



## FINANCIAL SUPERVISION ACT 1988

### FINANCIAL SUPERVISION (SPECIALIST 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 (Specialist 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 jurisdiction" means a jurisdiction accepted by the Commission as a jurisdiction in which overseas administrators of specialist 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;

"administrator" means a person who is appointed by the governing body of a fund who is responsible for the conduct of the administration of the fund;

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

“annual financial statements” means, in relation to a specialist fund, financial statements prepared in accordance with article 14;

“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;

“functionary” means, in relation to a specialist 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;

“Isle of Man administrator” means an administrator appointed in relation to a specialist fund in accordance with article 8(a);

“launch date” means, in relation to a specialist 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;

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

“overseas administrator” means an administrator appointed in relation to a specialist fund in accordance with article 8(b);

“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).

“specialist investor” has the meaning ascribed thereto in Schedule 1;

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

(2) Subsection (4) of section 11 of the Act shall apply to a specialist 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 specialist fund**

4(1) The governing body of a specialist 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 are accurate and comply in all respects with the requirements of the Act and this Order;

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

- (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 administrator 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, an annual compliance declaration in the form set out in Schedule 3 to this Order is signed and submitted to the Commission by the governing body; and
- (g) the responsibilities imposed upon the administrator under article 9 are discharged.

(2) The governing body of a specialist fund or proposed specialist 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 specialist fund**

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

(2) In relation to paragraph (1), where the administrator of a specialist fund is an overseas administrator, the governing body of the fund shall include at least one Isle of Man resident natural person —

- (a) who is the holder of a licence granted under the Fiduciary Services Acts 2000<sup>3</sup> and 2005<sup>4</sup> which allows that fiduciary to act in these circumstances; or
- (b) whose services are provided by a fiduciary to the fund as a client under a licence granted under the Fiduciary Services Acts 2000 and 2005 which allows the fiduciary to provide such services in these circumstances.

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

(4) Where a specialist fund is constituted as a unit trust, the governing body shall be a trustee who is a different person from the administrator 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;

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<sup>3</sup> 2000 c. 13

<sup>4</sup> 2005 c. 5

- (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.

(5) In relation to paragraph (4), where the administrator of a specialist fund is an overseas administrator, the governing body shall be an authorised person for the purpose of the Act who is permitted to undertake this activity.

**Responsibilities of an Isle of Man member of the governing body where an overseas administrator is appointed**

6. Where a specialist fund has an overseas administrator the natural person required under article 5(2) shall be responsible for notifying the Commission forthwith upon becoming aware that—

- (a) the governing body have not fulfilled their obligations under this Order; or
- (b) the requirements of article 9 have not been complied with.

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

7. Where a member of the governing body of a specialist 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 administrator of a specialist fund**

8. A specialist fund shall have an administrator who is either —

- (a) the holder of a licence under the Investment Business Act 1991<sup>5</sup> which permits it to undertake this activity; or
- (b) licensed to act as an administrator to funds in an acceptable jurisdiction and whose licence extends to administration services provided to funds of this type.

**Responsibilities of an administrator of a specialist fund**

9(1) The administrator of a specialist fund shall —

- (a) notify the Commission forthwith upon 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;
- (b) satisfy itself that investors in the fund have certified that he/she/it/they is/are a specialist investor and has/have made an initial investment in the fund in an amount of not less than US\$100,000;
- (c) 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;
- (d) 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

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<sup>5</sup> 1991 C.18

of the information contained in the last notification in relation to the fund delivered to the Commission pursuant to sub paragraph (c) 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;

- (e) 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;
- (f) report to the Commission forthwith upon it becoming aware that any of the conditions in articles 10, 11, 12 and 13 are not complied with;
- (g) notify the Commission as soon as reasonably practicable after receiving an audit report of a specialist fund, as required by article 15, 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 administrator or any other party intends to take;
- (h) in the event that the audited annual financial statements of a specialist fund are not distributed within the period prescribed under article 16, 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. Each such notification shall —
  - (i) give details of the issues giving rise to the delay;
  - (ii) contain a revised timetable for distribution of the audited annual financial statements; and
  - (iii) be signed by, or on behalf of, the administrator; and
- (i) upon becoming aware that an auditor of a specialist 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.

(2) Where a specialist fund has an overseas administrator, that administrator may discharge its duties under this article by ensuring that mechanisms are in place to meet the requirements in paragraph (1), and by monitoring the operation of those mechanisms to ensure that the requirements are met.

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

10(1) A specialist 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 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.

### **Investment requirements for a specialist fund**

11. A specialist fund shall —

- (a) have a minimum initial subscription amount of not less than US\$100,000; and
- (b) only accept investments from investors who have certified their status in the form set out in Schedule 6.

### **Offering document of a specialist fund**

12. A specialist 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 specialist fund**

- 13(1) A specialist 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.

### **Financial statements**

- 14(1) A specialist 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 specialist 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**

- 15(1) A specialist fund shall have an auditor who is a qualifying auditor.
- (2) The annual financial statements of a specialist 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**

16. The audited annual financial statements of a specialist 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**

17. Where an auditor of a specialist 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**

18(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>6</sup> or an experienced investor fund within the meaning of the Financial Supervision (Experienced Investor Fund) (Exemption) Order 1999<sup>7</sup>;
- (b) in relation to an experienced investor fund has at all times maintained a minimum investment level of at least US\$100,000; and
- (c) within the period of 18 months following such commencement ceases to be a professional investor fund or an experienced investor fund, as relevant, and becomes a specialist fund.

(2) Article 11 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 specialist fund.

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<sup>6</sup> SD 602/99 amended by SD 81/03

<sup>7</sup> SD603/99 amended by SD 407/00, SD 80/03, SD 347/03 and SD806/07

## SCHEDULE 1

### Meaning of specialist investor

In this Order, "specialist investor" means a person or body who, in relation to a specialist fund, has certified that they are sufficiently experienced to understand the risks associated with an investment in that fund, who invests an initial minimum of not less than US\$100,000 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 specialist fund or an associate of a functionary to a specialist fund;
- (c) a person who is an employee, director, consultant or shareholder of or to a functionary of a specialist fund or an associate of a functionary to a specialist fund, who is acquiring an investment in the specialist 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;
- (h) a company, partnership, trust or other association of persons which has (or which is a wholly-owned subsidiary of a body corporate which has) assets available for investment of not less than US\$1,000,000 (or currency equivalent) or every member, partner or beneficiary of which falls within the definition of specialist investor; or
- (i) an individual who has a net worth, or joint net worth with his/her spouse, greater than US\$1,000,000 (or currency equivalent) excluding his/her principal place of residence.

**SCHEDULE 2**

**Part A**

**Responsibility statement to be signed by the governing body of a specialist 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 (Specialist 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 specialist investors.

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

Signed	Date	Signed	Date
Name		Name	
Position		Position	

**Part B**

**Specialist 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 specialist 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 specialist 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 _____  	

<p><b>3</b></p>	<p><b><u>Administrator of the specialist fund</u></b></p> <p>Name _____</p> <p>Address _____</p> <p>_____</p> <p>_____</p> <p>Regulated by _____</p> <p>Licence Category _____</p> <p>Reference no. _____</p>	<p><i>(where overseas administrator appointed)</i></p> <p><b>IOM member of the governing body required by article 5(2) of the Order</b></p> <p>Name _____</p> <p>Licenceholder* _____</p> <p>Licence category _____</p> <p><i>* if member provided under a category 1 Fiduciary Services Providers licence</i></p>	
<p><b>4</b></p>	<p><b><u>Custody Arrangements</u></b></p> <p><i>A description of the custody arrangements for the fund including the name and address of the parties involved in the custody arrangements. (If regulated, name of regulator and licence category/reference number.)</i></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Name _____ Regulated by _____</p> <p>Address _____ Licence Category _____</p> <p>_____ Reference no. _____</p> <p>_____</p> <p><i>Continue on a separate sheet as necessary</i></p>		
<p><b>5</b></p>	<p><b><u>Asset Management Arrangements</u></b></p> <p><i>A description of the asset management/advisory arrangements for the fund including the name(s) and address(es) of the parties involved in the arrangements and the name of regulator and licence category/reference number of the regulated entity involved.</i></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Name _____ Regulated by _____</p> <p>Address _____ Licence Category _____</p> <p>_____ Reference no. _____</p> <p><i>Continue on a separate sheet as necessary</i></p>		
<p><b>6</b></p>	<p><b><u>Promoter/Sponsor</u></b></p> <p>Name _____ Address _____</p> <p>_____</p> <p>_____</p> <p>Regulated by _____ Licence Category _____ Reference no. _____</p> <p><i>Continue on a separate sheet as necessary</i></p>		

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?	YES/NO*	
10	A statement as required by Schedule 5 paragraph 2 of the Order?	YES/NO*	
11	A definition of Specialist Investor as required by Schedule 5 paragraph 3 of the Order?	YES/NO*	
12	A provision as required by Schedule 5 paragraph 4 of the Order?	YES/NO*	
13	A description of the arrangements for the management and custody of the assets of the fund, as required by Schedule 5 paragraph 5 of the Order?	YES/NO*	
14	A risk warning as required by Schedule 5 paragraph 6 of the Order?	YES/NO*	
15	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 7 of the Order?	YES/NO*	
	<b>Does the Application Form contain:</b>		
16	The Part 1 and Part 2 certifications in accordance with Schedule 6 of the Order?	YES/NO*	
C	<b><i>Other information</i></b>		
17	Minimum subscription level		
18	Minimum fund NAV threshold for launch ( <i>not applicable for updates</i> )		
19	Frequency of dealing days		
20	Frequency of valuations ( <i>There is an expectation that fund valuations should normally take place at least quarterly</i> )		
21	Can investors redeem their holdings prior to any material changes (to their rights or to fees, etc) being implemented?	YES/NO*	
22	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>		
23	Will assets be held in subsidiaries? (If yes attach brief details of the structure this will take.)	YES/NO*	



**SCHEDULE 3**

**Form of annual compliance declaration to be submitted to the Commission within 6 month's 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.*

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 (Specialist 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	Date	Signed	Date
Name		Name	
Position		Position	

## 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 an administrator from its responsibilities under article 9(1)(d) 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 9(1)(d) 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 specialist fund as required in article 12 of this Order**

1. A statement to the effect that the fund shall only accept as investors in the fund, investors who are specialist 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 amount, being not less than US\$100,000.
3. The definition of a specialist investor as set out in Schedule 1 to 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 the investor has signed the certification(s) required by article 13 of this Order.
5. A description of the arrangements for the management and custody of the assets of the fund.
6. A risk warning in a prominent position in the following terms —

"[This fund] has been established in the Isle of Man as a specialist 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 "specialist investors" as defined in the Financial Supervision (Specialist Fund) (Exemption) Order 2007.

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

You are wholly responsible for ensuring that all aspects of [this fund] are acceptable to you. Investment in specialist 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 specialist fund (as the case may be), is a specialist 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. "

7. 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 specialist fund as required in article 13 of this Order

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

"I/we confirm that —

I/we am/are a specialist investor as defined on page [ ] of the offering document of [name of specialist 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 specialist 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 specialist fund on behalf of another person/ other persons and I/we have in my/our possession certification(s) signed by such person/persons to show that —

(a) each such person/persons is a specialist investor and understands the risks associated with this type of investment; and

(b) each such person/persons is investing an initial minimum amount of at least US\$100,000.

[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.
- (c) when making an investment in a fund of this type, we ensure that the associated interest of each relevant policyholder is for a value of at least US\$100,000.

[Signed ] [Dated]”.

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 specialist investors, known as the specialist fund. The Order defines a specialist investor for the purposes of the Order and requires certain disclosures to be made in the fund's documentation.

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