



FINANCIAL SUPERVISION ACT 1988

FINANCIAL SUPERVISION (EXPERIENCED INVESTOR FUND) (EXEMPTION) ORDER 1999

Approved by Tynwald on 16th November 1999

Coming into operation on 14th October 1999

In exercise of the powers conferred on the Treasury by section 11(11) of the Financial Supervision Act 1988¹ and of all other powers enabling it in that behalf, the following Order is hereby made -

Citation and commencement

1. This Order may be cited as the Financial Supervision (Experienced Investor Fund) (Exemption) Order 1999 and shall come into operation on the 14th October 1999.

Interpretation

2 (1) In this Order -

"acceptable financial adviser" means a person (wherever located) who advises investors on the suitability of investing in a qualifying type EIF and who is appointed by the fund's promoter in accordance with paragraph 9 of Schedule 3;

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

"the Act" means the Financial Supervision Act 1988;

"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;

¹ 1988 c.16

- (e) distribution of income;
- (f) issues, transfers and redemptions of units; and
- (g) record keeping;

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

“annual financial statements” means, in relation to a continuing EIF, financial statements prepared in accordance with Schedules 3, 4 and 5, as relevant;

“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;

“authorised person” has the meaning given in section 31(1) of the Act;

“closed experienced investor fund” is an experienced investor fund whose governing body resolves to meet the requirements for a closed experienced investor fund in accordance with articles 6 and 7 of this Order and which complies with the requirements for a closed experienced investor fund set out in Schedule 5 of this Order and “closed EIF” shall be construed accordingly;

“continuing EIF” means an experienced investor fund which meets the requirements in this Order to continue as a qualifying type experienced investor fund, a legacy experienced investor fund or a closed experienced investor fund;

“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;

“eligible custodian” has the meaning given in code 2.2 of the Financial Supervision Commission (Clients’ Investments) Regulatory Code²;

“exempt person” has the meaning given in regulation 2 of the Investment Business (Exemption) (Fund Managers) Regulations 1999³;

² GC 399/91 & 98/92 & SD 155/96

³ SD 604/99

"exempt international collective investment scheme" has the meaning given in section 11(7) of the Act;

"experienced investor" —

- (a) in relation to an experienced investor fund under article 4 or a closed EIF under Schedule 5 means, a person who is sufficiently experienced to understand the risks associated with an investment in that fund;
- (b) in relation to a legacy EIF under Schedule 4 has the meaning ascribed in Schedule 1 paragraph 2;

"experienced investor fund" means a collective investment scheme which complies with the conditions of article 4 or the requirements for a continuing EIF in this Order and the Schedules thereto;

"fiduciary trustee" means an authorised person appointed to perform the functions set out in article 4(6);

"fund administrator" means a person (other than the manager) who provides administration services to experienced investor funds and who is either -

- (a) the holder of a licence issued under the Investment Business Act 1991⁴ which specifically includes this activity; or
- (b) is the holder of a licence issued under the Banking Act 1998⁵(e) which by its terms does not prevent him from undertaking this activity.

"functionary" means, in relation to a continuing EIF, 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;

"fund" means a collective investment scheme;

"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;

"legacy experienced investor fund" is an experienced investor fund whose governing body resolves to meet the requirements for a legacy experienced investor fund in accordance with

⁴ 1991 c.18

⁵ 1998 c.4

articles 6 and 7 of this Order and which complies with the requirements for a legacy experienced investor fund set out in Schedule 4 of this Order and "legacy EIF" shall be construed accordingly;

"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 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 fulfils the requirements of (a) or (b) below —

- (a) has a permanent place of business on the Island, and —
 - (i) is a member of one of the following bodies of accountants —
 - (A) The Institute of Chartered Accountants in England and Wales;
 - (B) The Institute of Chartered Accountants of Scotland;
 - (C) The Institute of Chartered Accountants in Ireland;
 - (D) The Chartered Association of Certified Accountants;
 - (E) The Chartered Institute of Public Finance and Accountancy;
 - (F) The Association of Authorised Public Accountants; or
 - (ii) is a member firm of one of the bodies referred to in (i);
- (b) in respect of a fund constituted under the laws of a jurisdiction other than the Isle of Man where —
 - (i) the laws of that jurisdiction require the audit of such a fund to be undertaken by a person or body corporate who has a permanent place of business in that jurisdiction;
 - (ii) the person or body corporate is qualified to act as auditor of the fund in accordance with the laws of that jurisdiction and has the necessary experience in auditing funds of this type; and
 - (iii) that jurisdiction is an acceptable jurisdiction.

"qualifying fund" has the meaning given in the Financial Supervision (Qualifying Fund) (Exemption) Order 2007⁶;

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

⁶ SD 808/07

"qualifying type experienced investor fund" is an experienced investor fund whose governing body resolves to meet the requirements for a qualifying type experienced investor fund in accordance with articles 6 and 7 of this Order and which complies with the requirements for a qualifying type experienced investor fund set out in Schedule 3 of this Order and "qualifying type EIF" shall be construed accordingly;

"specialist fund" has the meaning given in the Financial Supervision (Specialist Fund) (Exemption) Order 2007⁷; and

"subsidiary" and "holding company" shall be construed in accordance with section 1 of the Companies Act 1974⁸.

(2) In this Order, any figure expressed in US Dollars shall be taken as including its equivalent in any other currency.

Exemptions

3(1) An experienced investor fund and a continuing EIF shall be exempt from subsection (1), and subsections (7) to (10) (inclusive) of section 11 of the Act.

(2) Subsection (4) of section 11 of the Act shall apply to an experienced investor fund and a continuing EIF 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,".

(3) A continuing EIF shall be exempt from subsection 2(b) of section 11 of the Act.

Conditions

4 (1) Where an experienced investor fund has a manager in the Island, such manager must be either -

(a) the holder of a licence under the Investment Business Act 1991 which specifically includes this activity; or

(b) an exempt person.

(2) Where an experienced investor fund has a manager outside the Island such manager must be an exempt person.

(3) Where an experienced investor fund has no manager, a fund administrator must be appointed in respect of that fund.

(4) An experienced investor fund shall have a custodian who must be a different person from the manager, if a manager is appointed, or the fund administrator, if a fund administrator is appointed. Such custodian shall be either -

(a) an authorised person; or

⁷ SD 807/07

⁸ 1974 c. 30

(b) an eligible custodian.

(5) The manager, if a manager is appointed, or the fund administrator, if a fund administrator is appointed shall satisfy itself that all investors in the fund are sufficiently experienced to understand the risks associated with an investment in the experienced investor fund.

(6) If a fiduciary trustee is appointed in respect of an experienced investor fund the fiduciary trustee -

(a) must be a different person to a manager or fund administrator but need not be a different person to the custodian; and

(b) must satisfy himself that the scheme is and continues to be managed and maintained by the manager, if a manager is appointed, or the fund administrator, if a fund administrator is appointed, in accordance with the fund's constitutional documents.

(7) The manager, if a manager is appointed, or the fund administrator, if a fund administrator is appointed, shall be responsible for ensuring that the conditions in paragraph (8) are complied with.

(8) The experienced investor fund -

(a) shall have an offering document which has been approved by the manager, if a manager is appointed, or, as the case may be, the fund administrator, if a fund administrator is appointed, and a copy of the offering document and any subsequent alterations shall be sent to the Commission within 14 days of production;

(aa) shall have a minimum subscription level which is determined jointly by –

(i) the directors, scheme trustee or general partner of the fund, as the case may be; and

(ii) the manager, if a manager is appointed, or the fund administrator, if a fund administrator is appointed;

(b) shall accept as investors in the fund, only such persons as the manager, if a manager is appointed, or the fund administrator, if a fund administrator is appointed, is satisfied, on the basis of the certification made by that investor under paragraph (8)(d), are experienced investors. A statement to this effect shall be contained in the offering document of the fund;

(c) shall have, in a prominent position, within its offering document the definition of an experienced investor as provided in this Order;

(d) shall have within its application form the following statement-

" I / we confirm that I / we am / are an experienced investor as defined in the offering document on page [] of [name of experienced investor fund] dated [] and further confirm that I / we have read, fully understood and accepted the risks associated with an investment in [name of experienced investor fund]";

- (e) shall have within its offering document all material information which, at the date of the offering document, is within the knowledge of the manager, if a manager is appointed, or, as the case may be, the fund administrator, if a fund administrator is appointed (or which that person would have obtained by making reasonable enquiries) which is relevant for the purpose of making an informed judgement about the merits of participating in the fund;
- (f) shall have within its offering document a provision to the effect that no application shall be accepted, and no such subscription or transfer shall be effected unless and until such person has signed the statement as stated in article 4(8)(d), acknowledging that the new participant or transferee is an experienced investor;
- (g) shall have within its offering document a description of the arrangements for the custody of the assets of the fund;
- (h) shall have within its offering document the following statements in a prominent position—

"[name of the experienced investor fund] is not subject to approval in the Isle of Man, and investors are not protected by any statutory compensation arrangements in the event of the fund's failure."

"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."

- (9) The manager or fund administrator shall have the annual report and accounts of the fund audited.
- (10) The manager or, as the case may be, the fund administrator shall certify to the Commission within 14 days of an experienced investor fund becoming established, that the offering document and relevant constitutional documents of the fund comply in all respects with the requirements of this Order.

Transitional Arrangements

5 (1) This article applies to a scheme which-

- (a) immediately before the commencement of this Order was an exempt international collective investment scheme; and
- (b) within the period of 12 months following such commencement, ceases to be an exempt international collective investment scheme and becomes an experienced investor fund

(2) Article 4(8) (b), (d) and (f) shall not apply to a scheme to which this article applies but only in respect of persons who were members of the exempt international collective investment scheme immediately before it became an experienced investor fund.

"Continuing EIFs and funds becoming Qualifying Funds and Specialist Funds"

6.(1) No experienced investor funds shall be established after the 1st November 2007.

(2) Only funds which are existing experienced investor funds as at 1st November 2007 shall be eligible to become continuing EIFs.

7. (1) The governing body of an experienced investor fund shall —

(a) by 1st November 2008 resolve that the fund shall continue as and shall meet the requirements of this Order to continue as —

(i) a qualifying type experienced investor fund; or

(ii) a legacy experienced investor fund; or

(iii) a closed experienced investor fund; or

(b) by 1st November 2008 resolve that the fund shall become a qualifying fund or a specialist fund.

(2) Upon resolving in accordance with paragraph (1), the governing body shall submit a statement of responsibility signed by each member of the governing body to the Commission in the form set out in Schedule 2 by 14th November 2008.

(3) In relation to a fund continuing as a qualifying type EIF or a legacy EIF, the governing body shall —

(a) by 1st May 2009, ensure that the offering document and relevant constitutional documents of the fund comply in all respects with the requirements of this Order applicable to qualifying type EIFs or legacy EIFs, as appropriate; and

(b) by 14th May 2009 provide written confirmation to the Commission that the fund complies with the requirements of this Order applicable to qualifying type EIFs or legacy EIFs, as appropriate, accompanied by the notification in Schedule 6.

(4) Existing experienced investors in a fund at the date on which it becomes —

(a) a qualifying type EIF are not required to certify that they are qualifying investors in respect of their existing holding; and

(b) a legacy type EIF are not required to recertify that they are experienced investors under the revised criteria set out at Schedule 1 or that they have an initial investment amount in excess of US\$100,000 in respect of their existing holding.

(5) In relation to a fund continuing as a closed EIF, prior to making the resolution in paragraph (1) the governing body must ensure that —

(a) the existing investors in the fund have been notified of its closure to new investment; and

(b) the fund is no longer being promoted and mechanisms are in place to ensure that no further applications to invest in the fund are accepted.

(6) A fund shall not become a continuing EIF until it has made all necessary changes to comply with the requirements in this Order for a qualifying type EIF, legacy EIF or closed EIF, as appropriate. The fund will become a continuing EIF on the date on which such changes have been completed.

(7) In relation to a fund that resolves to become a qualifying fund or a specialist fund —

(a) the fund shall continue to be an experienced investor fund until 1st May 2009 or until it has made all necessary changes to become a qualifying fund or a specialist fund, whichever is the earlier, on which date it shall cease to be an experienced investor fund; and

(b) the governing body will be required to notify the Commission, in line with the requirements for a qualifying fund or a specialist fund when the fund becomes such a fund.

(8) If the requirements of paragraphs (1), (2), (3), (5) and (7) are not met the fund shall cease to be an experienced investor fund and article 3 shall cease to apply to the fund.

SCHEDULE 1

1. Meaning of qualifying investor

In this Order, "qualifying investor" means a person or body who, in relation to a qualifying type experienced investor 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 type experienced investor fund or an associate of a functionary to the qualifying type experienced investor fund;
- (c) a person who is an employee, director, consultant or shareholder of or to a functionary of the qualifying type experienced investor fund or an associate of a functionary to the qualifying type experienced investor fund, who is acquiring an investment in the qualifying type experienced investor 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 10A Part 3.

2. Meaning of experienced investor for the purpose of a legacy experienced investor fund

For the purpose of Schedule 4, "experienced investor" means a person or body who, in relation to an experienced investor 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 experienced investor fund or an associate of a functionary to the experienced investor fund;
- (c) a person who is an employee, director, consultant or shareholder of or to a functionary of the experienced investor fund or an associate of a functionary to the experienced investor fund, who is acquiring an investment in the experienced investor 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 experienced 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 each member of the governing body of a qualifying type experienced investor fund or legacy experienced investor fund and submitted to the Isle of Man Financial Supervision Commission by 14th November 2008

To the Isle of Man Financial Supervision Commission

Name of Fund _____

Type of continuing EIF which the fund will become: Qualifying type/ Legacy

1. We confirm that the offering document dated _____ for the above fund complies with the requirements of article 4 of the Financial Supervision (Experienced Investor Fund) (Exemption) Order 1999 ("the 1999 Order") and contains 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 confirm that the offering document and relevant constitutional documents of the fund shall comply in all respects with the requirements of the Order applicable to qualifying type experienced investor funds or legacy experienced investor funds, as appropriate, by 1st May 2009. We jointly and severally accept responsibility for ensuring that necessary changes are made to the offering document accordingly.
3. We acknowledge that the requirements referred to in paragraph 2 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.
4. 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;
5. We confirm that the current investors in the fund have made a declaration that they are experienced investors;
6. 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 or experienced investors, as appropriate;
7. 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.

_____	_____	_____	_____
Signed	Date	Signed	Date

_____	_____
Name	Name

_____	_____
Position	Position

_____	_____	_____	_____
Signed	Date	Signed	Date

_____	_____
Name	Name

_____	_____
Position	Position

Please continue on a separate sheet as necessary

SCHEDULE 3

Requirements for a Qualifying Type Experienced Investor Fund

Duties of the governing body of a qualifying type EIF

1(1) The governing body of a qualifying type EIF 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 applicable to qualifying type EIFs 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 7 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 paragraph 5 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 type EIF or a proposed qualifying type EIF shall sign a statement of responsibility in the form set out in Schedule 6 Part A in relation to 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 date of issue of the amended offering document.

Composition of the governing body of a qualifying type EIF

2(1) With the exception of a fund constituted as a unit trust, the governing body of a qualifying type EIF 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) Where a qualifying type EIF 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 type EIF

3. Where a member of the governing body of a qualifying type EIF 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 type EIF

4(1) A qualifying type EIF shall have a manager in the Island, and such manager must be —

- (a) the holder of a licence under the Investment Business Act 1991¹¹ which permits them to undertake this activity; or
- (b) an exempt person.

(2) Where the manager appointed in sub-paragraph (1) is an exempt person, the fund administrator shall be responsible for the requirements in paragraph 5.

Responsibilities of a manager of a qualifying type EIF

5. The manager of a qualifying type EIF 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 new 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 1(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 fund becoming a qualifying type EIF certify and submit to the Commission a notification in the form set out in Schedule 6 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 (d) or this paragraph inaccurate, incomplete or otherwise

¹¹ 1991 C.18

misleading, certify and submit to the Commission an updated notification in the form set out in Schedule 6 Part B to this Order;

- (f) in compliance with paragraph 1(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 Schedule 7 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 8 to this Order;
- (h) report to the Commission forthwith upon it becoming aware that any of the conditions in paragraphs 6, 7, 8, 9, 10, 11 and 12 are not complied with;
- (i) notify the Commission as soon as reasonably practicable after receiving an audit report of a qualifying type EIF, as required by paragraph 14, 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 type EIF are not distributed within the period prescribed under paragraph 15, 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 type EIF 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 type EIF

6(1) A qualifying type EIF 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 sub paragraph (1) is suitable to undertake the function.

(3) In making the assessment in (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 sub paragraph (2).

The custodian of a qualifying type EIF

7(1) A qualifying type EIF 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 type EIF

8(1) A qualifying type EIF shall appoint at least one promoter.

(2) With effect from 1st November 2008, each promoter to a qualifying type EIF must be 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 1(h)

9(1) A qualifying type EIF 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 10A.

(2) A financial adviser shall not be treated as acceptable until it has —

- (a) been assessed as being acceptable under sub 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 sub 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 (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 type EIF

10. A qualifying type EIF shall only accept investments from investors who have certified their status in the form set out in Schedule 10.

Offering document of a qualifying type EIF

11. A qualifying type EIF 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 9 to this Order.

Application form of a qualifying type EIF

12(1) A qualifying type EIF shall have an application form which contains the certifications set out in Schedule 10.

(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

13(1) A qualifying type EIF 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 type EIF 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

14(1) A qualifying type EIF shall have an auditor who is a qualifying auditor.

(2) The annual financial statements of a qualifying type EIF 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

15. The audited annual financial statements of a qualifying type EIF 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

16. Where an auditor of a qualifying type EIF 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.

SCHEDULE 4

Requirements for a Legacy Experienced Investor Fund

Duties of the governing body of a legacy EIF

1(1) The governing body of a legacy EIF 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 applicable to legacy EIFs 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;
- (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 7 to this Order is signed by and submitted to the Commission by the governing body; and
- (g) the responsibilities imposed upon the administrator under paragraph 5 are discharged.

(2) The governing body of a legacy EIF or a proposed legacy EIF shall sign a statement of responsibility in the form set out in Schedule 6 Part A in relation to 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 date of issue of the amended offering document.

Composition of the governing body of a legacy EIF

2(1) With the exception of a fund constituted as a unit trust, the governing body of a legacy EIF 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) Where a legacy EIF 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;
- (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 legacy EIF

3. Where a member of the governing body of a legacy EIF 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 legacy EIF

4. A legacy EIF shall have an administrator who is the holder of a licence under the Investment Business Act 1991 which permits it to undertake this activity.

Responsibilities of an administrator of a legacy EIF

5. The administrator of a legacy EIF 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 a new investor in the fund certifies that he/she/it/they is/are an experienced investor under the definition in Schedule 1 paragraph 2 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 fund becoming a legacy EIF certify and submit to the Commission a notification in the form set out in Schedule 6 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 of the information contained in the last notification in relation to the fund delivered to the Commission pursuant to (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 6 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 8 to this Order;
 - (f) report to the Commission forthwith upon it becoming aware that any of the conditions in paragraphs 6, 7, 8, 9 and 10 are not complied with;
 - (g) notify the Commission as soon as reasonably practicable after receiving an audit report of a legacy EIF, as required by paragraph 12, 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 legacy EIF are not distributed within the period prescribed under paragraph 13, 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 legacy EIF 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.

The arrangements for the provision of asset management services in relation to a legacy EIF

6(1) A legacy EIF 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 sub paragraph (1) is suitable to undertake the function.

(3) In making the assessment in sub 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.

Custody arrangements for a legacy EIF

7(1) A legacy EIF 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 administrator 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.

Investment requirements for a legacy EIF

8. A legacy EIF 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 10.

Offering document of a legacy EIF

9(1) A legacy EIF 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 9 to this Order.

Application form of a legacy EIF

10(1) A legacy EIF shall have an application form which contains the certifications set out in Schedule 10B.

(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

11(1) A legacy EIF 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 legacy EIF 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

12(1) A legacy EIF shall have an auditor who is a qualifying auditor.

(2) The annual financial statements of a legacy EIF 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

13. The audited annual financial statements of a legacy EIF 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

14. Where an auditor of a legacy EIF 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.

Use of the title "Experienced Investor Fund" for a legacy experienced investor fund

15. A legacy EIF which complies with the requirements of this Order relating to legacy EIFs shall continue to be called an experienced investor fund and is not required to make reference to the term "legacy" in its constitutional and offering documents.

SCHEDULE 5

Requirements for a Closed Experienced Investor Fund

Duties of the governing body of a closed EIF

1(1) The governing body of a closed EIF 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 fund does not accept any new investors nor any new subscriptions from existing investors with exception of any dividends payable by the fund which may be reinvested on the instruction of existing investors;
- (b) the requirements set out in this Order applicable to closed EIFs are complied with;
- (c) the fund is and continues to be managed and operated in accordance with the fund's constitutional documents and last offering document;
- (d) if there are any material changes to the fund or its circumstances the administrator of the fund is notified of such change(s);
- (e) within 6 months of the fund's financial year-end, an annual compliance declaration in the form set out in Schedule 7 to this Order is signed by and submitted to the Commission by the governing body; and
- (f) the responsibilities imposed upon the administrator under paragraph 5 are discharged.

(2) If there are any material changes to the circumstances of the closed EIF, the governing body shall notify the Commission forthwith.

Composition of the governing body of a closed EIF

2(1) With the exception of a fund constituted as a unit trust, the governing body of a closed EIF shall include at least one natural person who holds such office in a non-executive capacity.

(2) Where a closed EIF 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;
- (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 closed EIF

3. Where a member of the governing body of a closed EIF 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 closed EIF

4. A closed EIF shall have an administrator who is the holder of a licence under the Investment Business Act 1991 which permits it to undertake this activity.

Responsibilities of an administrator of a closed EIF

5. The administrator of a closed EIF 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) within 10 working days of the fund becoming a closed EIF certify and submit to the Commission a notification in the form set out in Schedule 6 Part B;
- (c) notify the Commission forthwith of it becoming aware of any material changes to the circumstances of the closed EIF;
- (d) within 15 working days of each calendar quarter end, supply to the Commission the statistical information about the fund which is detailed in Schedule 8 to this Order;
- (e) report to the Commission forthwith upon it becoming aware that any of the conditions in paragraphs 6 and 7 are not complied with;
- (f) notify the Commission as soon as reasonably practicable after receiving an audit report of a closed EIF, as required by paragraph 9, 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;
- (g) in the event that the audited annual financial statements of a closed EIF are not distributed within the period prescribed under paragraph 10, 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
- (h) upon becoming aware that an auditor of a closed EIF 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.

The arrangements for the provision of asset management services in relation to a closed EIF

6(1) A closed EIF 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 sub paragraph (1) is suitable to undertake the function.

(3) In making the assessment in sub 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.

Custody arrangements for a closed EIF

7(1) A closed EIF 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 administrator 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.

Financial statements

8(1) A closed EIF 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 closed EIF 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

9(1) A closed EIF shall have an auditor who is a qualifying auditor.

(2) The annual financial statements of a closed EIF 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

10. The audited annual financial statements of a closed EIF 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

11. Where an auditor of a closed EIF 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.

Use of the title "Experienced Investor Fund" for a closed experienced investor fund

12. A closed EIF which complies with all of the requirements of this Order relating to closed EIFs shall continue to be called an experienced investor fund.

SCHEDULE 6

Part A

Responsibility statement to be signed by the governing body of a qualifying type or legacy experienced investor fund

To the Isle of Man Financial Supervision Commission

Name of Fund _____

Type of continuing EIF: _____ Qualifying type/ Legacy

1. We confirm that the offering document dated _____ for the above fund complies with the requirements of the Financial Supervision (Experienced Investor Fund) (Exemption) Order 1999 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 or experienced investors, as appropriate.

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

_____ Signed	_____ Date	_____ Signed	_____ Date
_____ Name		_____ Name	
_____ Position		_____ Position	

Part B

Continuing EIF Fund Notification/Alteration Form

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

Date _____ Fund Type: Qualifying Type/ Legacy
(of change)

Full name of fund _____

The name of the fund must not be misleading or undesirable

** When completing this form, please clearly indicate changes from previous arrangements.*

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

3	<p><u>Manager / administrator of the Fund</u></p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <p>Manager/Administrator</p> <p>Name _____</p> <p>Address _____</p> <p>_____</p> <p>_____</p> <p>Licence Category _____</p> </td> <td style="width: 50%; vertical-align: top;"> <p><i>If an exempt manager appointed details of fund administrator</i></p> <p>Name _____</p> <p>Address _____</p> <p>_____</p> <p>_____</p> <p>Licence Category _____</p> </td> </tr> </table>	<p>Manager/Administrator</p> <p>Name _____</p> <p>Address _____</p> <p>_____</p> <p>_____</p> <p>Licence Category _____</p>	<p><i>If an exempt manager appointed details of fund administrator</i></p> <p>Name _____</p> <p>Address _____</p> <p>_____</p> <p>_____</p> <p>Licence Category _____</p>	
<p>Manager/Administrator</p> <p>Name _____</p> <p>Address _____</p> <p>_____</p> <p>_____</p> <p>Licence Category _____</p>	<p><i>If an exempt manager appointed details of fund administrator</i></p> <p>Name _____</p> <p>Address _____</p> <p>_____</p> <p>_____</p> <p>Licence Category _____</p>			
4	<p><u>Custody arrangements</u></p> <p><i>A description of the Custody arrangements for the fund including the name and address of parties involved in the custody arrangements.</i></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Name _____ Regulated by _____</p> <p>Address _____ Licence Category _____</p> <p>_____ Reference no. _____</p> <hr/> <p><i>Continue on a separate sheet as necessary</i></p>			
5	<p><u>Asset Management Arrangements</u></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>			
6	<p><u>Promoter/Sponsor</u></p> <p>Name _____ Address _____</p> <p>_____</p> <p>Regulated by _____ Licence Category _____ Reference no. _____</p> <p><i>Continue on a separate sheet as necessary</i></p>			

7	<u>Qualifying Auditor</u> Name _____ Address _____ _____ _____	Accountancy Body of which the qualifying auditor is a member or a member firm _____ _____	
8	Conflicts of Interest - 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	<i>Offering Document and Application Form</i>		
	Does the Offering Document contain:		
9	A statement as required by Schedule 9 paragraph 1 of the Order?	YES/NO*	
10	A provision as required by Schedule 9 paragraph 2 of the Order?	YES/NO*	
11	A definition of Qualifying/ Experienced Investor as required by Schedule 9 paragraph 3 of the Order?	YES/NO*	
12	A provision as required by Schedule 9 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 9 paragraph 5 of the Order?	YES/NO*	
14	A risk warning as required by Schedule 9 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 9 paragraph 7 of the Order?	YES/NO*	
	Does the Application Form contain:		
16	Certifications in accordance with Schedule 10 of the Order?	YES/NO*	
C	<i>Other information</i>		
17	Minimum subscription level		
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"> • the fund's Investment Objective and Policy • the proposed types of Investments to be made by the Fund • any Investment Restrictions/Parameters • permitted level of borrowing/gearing and • level of fees levied on the fund 		
22	Will assets be held in subsidiaries? (If yes attach brief details of the structure this will take.)	YES/NO*	

SCHEDULE 7

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 _____

For the period: _____ To: _____

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

Part 1 – Governing Body Declaration*(to be completed for all continuing EIFs)*

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 (Experienced Investor Fund) (Exemption) Order 1999;
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. (except in the case of a closed experienced investor fund under the 1999 Order) 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 8

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/ administrator from its responsibilities under this Order and, to the extent that there has been any material alteration to the constitutional documents and/or offering document of the fund a notification in the form set out in Schedule 2 Part B must also be submitted.*

SCHEDULE 9

A Specific matters to be contained in the Offering Document of a qualifying type experienced investor fund or a legacy experienced investor fund.

1. A statement to the effect that the fund shall only accept as investors in the fund investors who are —

- (a) qualifying investors if the fund is a qualifying type experienced investor fund; or
- (b) experienced investors if the fund is a legacy experienced investor fund.

2. A statement to the effect that, in relation to a —

- (a) qualifying type EIF, 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.
- (b) legacy EIF, 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 qualifying investor or experienced investor, as appropriate, 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 —

(1) In relation to a qualifying type experienced investor fund —

- (a) the investor has signed the certifications required by Schedule 10A Parts 1 and 2, as required;
- (b) where an investor is a qualifying investor by virtue of Schedule 1 paragraph 1(h), the acceptable financial adviser who advised the investor has signed a statement as stated in Schedule 10A Part 3.

(2) In relation to a legacy experienced investor fund the investor has signed the certifications required by Schedule 10B Parts 1 and 2, as required.

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 qualifying type experienced investor fund/ experienced investor 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"/ "experienced investors"* as defined in the Financial Supervision (Experienced Investor Fund) (Exemption) Order 1999.

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

You are wholly responsible for ensuring that all aspects of [this fund] are acceptable to you. Investment in qualifying type experienced investor funds/ experienced investor 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 type experienced investor fund/ experienced investor fund* (as the case may be), is a qualifying investor/ experienced 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 10

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

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

“I/we confirm that —

I/we am/are a qualifying investor as defined on page [] of the offering document of [name of qualifying type experienced investor 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 type experienced investor 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 type EIF 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 1(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 type experienced 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]”

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

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

“I/we confirm that —

I/we am/are an experienced investor as defined on page [] of the offering document of [name of experienced investor 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 experienced investor 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 either 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 experienced investor 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 an experienced 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 13th day of October 1999

Minister for the Treasury

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

The Order exempts the experienced investor fund from certain mandatory requirements which would otherwise apply to an international collective investment scheme.