

## **Qualifying Type EIF – Standard conditions for introducing Regulated Financial Adviser by modification under section 24(7) and 24(8) of the Collective Investment Schemes Act 2008**

On application for the Commission to use its powers in section 24(7) or 24(8) of the Collective Investment Schemes Act 2008 for the purposes of the transitioning of Experienced Investor Funds, the Financial Supervision (Experienced Investor Fund) (Exemption) Order 1999<sup>1</sup> may be applied to the (FUND NAME) with the following modifications<sup>2</sup>:

- A** The definition of acceptable financial adviser in article 2 of the Order shall be removed for the purpose of this fund.
- B** The following definition shall be inserted into article 2 of the Order for the purpose of this fund:  
“regulated financial adviser” means a person (wherever located) who advises investors or potential investors on the suitability of investing in a qualifying type EIF and who meets the requirements of paragraph 9 of Schedule 3 as set out in this modification;”
- C** The following sub paragraphs (m) and (n) shall be added to Schedule 3 paragraph 5<sup>3</sup> for the purpose of this fund.<sup>4</sup>
- “(m) oversee the promotion of the fund by reviewing promotional materials and advertisements; and
  - (n) satisfy itself that a person who has signed the declaration in part 3 of Schedule 10A in relation to sales to an investor who is a qualifying investor by virtue of Schedule 1 paragraph 1(h), is a regulated financial adviser for the purpose of the modified Schedule 3 paragraph 9(2) to the Order as set out in this modification.”
- D** The requirement for a Regulated Promoter under paragraph 8(2) of Schedule 3 to the Order shall be removed for the purpose of this fund.
- E** For the purpose of this fund, Schedule 3 paragraph 9 of the Order shall be replaced with the following:
- “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 a regulated financial adviser and that regulated financial adviser has signed the declaration in part 3 of Schedule 10A.
- (2) A person shall not be a regulated financial adviser unless —
- (a) that person is regulated as a financial adviser; and
  - (b) the scope of that person’s regulatory permission is sufficiently broad to encompass advising upon or selling this type of fund to this type of investor in the jurisdiction in which the advice is given; and
  - (c) the regulatory regime under which that person is regulated;

<sup>1</sup> SD: 603/99 as amended by SD 407/00, 87/03, 347/03 and 806/07

<sup>2</sup> Similar modifications can be sought to the Financial Supervision (Qualifying Fund) (Exemption) Order 2007 in relation to qualifying funds

<sup>3</sup> Paragraph 5 sets out the responsibilities of the manager of a Qualifying Type Experienced Investor Fund.

<sup>4</sup> Where there is an exempt manager in place, this function must be delegated to the appointed administrator.

- (i) includes a requirement that such a person must be competent in relation to any product upon which they provide advice; and
- (ii) requires such a person to provide advice to an investor or potential investor on the suitability of an investment for that investor based on that investor's requirements and attitude to risk."

#### **F References to Acceptable Financial Advisers**

References to "an acceptable financial adviser" in paragraphs 5(c) and 12(2) of Schedule 3 of the Order shall be read as "a regulated financial adviser" for the purpose of this fund. References to "the acceptable financial adviser" in Schedule 9A paragraph 4(1)(b) and Schedule 10A Part 3 - Certification of the Order shall be read as "the regulated financial adviser" for the purpose of this fund.

#### **G Offering document**

The terms of this modification are to be treated as material information for the purposes of Schedule 3 Paragraph 11 and as such should be disclosed in the offering document for the purpose of this fund.

**23<sup>rd</sup> October 2008**