

Qualifying Fund – 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, the Financial Supervision (Qualifying Fund) (Exemption) Order 2007¹ may be applied to the (FUND NAME) with the following modifications:

- 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 fund and who meets the requirements of article 12 as set out in this modification;”
- C** The following sub paragraphs (m) and (n) shall be added to article 8 for the purpose of this fund.
- “(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 6 in relation to sales to an investor who is a qualifying investor by virtue of Schedule 1 paragraph (h), is a regulated financial adviser for the purpose of the modified article 12(2) to the Order as set out in this modification.”
- D** The requirement for a Regulated Promoter under article 11 of the Order shall be removed for the purpose of this fund.
- E** For the purpose of this fund, article 12 of the Order shall be replaced with the following:
- “12(1) A qualifying fund cannot accept an application to invest from a person who certifies that they are a qualifying investor under paragraph (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 6.
- (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;
 - (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.”

¹ SD 808/07

F References to Acceptable Financial Advisers

References to “an acceptable financial adviser” in articles 8(c) and 15(2) 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 5 paragraph 4(b) and Schedule 6 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 article 14 and as such should be disclosed in the offering document for the purpose of this fund.

18th December 2008