accordance with the fund's constitutional and offering documents;
  - (b) notify the Commission forthwith on becoming aware that a member of the governing body of the fund is removed from such office, resigns from such office or is not reappointed at the end of his/her term of office. Any such notification shall be accompanied by details of the reasons (if any) for that removal, resignation or failure to reappoint;
  - (c) satisfy itself that each investor in the fund has certified that he/she/it/they is/are a qualifying investor and, in the case of investors qualifying under Schedule 1 paragraph (h), that the qualifying investor's status as such has also been certified by an acceptable financial adviser;
  - (d) within 10 working days of the launch date of the fund certify and submit to the Commission a notification in the form set out in Schedule 2 Part B;
  - (e) within 10 working days of becoming aware of any material alteration to the constitutional documents and/or offering document of the fund that would render any of the information contained in the last notification in relation to the fund delivered to the Commission pursuant to paragraph (d) or this paragraph inaccurate, incomplete or otherwise misleading, certify and submit to the Commission an updated notification in the form set out in Schedule 2 Part B to this Order;
  - (f) in compliance with article 4(1)(f), within 6 months of the fund's financial year-end, complete and sign Part 2 of the annual compliance declaration in the form set out at

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<sup>3</sup> 1991 C.18

Schedule 3 to this Order and, in conjunction with the governing body, submit the completed declaration (including both Part 1 and Part 2) to the Commission;

- (g) within 15 working days of each calendar quarter end, supply to the Commission the statistical information about the fund which is detailed in Schedule 4 to this Order;
- (h) report to the Commission forthwith upon it becoming aware that any of the conditions in articles 9, 10, 11, 12, 13, 14 and 15 are not complied with;
- (i) notify the Commission as soon as reasonably practicable after receiving an audit report of a qualifying fund, as required by article 17, that has been qualified by the auditors in relation thereto. Such notification shall be accompanied by a copy of the audit report together with details of any remedial action that the manager or any other party intends to take;
- (j) in the event that the audited annual financial statements of a qualifying fund are not distributed within the period prescribed under article 18, notify the Commission of that fact within 10 working days and every three months thereafter until such audited annual financial statements are issued and distributed. Such notification shall —
  - (i) give details of the issues giving rise to the delay;
  - (ii) contain a revised timetable for distribution; and
  - (iii) be signed by, or on behalf of, the manager;
- (k) upon becoming aware that an auditor of a qualifying fund is removed from office, resigns or is not reappointed at the end of the auditor's term of office, notify the Commission of that fact forthwith; and
- (l) determine a minimum subscription amount appropriate to the fund jointly with the governing body.

**The arrangements for the provision of asset management services in relation to a qualifying fund**

9(1) A qualifying fund shall ensure that it receives relevant advisory or discretionary management services, whether directly or indirectly, in relation to the investment and re-investment of its assets.

(2) Before making an appointment, and on an ongoing basis, it is the responsibility of the governing body to ensure that an appointed asset manager or investment adviser providing the services in paragraph (1) is suitable to undertake the function.

(3) In making the assessment in paragraph (2), the governing body shall —

- (a) take account of the regulated status of the appointed asset manager or investment adviser and the regulated status of any person providing investment services to the appointed asset manager or investment adviser; and
- (b) obtain the manager's approval to the appointment of the asset manager or investment adviser.

(4) The manager shall notify the governing body forthwith if, at any time after the appointment of an asset manager or investment adviser, the manager becomes aware of any matters which it believes are relevant to an assessment of the ongoing suitability of that asset manager or investment adviser under paragraph (2).

### **The custodian of a qualifying fund**

- 10(1) A qualifying fund shall ensure that one or more custodians are appointed.
- (2) It is the responsibility of the governing body to ensure that each appointed custodian is appropriately experienced in providing services to the class of assets for which it will provide services.
- (3) Each custodian must be a different person from the manager and either —
- (a) an authorised person for the purpose of the Act and who is permitted to undertake this activity; or
  - (b) licensed to provide these services to funds in an acceptable jurisdiction and whose licence extends to such services provided to funds of this type.

### **The promoter of a qualifying fund**

- 11(1) A qualifying fund shall appoint at least one promoter.
- (2) A promoter may only be appointed under paragraph (1) if it is regulated for that purpose under the Investment Business Act 1991 or in an acceptable jurisdiction.

### **Investment by investors who certify that they are qualifying investors under Schedule 1 Paragraph (h)**

- 12(1) A qualifying fund cannot accept an application to invest from a person who certifies that they are a qualifying investor under paragraph 1(h) of Schedule 1 unless that investor has been advised about the suitability of the investment by an acceptable financial adviser and that financial adviser has signed the declaration in Part 3 of Schedule 6.
- (2) A financial adviser shall not be treated as acceptable until it has —
- (a) been assessed as being acceptable under paragraph (3) by a promoter appointed by the fund; and
  - (b) entered into written terms of business with that promoter.
- (3) When assessing whether a financial adviser is acceptable the promoter must satisfy itself that the financial adviser —
- (a) holds all necessary regulatory permissions and licences in each jurisdiction in or from which the financial adviser will be advising upon or selling the fund;
  - (b) can demonstrate appropriate competence in relation to advising upon or selling this type of fund. In making this assessment the promoter shall have regard to any relevant qualifications and experience of the financial adviser and the content of their standard client terms of business; and
  - (c) can demonstrate the continuing adequacy and appropriateness of its procedures, controls and investor records and how these ensure that the fund shall only be distributed to qualifying investors.
- (4) Written terms of business required in paragraph (2) shall require that the financial adviser must —

- (a) undertake customer due diligence on all applicants which they introduce to the fund. Such assessment shall include consideration of whether the customer meets the criteria to be a qualifying investor and whether the fund is suitable for the customer;
- (b) maintain records of the assessment in sub paragraph (a) and provide such records to the promoter forthwith on request; and
- (c) only sell the fund to investors that meet the definition of qualifying investor.

(5) A promoter is responsible for ensuring that a financial adviser with whom it has terms of business continues to be an acceptable financial adviser and shall terminate terms of business if it ceases to meet these requirements.

### **Investment requirements for a qualifying fund**

13. A qualifying fund shall only accept investments from investors who have certified their status in the form set out in Schedule 6.

### **Offering document of a qualifying fund**

14. A qualifying fund shall have an offering document which —
- (a) accurately sets out all material information which, at the date of the offering document, is within the knowledge of the governing body (or which the governing body would have obtained by making reasonable enquiries) and which is relevant for the purpose of making an informed judgement about the merits of participating in the fund; and
  - (b) complies with the requirements of the Act and contains the matters set out in Schedule 5 to this Order.

### **Application form of a qualifying fund**

15(1) A qualifying fund shall have an application form which contains the certifications set out in Schedule 6.

(2) Before being accepted as an investor in the fund each applicant is required to complete the Part 1 certification and, if applicable, the relevant Part 2 certification. The Part 3 certification shall be completed by an acceptable financial adviser where required.

### **Financial statements**

16(1) A qualifying fund shall cause financial statements in respect of the fund to be prepared in respect of each accounting period ending on its financial year-end date.

(2) The annual financial statements of a qualifying fund shall be prepared in accordance with International Financial Reporting Standards (as promulgated by the International Accounting Standards Board) or United Kingdom Accounting Standards (as promulgated by the Accounting Standards Board).

### **Audit of financial statements**

17(1) A qualifying fund shall have an auditor who is a qualifying auditor.

(2) The annual financial statements of a qualifying fund shall be audited in accordance with internationally accepted auditing standards and practices by a qualifying auditor who shall issue an audit report in relation thereto.

### **Distribution of financial statements**

18. The audited annual financial statements of a qualifying fund shall be distributed to its investors no later than 6 months after the fund's financial year-end or within the timescales prescribed in the offering document if earlier.

**Notification of removal of, resignation of or failure to reappoint an auditor to the fund**

19. Where an auditor of a qualifying fund is removed from office, resigns or is not reappointed at the end of the auditor's term of office the auditor shall provide a signed statement direct to the Commission stating either —

- (a) that there are no circumstances connected with the auditor ceasing to hold office which the auditor considers should be brought to the attention of the Commission; or
- (b) if there are circumstances connected with the auditor ceasing to hold office which the auditor considers should be brought to the attention of the Commission, full details of those circumstances.

**Transitional arrangements**

20(1) This article applies to a fund which —

- (a) immediately before the commencement of this Order was a professional investor fund within the meaning of the Financial Supervision (Professional Investor Fund) (Exemption) Order 1999<sup>4</sup> or an experienced investor fund within the meaning of the Financial Supervision (Experienced Investor Fund) (Exemption) Order 1999<sup>5</sup>; and
- (b) within the period of 18 months following such commencement ceases to be a professional investor fund or an experienced investor fund, (as the case may be), and becomes a qualifying fund.

(2) Article 13 shall not apply to a fund to which this article applies but only in respect of persons who were investors in the fund before it became a qualifying fund.

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<sup>4</sup> SD 602/99 amended by SD 81/03

<sup>5</sup> SD603/99 amended by SD 407/00, SD 80/03, SD 347/03 and SD806/07

## SCHEDULE 1

### Meaning of qualifying investor

In this Order, "qualifying investor" means a person or body who, in relation to a qualifying fund, has certified that they are sufficiently experienced to understand the risks associated with an investment in that fund and who, at the time of the investment falls into one of the following categories —

- (a) a person, partnership, other unincorporated association or body corporate whose ordinary business or professional activity includes, or it is reasonable to expect that it includes, acquiring, underwriting, managing, holding or disposing of investments, whether as principal or agent, or the giving of advice concerning investments;
- (b) a functionary to the qualifying fund or an associate of a functionary to the qualifying fund;
- (c) a person who is an employee, director, consultant or shareholder of or to a functionary of the qualifying fund or an associate of a functionary to the qualifying fund, who is acquiring an investment in the qualifying fund as part of his remuneration or an incentive arrangement or by way of co-investment;
- (d) any employee, director, partner or consultant to or of any person referred to in paragraph (a);
- (e) a trustee of a family trust settled by or for the benefit of one or more persons referred to in paragraphs (b) or (c);
- (f) a trustee or operator of any employment benefit or executive incentive scheme or trust established for the benefit of persons referred to in paragraphs (b) or (c) or their dependants;
- (g) a government, local authority, public authority or supra-national body in the Isle of Man or elsewhere; or
- (h) a person whose expertise, experience and knowledge to adequately appraise the investment is certified in accordance with Schedule 6 Part 3.

**SCHEDULE 2**

**Part A**

**Responsibility statement to be signed by the governing body of a qualifying fund**

To the Isle of Man Financial Supervision Commission

Name of Fund \_\_\_\_\_

1. We confirm that the offering document dated \_\_\_\_\_ for the above fund complies with the requirements of the Financial Supervision (Qualifying Fund) (Exemption) Order 2007 and accurately sets out all material information to enable an informed investment decision to be made by prospective investors. We jointly and severally accept responsibility for the offering document accordingly.
2. We acknowledge that the requirements referred to in paragraph 1 are continuing requirements and that the offering document is required to be amended in a timely manner to reflect any material changes to the fund or its circumstances.
3. We acknowledge that it is the responsibility of the governing body of the fund to ensure that the fund is and continues to be managed and operated in accordance with the fund's constitutional documents and offering document.
4. We confirm that each person named in the offering document and referred to therein as being responsible for a function in relation to the fund has consented to the inclusion of its name and to the description of its function in relation to the fund in the form and context in which they appear.
5. We acknowledge that it is the responsibility of the governing body of the fund to ensure that the fund will only be promoted to qualifying investors.

Signed for and on behalf of the Fund's governing body.

Signed	Date	Signed	Date
Name		Name	
Position		Position	

**Part B**

**Qualifying fund notification and alteration form**

**to be submitted to the Commission within 10 working days of launch\* /alteration**

Date \_\_\_\_\_ Notification/alteration update *(delete as applicable)\*\**  
*(of launch or change)*

**Full name of fund** \_\_\_\_\_  
*The name of the fund must not be misleading or undesirable*

*\* launch date means the date of publication of its initial offering document*

*\*\* If alteration / update, rather than first notification, please indicate clearly changes from previous version*

<b>A</b>	<b>Standing Information</b>	
<b>1</b>	<b><u>Legal structure of the Qualifying fund</u></b> <i>(delete as appropriate)</i>	
	<b><i>i) Company</i></b> <i>Company number</i> _____ <i>Registered office</i> _____   	<b><i>ii) Trust</i></b>    
		<b><i>iii) Limited Partnership</i></b>    
<b>2</b>	<b><u>Membership of the Governing Body of the Qualifying fund</u></b>	
	<b><i>i) Name</i></b> _____ <i>Address</i> _____    <i>Date of Birth</i> _____ Is this person an independent non executive member? <i>Yes/No</i> Isle of Man resident? <i>Yes/No</i> Relevant qualifications _____  	<b><i>ii) Name</i></b> _____ <i>Address</i> _____    <i>Date of Birth</i> _____ Is this person an independent non executive member? <i>Yes/No</i> Isle of Man resident? <i>Yes/No</i> Relevant qualifications _____  
	<b><i>iii) Name</i></b> _____ <i>Address</i> _____    <i>Date of Birth</i> _____ Is this person an independent non executive member? <i>Yes/No</i> Isle of Man resident? <i>Yes/No</i> Relevant qualifications _____  	<b><i>iv) Name</i></b> _____ <i>Address</i> _____    <i>Date of Birth</i> _____ Is this person an independent non executive member? <i>Yes/No</i> Isle of Man resident? <i>Yes/No</i> Relevant qualifications _____  

3	<u><b>Manager</b></u> Name_____ Address_____ _____ _____ Licence Category_____	<u><b>Administrator (if applicable)</b></u> Name_____ Address_____ _____ _____ Licence Category_____	
4	<u><b>Custodian</b></u> Name_____ Address_____ _____ _____ Regulated by _____ <i>Continue on a separate sheet as necessary</i>	<u><b>5 Asset manager/adviser</b></u> Name_____ Address_____ _____ _____ Regulated by _____ <i>Continue on a separate sheet as necessary</i>	
6	<u><b>Promoter/Sponsor</b></u> Name_____ Address_____ _____ _____ Regulated by _____ Licence Category_____ Reference no. _____ <i>Continue on a separate sheet as necessary</i>		
7	<u><b>Qualifying Auditor</b></u> Name_____ Address_____ _____ _____ _____	Accountancy Body of which the qualifying auditor is a member or a member firm _____ _____	
8	<u><b>Conflicts of Interest -</b></u> Please attach details of any interrelationships between the parties in 1 to 7 above which could result in perceived or actual conflicts of interest.		
B	<b><i>Offering Document and Application Form</i></b>		
	<b>Does the Offering Document contain:</b>		
9	A statement as required by Schedule 5 paragraph 1 of the Order?	<b>YES/NO*</b>	
10	A provision as required by Schedule 5 paragraph 2 of the Order?	<b>YES/NO*</b>	
11	A definition of Qualifying Investor as required by Schedule 5 paragraph 3 of the Order?	<b>YES/NO*</b>	
12	A provision as required by Schedule 5 paragraph 4 of the Order?	<b>YES/NO*</b>	
13	A risk warning as required by Schedule 5 paragraph 5 of the Order?	<b>YES/NO*</b>	
14	Disclosure that the fund will have audited annual financial statements which are issued to investors within six months from the end of each financial period, or in line with the offering document, if earlier, as required by Schedule 5 paragraph 6 of the Order?	<b>YES/NO*</b>	
	<b>Does the Application Form contain:</b>		

15	The Part 1, Part 2 and Part 3 certifications in accordance with Schedule 6 of the Order?	YES/NO*	
<i>C</i>	<b><i>Other information</i></b>		
16	Minimum subscription level		
17	Minimum fund NAV threshold for launch (not applicable for updates)		
18	Frequency of dealing days		
19	Frequency of valuations ( <i>There is an expectation that fund valuations should normally take place at least quarterly</i> )		
20	Can investors redeem their holdings prior to any material changes (to their rights or to fees, etc) being implemented?	YES/NO*	
21	Please attach details of - <ul style="list-style-type: none"> <li>• the fund's Investment Objective and Policy</li> <li>• the proposed types of Investments</li> <li>• any Investment Restrictions/Parameters and</li> <li>• permitted level of borrowing/gearing</li> <li>• level of fees levied on the fund</li> </ul>		
22	Will assets be held in subsidiaries? (If yes attach brief details of the structure this will take.)	YES/NO*	
23	Distribution channels  _____  _____  _____		
24	Is the fund listed/ intended to be listed on a stock exchange? <i>If yes please give details</i>  _____  _____	YES/NO*	

\* If the answer to questions 9-15, 20, 22 or 24 is no please provide further details.

## Certification by the fund's manager

We the undersigned confirm to the best of our knowledge and belief the accuracy of the statements in this Part B notification.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Position

\_\_\_\_\_  
Position

\_\_\_\_\_  
Company

\_\_\_\_\_  
Company

**SCHEDULE 3**

**Form of annual compliance declaration to be submitted to the Commission within 6 months of the fund's financial year-end**

To the Isle of Man Financial Supervision Commission

Name of Fund \_\_\_\_\_ (the "Fund")

For the period from: \_\_\_\_\_ to: \_\_\_\_\_

*The period covered by this declaration must correspond with that of the fund's financial year.*

**Part 1 – Governing Body Declaration**

We confirm that —

1. the Fund has at all times during the period covered by this declaration complied with the requirements of the Financial Supervision Act 1988 and the Financial Supervision (Qualifying Fund) (Exemption) Order 2007;
2. the Fund has at all times during the period covered by this declaration been managed and operated in accordance with the Fund's constitutional documents and offering document; and
3. the Fund's offering document has at all times during the period covered by this declaration accurately set out all material information to enable an informed investment decision to be made by investors.

Any areas of non-compliance, and any other information that we consider should be brought to the Commission's attention in relation to the operation of the Fund, have been detailed on a separate sheet (*such sheet must be attached to this notification*).

Signed for and on behalf of the Fund's governing body.

Signed	Signed
Date	Date
Name	Name
Position	Position

## Part 2 – Manager Declaration

We confirm that —

1. we are not aware of any matters that lead us to believe that the Fund has not, during the period covered by this declaration, complied with the requirements of the Financial Supervision Act 1988 and the Financial Supervision (Qualifying Fund) (Exemption) Order 2007;
2. at all times during the period covered by this declaration, the Fund has been managed and operated in accordance with the fund's constitutional documents and offering document; and
3. we are not aware of any matters that lead us to believe that at any time during the period covered by this declaration the Fund's offering document did not accurately set out all material information to enable an informed investment decision to be made by investors.

Any areas of non-compliance, and any other information that we consider should be brought to the Commission's attention in relation to the operation of the Fund, have been detailed on a separate sheet (*such sheet must be attached to this notification*).

Signed for and on behalf of the Fund's manager.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Position

\_\_\_\_\_  
Position

\_\_\_\_\_  
Company

\_\_\_\_\_  
Company

## SCHEDULE 4

**Statistical information to be supplied to the Commission within 15 working days of the end of each calendar quarter\***

1. Name of Fund:
2. Type of Fund:
3. Domicile of Fund:
4. Asset Category of Fund
5. Legal constitution of Fund (e.g. OEIC, Unit Trust):
6. Total Assets of Fund (before deducting liabilities) (US\$'000):
7. Net Asset Value of Fund (US\$'000):
8. Total value of subscriptions (US\$'000) for the quarter:
9. Total value of redemptions (US\$'000) for the quarter:
10. Number of unit holders:
11. Approximate % distribution of unit holders (IOM/UK/Other EC/Rest of the World):

*\* For the avoidance of doubt, the submission of statistical information in relation to a fund in accordance with this notification shall not operate to discharge a manager from its responsibilities under article 8(e) of this Order and, to the extent that there has been any material alteration to the constitutional documents and/or offering document of the fund within the meaning of article 8(e) a notification in the form set out in Schedule 2 Part B must also be submitted.*

## SCHEDULE 5

### Specific matters to be contained in the Offering Document of a qualifying fund as required by article 14 of this Order

1. A statement to the effect that the fund shall only accept as investors in the fund investors who are qualifying investors in relation to the fund.
2. A statement to the effect that the fund shall only accept an initial investment in a specified minimum subscription amount, being an amount appropriate to the fund which is determined jointly by the governing body of the fund and the manager.
3. The definition of a qualifying investor as set out in Schedule 1 of this Order shall be set out in a prominent position.
4. A provision to the effect that no application to invest in the fund shall be accepted, and no such subscription for, or transfer of, an interest in the fund shall be effected, unless and until —
  - (a) the investor has signed the certification(s) required by Schedule 6 Parts 1 and 2; and
  - (b) where an investor is a qualifying investor only by virtue of Schedule 1 paragraph (h), the acceptable financial adviser who advised the investor has signed the certification required by Schedule 6 Part 3.
5. A risk warning in a prominent position in the following terms —

"[This fund] has been established in the Isle of Man as a qualifying fund and, as such, is not subject to any form of authorisation or approval in the Isle of Man.

Investors are not protected by any statutory compensation arrangements in the event of the fund's failure and the Isle of Man Financial Supervision Commission does not vouch for the financial soundness of the fund or for the correctness of any statements made or opinions expressed with regard to it.

The fund is not suitable for those who are not "qualifying investors" as defined in the Financial Supervision (Qualifying Fund) (Exemption) Order 2007.

Requirements which may be deemed necessary for the protection of retail or non-qualifying investors, do not apply to qualifying funds. By signing the declaration at [ ] you are expressly agreeing that you fall within the definition of a "qualifying investor" and accept the reduced requirements, or the absence of such requirements, accordingly.

You are wholly responsible for ensuring that all aspects of [this fund] are acceptable to you. Investment in qualifying funds may involve special risks that could lead to a loss of all or a substantial portion of such investment. Unless you fully understand and accept the nature of [this fund] and the potential risks inherent in [this fund] you should not invest in [this fund].

If you are investing on behalf of another person, the Isle of Man Financial Supervision Commission expects you to be satisfied that the person/persons on whose behalf you are investing, or whose interest is linked to the investment in the qualifying fund (as the case may be), is a qualifying investor who understands the risks associated with this type of investment.

If you are a life assurance company investing assets comprised within your long-term business fund, the Isle of Man Financial Supervision Commission expects that relevant policyholders have been given the opportunity to read the offering document for this fund and as such to have information about the risks associated with this type of investment.”

6. A statement to the effect that the fund is required to have audited annual financial statements which are to be issued to investors within six months from the end of each financial period of the fund, or within the timescales prescribed in the offering document (if earlier), as the case may be.

## SCHEDULE 6

### Certifications to be contained in the application form of a qualifying fund as required by article 15 of this Order

**Part 1 Certification** – This certification is to be completed by all applicants.

“I/we confirm that —

I/we am/are a qualifying investor as defined on page [ ] of the offering document of [name of qualifying fund] dated [ ]; and

I/we am/are sufficiently experienced to understand the features and risks attendant to investing in an unauthorised and unapproved fund of this type; and

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

I/we personally accept all the risks associated with this investment and particularly that my/our investment in the [name of qualifying fund] involves risks that could result in a loss of a significant proportion or all of the sum invested; and

I/we further confirm that, where appropriate, I/we have taken independent advice on the suitability of this investment within my/our overall investment portfolio.

[Signed ] [Dated]”.

**Part 2 Certification** – The certification at paragraph (1) is to be completed by any investor who is investing on behalf of another person and the certification at paragraph (2) is to be completed by any investor who is a life assurance company investing assets comprised within its long term business fund (as appropriate).

(1) “I/we confirm that I/we am/are investing in the qualifying fund on behalf of another person/other persons and that I/we have in my/our possession certification(s) signed by such person/persons to show that each such person/persons is a qualifying investor.

[Signed ] [Dated]”.

(2) “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 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 the high levels of risk attached to a fund which is not intended for retail sale to private investors; and

(ii) the policyholder, where necessary, meets the minimum criteria of a class of investor in a fund of this nature.

- (b) we are responsible for ensuring that policyholder declarations are obtained and 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 acceptable financial adviser who has advised the investor where the investor qualifies as a qualifying investor only by virtue of Schedule 1 paragraph (h) —

“I confirm that —

- (i) I am the appointed financial adviser for the above named client; and
- (ii) I have discussed the features and risks attendant to an investment in a non-regulated fund of this type with the client; and
- (iii) 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
- (iv) 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]”

Made this 20<sup>th</sup> September 2007

by authority of the  
Minister for the Treasury

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

This Order creates a special type of international collective investment scheme which is available only to qualifying investors, known as the qualifying fund. The Order defines a qualifying investor for the purposes of the Order and requires certain disclosures to be made in the fund's documentation.

This Order exempts a qualifying fund from certain mandatory requirements which would otherwise apply to an international collective investment scheme.