

INVESTMENT FUNDS REGULATIONS, 2020

Arrangement of Regulations

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INVESTMENT FUNDS ACT, 2020 (NO. 2 OF 2019)

INVESTMENT FUNDS REGULATIONS, 2020

The Minister, in exercise of the powers conferred by section 159 of the Investment Funds Act, 2019 (*No. 2 of 2019*), makes the following regulations —

PART I - PRELIMINARY

1. Citation.

These Regulations may be cited as the Investment Funds Regulations, 2020.

2. Interpretation.

In these Regulations —

“**Act**” means the Investment Funds Act, 2019 (*No. 2 of 2019*);

“**annual declaration**” means a declaration signed and filed annually with the Commission by a regulated person to confirm that the information filed with the Commission is current and applicable;

“**CCP**” means a Central Counterparty Clearing House;

“**corporate and accounting records**” includes —

- (a) the constitutive documents of an investment fund or an investment fund administrator;
- (b) the register of investors of an investment fund;
- (c) the register of directors, officers and shareholder of an investment fund or an investment fund administrator;
- (d) the register of all operators of an investment fund;
- (e) such financial statements, accounts and records as the operators or directors consider necessary or desirable in order to reflect the financial position of the investment fund or investment fund administrator; and
- (f) such other records as the Commission may reasonably require;

“**extraordinary resolution**” means —

- (a) a resolution approved at a duly convened and constituted extraordinary meeting of the investors by the affirmative vote

of at least seventy-five per cent of the investors present at the meeting and entitled to vote thereon and who voted and did not abstain; or

- (b) a written resolution consented to in writing by investors holding at least seventy-five per cent of the issued and outstanding equity interests entitled to vote thereon;

“financial institution” means a bank or trust company, an investment fund administrator, a broker-dealer, licensed investment fund, or securities investment advisor regulated by a regulatory authority in The Bahamas or such other foreign financial institution located in a prescribed jurisdiction that is regulated by a foreign regulatory authority having similar regulatory and supervisory responsibilities to those of the Commission or the Central Bank of The Bahamas;

“NAV” means the net asset value of the investment fund.

3. Determination of ‘fit and proper’ person.

- (1) In determining whether a person is a fit and proper person for the purposes of the Act, the Commission shall, in addition to any other matter that the Commission may consider relevant, have regard to —
 - (a) the financial status or solvency of the person;
 - (b) the educational or other qualifications or experience, having regard to the nature of the functions that, if the application is allowed or granted, the person will perform;
 - (c) the ability of the person to carry on the regulated activity competently, honestly and fairly;
 - (d) the ability of the person to ensure a satisfactory standard of governance, organization and operational conduct; and
 - (e) the reputation, character, reliability and financial integrity, of —
 - (i) where the person is an individual, the individual himself; or
 - (ii) where the person is a corporation, the corporation and any director, shareholder, chief executive officer and any other officer of the corporation.
- (2) Notwithstanding paragraph (1), the Commission may take into account, in determining whether a person is fit and proper —
 - (a) a decision made in respect of the person by the Commission, any other domestic regulatory authority or overseas regulatory authority, or a court or tribunal wherever located;
 - (b) any information in the possession of the Commission, whether provided by the person or not, relating to —
 - (i) the person;

- (ii) any person who is or is to be employed by or associated with the person for the purposes of the regulated activity for which the registration or licence is granted or the application is made;
 - (iii) any other person who will be acting for or on behalf of the person in relation to the regulated activity; and
 - (iv) where the person is a corporation in a group of companies —
 - (aa) any other corporation in the same group of companies; or
 - (bb) any shareholder or officer of any other corporation in the group of companies;
 - (c) where the consideration relates to a registration or licence under Part II of the Act, whether the person has established effective internal control procedures and risk management systems to ensure compliance with all applicable regulatory requirements; and
 - (d) the state of affairs of any other relevant business that the person carries on or proposes to carry on.
- (3) For the purposes of this regulation, “**regulated activity**” means the activity carried on or proposed to be carried on by the person that requires licensing or registration under the Act.

PART II - INVESTMENT FUNDS

DIVISION I – APPLICATION FOR LICENSING AS INVESTMENT FUND

4. Offering Document.

- (1) The offering document of a standard fund or professional fund shall contain the information set out in the *First Schedule*.
- (2) The offering document of a SMART Fund shall contain such information as may be required by the Commission for the relevant approved SMART fund structure.

5. Performance data in offering document or advertisement.

- (1) Any person who publishes an offering document, advertisement or any other invitation to invest in an investment fund shall, where the performance data or estimated yield is stated in the offering document, advertisement or other invitation, justify and explain all calculations and representations in such offering document, advertisement or other invitation.

- (2) For the purposes of this regulation, performance data shall include but not be limited to NAVs, redemptions, subscriptions, calculation of fund returns, and benchmarking of returns against established indices.

6. Constitutive documents.

- (1) The constitutive documents of a standard fund or professional fund shall contain the information set out in the *Second Schedule*.
- (2) The constitutive documents of a SMART Fund shall contain such information as may be required by the Commission for the relevant approved SMART fund structure.
- (3) It shall be unlawful for an investment fund's constitutive document to exempt its custodian, administrator, manager, advisor or operator from any liability to investors.
- (4) Subject to paragraph (5) no alteration of the constitutive documents of an investment fund may be made except by an extraordinary resolution of investors whose equity interests carry general voting rights.
- (5) An operator of an investment fund may alter the constitutive documents of the fund without consulting investors whose equity interests in that fund carry general voting rights, only where the operator certifies in writing that, in their opinion, the proposed alteration —
 - (a) is necessary to meet possible compliance with fiscal or statutory requirements or requirements of any overseas regulatory authority;
 - (b) does not materially prejudice investors' interests;
 - (c) does not to any material extent release the custodian, AIFMD custodian, investment fund administrator, investment fund manager, AIFM, investment fund advisor or any other person from any liability to investors; or
 - (d) does not materially increase the costs and charges payable from the investment fund's property.

7. Conflict in documents.

Where matters pertaining to an investment fund are addressed in both the offering document of the fund and the fund's constitutive documents and a conflict exists between a provision of the offering document and a provision in the constitutive documents, the provision in the constitutive document shall prevail.

DIVISION II – ADMINISTRATION OF INVESTMENT FUNDS

8. Requirements for directors, general partners, and administrators.

- (1) An investment fund that is —
 - (a) a company, shall have a minimum of two directors;
 - (b) a partnership, shall have a minimum of two general partners; or
 - (c) an investment condominium, shall have either a governing administrator or general administrator.
- (2) Every director or general partner of an investment fund shall be fit and proper.
- (3) Upon application to the Commission for licensing, the investment fund shall —
 - (a) in respect of any director or general partner that is an individual, submit biographical details and an account of the professional qualifications and experience of each of its directors or general partners; or
 - (b) in respect of any director or general partner that is a company, submit the documents of incorporation of the company as well as the biographical details and an account of the professional qualifications and experience of each director.
- (4) Where an investment fund after being licensed desires to appoint a director or general partner, it shall submit the information required in paragraph (3) to the Commission for its approval, prior to the appointment of that director or general partner.

9. Offering and redemption.

- (1) No person shall supply a subscription form for the purchase of an equity interest to any other person who has not previously invested in that fund unless the subscription form is accompanied by the offering document related to that fund.
- (2) Where an initial offer is made by a fund, the fund shall not invest the subscription proceeds prior to the closing of the initial offer without disclosing their intention to do so in the offering document.
- (3) Offer and redemption prices shall be calculated on the basis of the investment fund's net asset value divided by the number of equity interests outstanding or as otherwise provided in the investment fund's offering document and such prices may be adjusted by fees and charges that are to be clearly disclosed in the offering document.

- (4) The offering document of an investment fund shall specify the maximum intervals between the redemption day for the equity interests in the investment fund and payment of redemption proceeds to the investor.
- (5) The offering document of an investment fund shall stipulate in what circumstances, if any, redemption requests of the fund may be deferred to the next redemption day.

DIVISION III – OPERATIONS OF INVESTMENT FUNDS

10. Change in dealing in investment fund.

- (1) A change in the method of dealing in an investment fund, whether temporary or permanent may be made with the approval of the operators of the fund where —
 - (a) the possibility of a change and the circumstances in which a change can be made have been fully disclosed in the offering document; or
 - (b) there is no disclosure under paragraph (a) but there are exceptional circumstances, that make it in the best interest of the fund to change the dealing in the fund.
- (2) Within seven days of a change in the method of dealing in a fund, the investment fund shall give written notice of the change to investors in the fund and shall provide a copy of the notice to the Commission.
- (3) In the case of a temporary change, the notice to the investor under paragraph (2) shall also specify the period of time for which the temporary change has been made.
- (4) In the case of a permanent change in the method of dealing in the investment fund, the investment fund shall submit a copy of its amended offering document and constitutive documents, where applicable, to the Commission no later than twenty-one days after the effective date.

11. Suspension of dealing in an investment fund.

- (1) Dealing in an investment fund may be suspended where —
 - (a) the possibility of suspension in dealing and the circumstances in which suspension may occur are disclosed in the offering document of the fund; or
 - (b) there is no disclosure under subparagraph (a) but there are exceptional circumstances, that make it in the best interest of the fund to suspend dealing.

- (2) The investment fund administrator of an investment fund shall immediately give notice in writing to the investors if dealing in the investment fund ceases or is suspended, and shall simultaneously provide a copy of the notice to the Commission.
- (3) Where dealing in the investment fund is suspended and that investment fund's prices are normally published in a newspaper, the fund shall publish notice of the suspension during the period of suspension, in such newspaper and in such other media as the Commission may specify.

12. Transactions with connected persons.

- (1) No person shall enter into underwriting or sub-underwriting contracts on behalf of an investment fund —
 - (a) without the prior written consent of the operators; and
 - (b) unless the investment fund or the investment fund administrator provides in writing to the operators, all commissions and fees payable to the investment fund administrator or connected person under such contracts and all investments acquired under such contracts shall form part of the investment fund's assets.
- (2) Where cash forming part of the investment fund's assets is deposited with the custodian, the investment fund administrator, the investment fund manager, the AIFM, the AIFMD custodian, the investment fund advisor or with any bank that is a connected person thereof, interest thereon shall be paid at a rate not lower than the prevailing commercial rate for a deposit of a similar kind, size and term, as is in accordance with normal banking practice.
- (3) An investment fund may borrow money from its custodian, AIFMD custodian, investment fund manager, AIFM, investment fund advisor, investment fund administrator or from any bank that is a connected person to any of those parties, if the rate of interest and any fee for arranging or terminating the loan is not greater than the prevailing commercial rate or fee for a loan of a similar kind, size and term, granted in accordance with normal banking practice.
- (4) Any material transaction between the investment fund and its investment fund administrator, investment fund manager, AIFM, AIFMD custodian, investment fund advisor, or any connected persons thereof shall be disclosed in the investment fund's annual audited financial statement.

13. Meetings.

- (1) At any meeting of the investors who own equity interests that carry general voting rights —
 - (a) investors may appoint proxies;
 - (b) votes shall be proportionate to the equity interests held;
 - (c) the quorum for meetings at which an extraordinary resolution is to be considered, shall be the investors holding twenty-five percent of the equity interests in issue;
 - (d) the quorum for meetings at which an ordinary resolution is to be considered, shall be the investors holding ten percent of the equity interests in issue;
 - (e) an ordinary resolution may be passed by a simple majority of the votes of those present and voting and an extraordinary resolution may be passed by seventy-five percent or more of those present and voting; and
 - (f) if within half an hour from the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned for not less than fifteen days and the quorum at an adjourned meeting will be those persons present in person or by proxy.
- (2) The constitutive documents of an investment fund shall provide for separate meetings of each class of investors where conflicts of interest exist and where different classes of investors would not be affected in the same way by any proposal to be put forward for their vote.
- (3) The operators of an investment fund, the custodian, AIFMD custodian, the investment fund administrator, investment fund manager, AIFM, investment fund advisor and their connected persons shall be permitted to vote their beneficially owned equity interests at a meeting in which they have a material interest in the business to be contracted, if —
 - (a) full disclosure of the existence of such a relationship is made in the offering document of the investment fund; and
 - (b) the possibility exists of a decision being made to the detriment of the investors of the investment fund and the investors had been notified of such conflict prior to the meeting and were afforded the opportunity to redeem their equity interest in an investment fund prior to a meeting being held.
- (4) An extraordinary resolution shall be made for the following purposes —
 - (a) to modify, alter or add to the constitutive documents, except as provided in regulation 6(5);

- (b) to increase the rate for maximum fees to be paid to the investment fund administrator, operators of the investment fund, investment fund manager, AIFM, investment fund advisor, custodian or AIFMD custodian; or
- (c) to impose fees, other than those specified in paragraph (b).

DIVISION IV – TRANSFERS OF INVESTMENT FUND OR INVESTMENT FUND ADMINISTRATOR

14. Transfer of fund to and from another jurisdiction.

For the purposes of section 19 and 20 of the Act, an investment fund that intends to either transfer from The Bahamas to another jurisdiction or transfer to The Bahamas from another jurisdiction shall notify the Commission in writing providing the particulars as set out either in Form A or Form B of in the *Sixth Schedule*.

15. Transfer of fund to new investment fund administrator.

An investment fund that intends to transfer from one investment fund administrator to another shall, prior to the transfer, notify the Commission in writing in not less than 14 days of the transfer, providing the particulars set out in the *Seventh Schedule*.

16. Application to re-launch suspended fund.

A suspended fund that intends to resume its operations shall submit an application for approval to re-launch such fund, providing the particulars set out in the *Eighth Schedule*.

17. Annual declaration of investment fund.

An investment fund shall submit to the Commission at the time of payment of the prescribed annual licence fee, the annual declaration required under section 43(1)(a) of the Act, providing the particulars set out in the Form A of the *Ninth Schedule*.

DIVISION V –SMART FUND

18. SMART fund structure.

- (1) Any financial institution or professional advisor may submit a written proposal for the structure of a SMART fund to the Commission for approval.

- (2) The Commission shall review every application made under paragraph (1) and shall advise the applicant in writing of its decision.
- (3) The Commission may establish and approve a SMART fund structure.

DIVISION VI – SELF-ADMINISTERED FUND

19. Self-administered fund.

Where the principal office of a self-administered fund is outside of The Bahamas, the fund shall at all times have a place in The Bahamas where duplicate corporate and accounting records are available.

20. Fees for self-administered fund.

A self-administered fund shall pay the prescribed fees in relation to that fund.

PART III - INVESTMENT FUND MANAGER

DIVISION I – APPLICATION FOR INVESTMENT FUND MANAGER'S REGISTRATION

21. Requirements for investment fund manager.

An investment fund manager shall —

- (a) be fit and proper; and
- (b) in addition to complying with any requirements stipulated by the Commission, in conducting its business activities —
 - (i) act honestly and fairly;
 - (ii) act with due skill, care and diligence;
 - (iii) observe and maintain a high standard of professional conduct; and
 - (iv) refrain from engaging in any improper or illegal conduct.

22. Requirements for investment fund manager's registration.

- (1) An application to the Commission for an investment fund manager's registration shall be as set out in Regulation 81.
- (2) In respect of the investment funds it manages or intends to manage, provide —

- (a) information about the investment strategies including the types of underlying funds if the investment fund is a fund of funds, and the applicant's policy on the use of leverage, and the risk profiles and other characteristics in respect of the investment funds;
- (b) information about the countries in which the investment funds are established or are expected to be established;
- (c) information on where the master fund is established if the investment fund is a feeder fund;
- (d) the constitutive documents of each investment fund;
- (e) information on the arrangements made for the appointment of the custodian in accordance with section 68 of the Act for each investment fund; and
- (f) any additional information as required for each investment fund.

23. Annual declaration of an investment fund manager.

The annual declaration made by an investment fund manager under section 43(1) (a) of the Act, providing the particulars set out in Form C of the *Ninth Schedule*.

PART IV – AIFM

DIVISION I – APPLICATION FOR LICENSING AS AIFM

24. AIFM to be fit and proper.

An AIFM shall be fit and proper person in accordance with regulation 3.

25. Requirements for AIFM licence.

- (1) An application to the Commission for an AIFM licence shall —
 - (a) in respect of the applicant provide —
 - (i) information on the persons who will be conducting the business of the AIFM;
 - (ii) information on the identities of the applicant's shareholders or members, whether direct or indirect, natural or legal persons, who have qualifying holdings and on the amounts of those holdings;
 - (iii) a programme of activity setting out the organisational structure of the applicant, including information on how the applicant intends to comply with the obligations of an AIFM under this Division;

- (iv) information on the remuneration policies and practices in accordance with section 79 of the Act; and
 - (v) information on arrangements made for the delegation and sub-delegation to third parties of the functions referred to in sections 88 and 89 of the Act.
- (b) in respect of the investment funds or EU AIFs it manages or markets or intends to manage or market, provide —
- (i) information about the investment strategies including the types of underlying funds if the investment fund or EU AIF is a fund of funds, and the applicant's policy as regards the use of leverage, and the risk profiles and other characteristics in respect of the investment funds and EU AIFs;
 - (ii) information about the countries in which the investment funds and EU AIFs under subparagraph (b)(i) are established or are expected to be established;
 - (iii) information on where the master fund is established if the investment fund is a feeder fund;
 - (iv) the constitutive documents of each investment fund or EU AIF;
 - (v) information on the arrangements made for the appointment of the AIFMD custodian in accordance with section 91 of the Act for each investment fund and EU AIF; and
 - (vi) any additional information as required by the Commission for each investment fund or EU AIF.

26. Annual declaration of an AIFM.

The annual declaration by an AIFM required under section 43(1)(a) of the Act, providing the particulars as set out in Form D of the *Ninth Schedule* and shall be submitted to the Commission at the time of payment of the prescribed annual licence fee.

27. Requirements for capital and own funds.

- (1) An AIFM that is —
 - (a) appointed as an external AIFM, shall have an initial capital of at least one hundred and twenty-five thousand euros or the equivalent sum in a currency acceptable to the Commission; or
 - (b) an internal AIFM, shall have an initial capital of at least three hundred thousand euros or the equivalent sum in a currency acceptable to the Commission.
- (2) The initial capital shall also include, where the value of the portfolios of investment funds managed by the AIFM exceeds two hundred and fifty

million euros, from the AIFM's own funds, a sum equal to 0.02 per cent of the amount by which the value of the portfolios of the AIFM exceeds two hundred and fifty million euros.

- (3) For the purpose of paragraph (2), the required total of the initial capital and the AIFM's own funds shall not, however, exceed ten million euros or the equivalent sum in a currency acceptable to the Commission.

DIVISION II— OPERATIONS

28. Notification to Commission and information to be provided by AIFM.

- (1) A person who is required to make a notification to the Commission under section 72(1) of the Act shall provide the Commission with —
 - (a) the name of each Member State in which the AIFM intends to market or manage or markets or manages an investment fund or EU AIF;
 - (b) the date on which the AIFM commenced, or will commence, marketing or managing an investment fund or EU AIF;
 - (c) a programme of activity setting out the organizational structure of the AIFM, including information on how the AIFM intends to comply with their obligations under these Regulations;
 - (d) evidence demonstrating that the AIFM has sufficient capital, in accordance with section 74 of the Act;
 - (e) a declaration that the AIFM agrees to comply with the requirements of the AIFMD applicable of the AIFM and the requirements of the Member State of reference under the AIFMD if authorized as an AIFM in a Member State; and
 - (f) the name of each AIF and the jurisdiction of incorporation or establishment of each such fund managed or marketed by the AIFM.
- (2) A person who intends to obtain or who has obtained an EU Passport shall further provide to the Commission the following —
 - (a) information regarding the remuneration policies and practices relating to the activities of the AIFM in accordance with section 79 of the Act;
 - (b) information regarding the arrangements made for the delegation and sub-delegation to third parties of functions as provided in sections 88 and 89 of the Act;
 - (c) details of the policy of the AIFM regarding the use of leverage
 - (d) as required under the AIFMD;

- (e) details regarding the risk profiles and any other characteristics of the EU AIF it manages or markets as required by the Commission; and
 - (f) details regarding the appointment of an AIFMD custodian as specified in the Act.
- (3) The notification required under section 72(1) of the Act shall be provided to the Commission within three months of the commencement of the Act.

29. Additional information in relation to EU AIFs.

For the purpose of paragraph 4(1)(f), a person who has complied with regulation 4 shall also, with respect to each EU AIF it manages or markets provide the Commission with —

- (a) the investment strategies of the EU AIF and any underlying funds of the EU AIF, if the EU AIF is a fund of funds;
- (b) any disclosures or offering documents provided to investors of the EU AIF; and
- (c) details regarding the location of the establishment of the master fund, if the EU AIF is a feeder fund.

30. Written notification of cessation of AIFM operations.

An AIFM shall inform the Commission in writing within seven days of ceasing to operate as an AIFM and shall submit the following and any other information required by the Commission —

- (a) the AIFM's original licence;
- (b) the reason that the AIFM is no longer operating as an AIFM; and
- (c) written confirmation indicating whether the investment funds or EU AIFs previously managed or marketed by the AIFM have been wound up or transferred.

31. Written notification of change.

A licensee shall immediately inform the Commission in writing of a change in any of the information provided to the Commission pursuant to regulation 26.

32. Reporting requirements.

For the purposes of satisfying its reporting requirements under section 103 the Act, the following information shall be reported by an AIFM —

- (a) *AIFM Specific Information* — The name of the AIFM;

- (b) *EU AIF and Investment Fund Quarterly Information* — A detailed list of all investment funds and EU AIFs that the AIFM manages or markets (the following information should be reported per investment fund or EU AIF that is under the management of the AIFM) —
- (i) name of investment fund or EU AIF;
 - (ii) investment fund or or EU AIF identification code;
 - (iii) inception date of investment fund or EU AIF;
 - (iv) an indication of the investment fund or EU AIF type as Private Equity; Real Estate; Fund of funds or Other;
 - (v) NAV;
 - (vi) base currency of the investment fund or EU AIF according to the assets under management and other relevant factors as calculated under the Act; and
 - (vii) an indication as to whether the investment fund or EU AIF is authorised or established in the EU and information with regard to that status;
- (c) *EU AIF and Investment Fund General Information* — being the —
- (i) domicile of the investment fund or EU AIF; and
 - (ii) name of prime broker(s) of the investment fund or EU AIF;
- (d) *Principal markets or instruments in which it trades on behalf of the investment funds or EU AIFs it manages* — From the most important market or instrument to the fifth most important market or instrument —
- (i) the principal markets in which the AIFM trades on behalf of the investment funds or EU AIFs it manages; and
 - (ii) values of assets under management for all investment funds or EU AIFs managed, calculated as set out in the Act;
- (e) *Investment details*, particularly —
- (i) the jurisdictions of the three main funding sources (excluding equity interests of the investment fund or EU AIF bought by investors);
 - (ii) the predominant investment fund or EU AIF type;
 - (iii) the main instruments in which the investment fund or EU AIF is trading from the most important instrument to the fifth most important instrument, including information on the type of instrument or instrument code;
 - (iv) the value indication of long or short positions;

- (v) breakdown of investment strategies for the predominant investment fund or EU AIF type including the strategy that best describes the investment fund's or EU AIF's strategy and the percentage share of the NAV;
- (vi) a geographical breakdown of the investments held by the investment fund by percentage of the total NAV of the investment fund or EU AIF;
- (vii) a breakdown of the ten principal exposures of the investment fund or EU AIF at the reporting date including information on type of asset or liability, name or description of the asset or liability, value as calculated in accordance with the constitutive documents, percentage of gross market value, long or short position and counterparty (where relevant);
- (viii) a breakdown of the five most important portfolio concentrations including information, such as type of asset or liability, name or description of the market, value of the aggregate exposure as calculated in accordance with the constitutive documents, percentage of gross market value, long or short position, and counterparty (where relevant);
- (ix) typical deal or position size;
- (x) a breakdown of information on investor concentration, such as the percentage of the investment fund's or EU AIF's equity that is beneficially owned by the five beneficial owners that have the largest equity interest in the investment fund or EU AIF (look through to beneficial owners), percentage breakdown of investor concentration by status of investor, and indication as to whether the investor is an accredited investor or a non-accredited investor;
- (xi) information on the instruments traded and individual exposures in which the AIFM is trading, including details on the main categories of assets (as determined by the Commission) in which the investment fund or EU AIF invested as at the reporting date; and
- (xii) currency exposure (total long and short value of exposures) by currency group;
- (f) *Risk Related Information*
 - (i) value of turnover in each asset class over the reporting months;
 - (ii) information on each company over which the investment fund or EU AIF has a dominant influence, such as the name; percentage of voting rights; transaction type;

- (iii) expected annual investment return or IRR in normal market conditions (in percentage);
- (iv) information on trading and clearing mechanisms, such as the estimated percentage (in terms of market value) of securities traded, estimated percentage (in terms of trade volumes) of derivatives that are traded, estimated percentage (in terms of trade volumes) of derivatives transactions cleared, and estimated percentage (in terms of market value) of repo trades cleared;
- (v) information on the value of collateral and other credit support that the investment fund or EU AIF has posted to all counterparties, such as the value of collateral posited in the form of cash and cash equivalents, value of collateral posited in the form of other securities (excluding cash and cash equivalents), and value of other collateral and credit support (including face amount of letters of credit and similar third party credit support);
- (vi) information on the amount of collateral and other credit support that the reporting fund has posted to counterparties, and the percentage that has been re-hypothecated by counterparties;
- (vii) information on the top five counterparty exposures, such as identity of the top five counterparties to which the investment fund has the greatest market-to-market net counterparty credit exposure, measured as a percentage of the NAV of the investment fund or EU AIF, and identity of the top five counterparties that have the greatest market-to-market net counterparty credit exposure to the investment fund or EU AIF, measured as a percentage of the NAV of the investment fund or EU AIF;
- (viii) an indication as to whether the investment fund or EU AIF cleared any transactions directly through a CCP and if so, information on the top three CCPs in terms of value held and net credit exposure;
- (ix) the breakdown or profile of investor liquidity, as a percentage of the portfolio capable of being liquidated within the respective prescribed periods of time;
- (x) the value of unencumbered cash;
- (xi) the breakdown or profile of investor liquidity, as a percentage of investor equity that can be redeemed within the prescribed periods of time (as a percentage of the investment fund's or EU AIF's NAV);

- (xii) information as determined by the Commission on investor redemptions;
- (xiii) information as determined by the Commission on special arrangements and preferential treatment;
- (xiv) a breakdown of the ownership of equity interests in the investment fund or EU AIF by investor groups (as a percentage of the NAV of investment fund or EU AIF assets, and look through to the beneficial owners where known or possible);
- (xv) information on financing of liquidity, such as the aggregate amount of borrowing by, and cash financing available to, the investment fund or EU AIF, and information on the prescribed period for which the creditor is contractually committed to provide such financing;
- (xvi) information as determined by the Commission on the value of borrowings of cash or securities;
- (xvii) information as determined by the Commission on the value of borrowing embedded in financial instruments;
- (xviii) information on the five largest sources of borrowed cash or securities (short positions);
- (xix) value of securities borrowed for short positions;
- (xx) gross exposure of, financial and legal structures or financial or legal structures, controlled by the investment fund or EU AIF;
- (xxi) leverage of the investment fund or EU AIF, as calculated in accordance with the Act;
- (xxii) total number of open positions; and
- (xxiii) information of the historical risk profile per reporting period.

33. Requirements for compliance.

Where applicable, an AIFM shall at all times —

- (a) comply with the requirements of AIFMD; and
- (b) when requested by the Commission, provide all information necessary for the Commission to satisfy itself that the AIFM is in compliance with these Regulations and the AIFMD.

34. Declaration of compliance.

For the purpose of section 101(1) of the Act, an AIFM shall submit together with its annual report to the Commission —

- (a) a declaration, confirming compliance with section 33 of the Act;
- (b) evidence of authorization for the AIFM from the relevant Member State, if applicable; and
- (c) a declaration that the AIFM is compliant with all the requirements of the AIFMD.

35. Process for confirmation of Status.

- (1) For the purposes of section 75 of the Act, an AIFM may request either an attestation or confirmation of status by providing the following to the Commission, at the time of the request —
 - (a) the name, principal contact and address of registered office of the AIFM;
 - (b) details of senior officers and directors of the AIFM;
 - (c) if not kept by its registered office, confirmation of the location and address of where the books and records of the AIFM are kept;
 - (d) confirmation that there has been no change to the person's annual declaration required to be filed under the Act;
 - (e) a declaration that the AIFM agrees to comply with the requirements of the AIFMD applicable to the AIFM and to ensure that any form of marketing or management of investment funds or EU AIFs in any Member State is effected in accordance with the law in force in the relevant Member State;
 - (f) the name of the Member State in which the marketing or management of investment funds or EU AIFs is to be conducted;
 - (g) agreement that the Commission or the regulator in any Member State may inspect the books and records of the AIFM at any time; and
 - (h) the prescribed fee.

36. Interpretation of Regulations.

The Commission, when giving effect to these regulations shall have regard to the provisions of the AIFMD and may, when fulfilling or enforcing any obligations created by these regulations, use any guidance issued by the European Securities and Markets Authority in respect of the AIFMD.

PART V – OPERATOR

37. Requirements for appointment of Operator.

- (1) An investment fund shall —
 - (a) appoint as its operator a person that is fit and proper; and
 - (b) upon application for licensing, submit to the licensor sufficient information so as to enable the licensor to assess the fit and proper status of the operator.
- (2) In addition to complying with any prescribed requirements, the operator appointed by the investment fund shall —
 - (a) act honestly and fairly;
 - (b) act with due skill, care and diligence;
 - (c) observe and maintain a high standard of professional conduct; and
 - (d) refrain from engaging in any improper or illegal conduct.
- (3) The Commission may require evidence from the investment fund that an operator is appropriately qualified for the performance of its functions at any time.

38. General powers and duties of an operator.

An operator shall —

- (a) ensure that the sale, issue, repurchase, redemption, and cancellation of equity interests of the investment fund are carried out in accordance with the provisions of the Act and the constitutive documents;
- (b) ensure that the value of the equity interests is calculated in accordance with the provisions of the constitutive documents;
- (c) carry out the proper instructions of the investment fund manager or AIFM and the investment fund administrator;
- (d) ensure that the investment and borrowing limitations set out in the constitutive documents are complied with;
- (e) ensure that the investment fund is audited annually or as required and cooperate with the auditors;
- (f) not issue equity interests or evidence of such equity interest unless subscription moneys have been paid;
- (g) take all reasonable steps to ensure that the investment fund maintains proper books and records;

- (h) take all reasonable steps to ensure that audited financial statements for the financial year are available for each investor within six months of the end of the investment fund's financial year or within such extension of that period as approved by the Commission;
- (i) make the constitutive documents of each fund for which it acts as operator available, free of charge in The Bahamas at all times for inspection by the investors, during normal office hours at the principal office; and
- (j) take all reasonable steps to ensure that the investment fund is not carrying on its business in a manner which is or is likely to be prejudicial to investors or creditors of the investment fund.

39. Operator of a unit trust.

An investment fund that is a unit trust shall appoint as its operator —

- (a) a bank or trust company with an unrestricted licence granted under section 4 of the Banks and Trust Companies Regulation Act (*Ch. 316*); or
- (b) such other bank or trust company having —
 - (i) a licence in a prescribed jurisdiction; and
 - (ii) a minimum net worth of two million United States dollars or the equivalent sum in a currency acceptable to the Commission inclusive of paid up capital and non-distributable contributed surplus; or
 - (iii) a minimum net worth of less than two million United States dollars or the equivalent sum in a currency acceptable to the Commission inclusive of paid up capital and non-distributable contributed surplus if the operator is the wholly owned subsidiary of a parent company which —
 - (aa) qualified under subparagraphs (b) (i) and (ii) and issues a standing commitment to the Commission to subscribe additional capital to its subsidiary up to two million United States dollars or the equivalent sum in a currency acceptable to the Commission if so required; or
 - (bb) undertakes to the Commission that it shall not let its wholly owned subsidiary default; and
 - (cc) agrees to comply with any other condition stipulated by the Commission; or
- (c) such other person as approved by the Commission.

PART VI – CUSTODIAN

DIVISION I – CUSTODIAN

40. Custodian to be qualified.

- (1) The Commission may require at any time, evidence from the operator or an investment fund manager in respect of an investment fund that it manages, that the custodian of the fund is appropriately qualified to be a custodian.
- (2) A custodian of an investment fund shall, where it is not a bank or trust company licensed under the Bank and Trust Companies Regulation Act, (*Ch. 316*)—
 - (a) be licensed in a prescribed jurisdiction; and
 - (b) have a minimum net worth of two million United States dollars or the equivalent sum in a currency acceptable to the Commission inclusive of paid up capital and non-distributable contributed surplus; or
 - (c) if the custodian is the wholly owned subsidiary of a parent company, have a minimum net worth of less than two million United States dollars or the equivalent sum in a currency acceptable to the Commission inclusive of paid up capital and non-distributable contributed surplus.
- (3) For the purpose of subregulation (2)(c), a custodian which is the wholly owned subsidiary of a parent company shall —
 - (a) cause the parent company to issue a written undertaking to the Commission to subscribe additional capital to its subsidiary up to two million United States dollars or the equivalent sum in a currency acceptable to the Commission if so required; or
 - (b) cause the parent company to undertake to the Commission that it shall not let its wholly owned subsidiary default; and
 - (c) agree to comply with any other condition stipulated by the Commission.

DIVISION II - AIFMD CUSTODIAN

41. Contractual particulars.

- (1) The contract to engage the AIFMD custodian in compliance with section 91(3) of the Act shall include, among other things —

- (a) a description of the services to be provided by the AIFMD custodian and the procedures to be adopted for each type of asset in which the investment fund may invest and which shall then be entrusted to the AIFMD custodian;
- (b) a description of the way in which the safe-keeping and oversight function is to be performed depending on the types of assets and the geographical regions in which the investment fund plans to invest, including identifying the country and the procedures for identifying a country as stipulated in the investment funds constitutive documents and offering documents;
- (c) a statement that the AIFMD custodian's liability shall not be affected by any delegation of its custody functions unless it has discharged itself of its liability in accordance with section 97 and of the Act;
- (d) the period of validity and the conditions for amendment and termination of the contract including the situations that could lead to the termination of the contract and details regarding the termination procedure and, if applicable, the procedures by which the AIFMD custodian should send all relevant information to its successor;
- (e) the confidentiality obligations applicable to the parties in accordance with relevant laws and these Regulations;
- (f) the means and procedures by which the AIFMD custodian transmits to the AIFM or the investment fund all relevant information that it needs to perform its duties, including —
 - (i) how any rights attached to assets is to be exercised ; and,
 - (ii) the period in which the AIFM and the investment fund shall have the time for an accurate overview of the accounts of the investment fund;
- (g) the means and procedures by which the AIFM or the investment fund transmits all relevant information or ensures the AIFMD custodian has access to all the information it needs to fulfil its duties, including the procedures ensuring that the AIFMD custodian will receive information from other parties appointed by the investment fund or the AIFM;
- (h) information on whether or not the AIFMD custodian, or a third party to whom safe-keeping functions are delegated in accordance with section 97 of the Act, may re-use the assets it has been entrusted with and, if any, the conditions attached to any such re-use;
- (i) the procedures to be followed when an amendment to the investment fund's constitutive documents or offering documents is

- being considered, detailing the situations in which the AIFMD custodian is to be informed, or where the prior agreement of the AIFMD custodian is needed to proceed with the amendment;
- (j) all necessary information that has to be exchanged between the investment fund, the AIFM, a third party acting on behalf of the investment fund or the AIFM, on the one hand, and the AIFMD custodian, on the other hand, related to the sale, subscription, redemption, issue, cancellation and re-purchase of equity interests of the investment fund;
 - (k) all necessary information that has to be exchanged between the investment fund, the AIFM, a third party acting on behalf of the investment fund or the AIFM and the AIFMD custodian related to the performance of the AIFMD custodian's oversight and control function;
 - (l) a requirement for the AIFMD custodian to provide, on a regular basis, details of any third party appointment, information on the criteria used to select the third party, and the steps to be followed to monitor the activities of the selected third party;
 - (m) information on the tasks and responsibilities of the parties to the contract in respect of obligations relating to the prevention of money laundering and the financing of terrorism;
 - (n) information on all cash accounts opened in the name of the investment fund, or the AIFM acting on behalf of the investment fund, and the procedures to be followed to inform the AIFMD custodian of new accounts opened in the name of the investment fund or relevant AIFM;
 - (o) the escalation procedures to be followed by the AIFMD custodian, including the identification of the persons to be contacted within the investment fund or the AIFM by the AIFMD custodian;
 - (p) a requirement for the AIFMD custodian to notify the AIFM when it becomes aware that the segregation of assets is not, or is no longer, sufficient to ensure protection from insolvency of a third party to whom safe-keeping functions are delegated in accordance with section 97 of the Act;
 - (q) the procedures to be followed by the AIFMD custodian to pursue enquiries into the conduct of the AIFM or the investment fund and to assess the quality of information transmitted, including having access to the books of the investment fund or AIFM or by way of on-site visits;
 - (r) the procedures to be followed by the AIFM or the investment fund to review the performance of the AIFMD custodian; and

- (s) the law governing the contract appointing the AIFMD custodian and any subsequent amendment of the contract.
- (2) The contract appointing the AIFMD custodian or the subsequent amendment to the contract shall be in writing.
- (3) The parties may agree to transmit all or part of the information that flows between them electronically, provided that proper recording of such information is ensured.
- (4) The AIFM and the AIFMD custodian may enter into a framework agreement listing the investment funds managed by that AIFM rather than a specific written agreement for each investment fund, unless otherwise provided by the law of the applicable jurisdiction.

42. General requirements for cash flow monitoring.

- (1) For the purpose of meeting its obligations under section 93 of the Act, the AIFMD custodian shall be provided upon its appointment and on an ongoing basis, with all relevant information it needs to properly monitor the relevant cash flows.
- (2) For the purpose of paragraph (1), an AIFMD custodian shall be entitled to be —
 - (a) informed of all existing cash accounts opened in the name of the investment fund, or in the name of the AIFM acting on behalf of the investment fund;
 - (b) informed at the opening of any new cash account by the investment fund or by the AIFM acting on behalf of the investment fund; and
 - (c) provided with all information related to the cash accounts opened at a third party entity, directly by those third parties.
- (3) The AIFM shall ensure that all instructions and information related to a cash account opened with a third party are sent to the AIFMD custodian to enable the AIFMD custodian to perform its own reconciliation procedure.

43. Monitoring of investment fund cash flows by AIFMD custodian.

An AIFMD custodian shall ensure effective and proper monitoring of the investment fund's cash flows and, in particular, it shall at least —

- (a) ensure that all cash of the investment fund is booked in accounts opened with entities eligible to be appointed as an AIFMD custodian in accordance with section 94 of the Act in the relevant markets where cash accounts are required for the purposes of the investment fund's operations and that are subject to prudential regulation and supervision;

- (b) implement effective and proper procedures to reconcile all cash flow movements and perform such reconciliations on a daily basis or, in case of infrequent cash movements, when such cash flow movements occur;
- (c) implement appropriate procedures to identify at the close of business day significant cash flows and, in particular, those that could be inconsistent with the investment fund's operations;
- (d) review periodically the adequacy of its procedures, including by performing at least once a year a full review of the reconciliation process and ensuring that the relevant cash accounts are included in the reconciliation process;
- (e) monitor on an ongoing basis the outcomes of the reconciliations and actions taken as a result of any discrepancies identified by the reconciliation procedures;
- (f) for the purpose of subparagraph (e), notify the AIFM without undue delay if an irregularity has not been rectified and also notify the Commission if the situation cannot be clarified or corrected; and
- (g) verify its own records of cash positions for consistency with those of the AIFM.

44. AIFMD custodians duty for other types of financial instruments.

- (1) Notwithstanding that financial instruments belonging to the investment fund, or to the AIFM acting on behalf of the investment fund, are not able to be physically delivered to the AIFMD custodian, such instrument shall be included in the scope of the custody duties of the AIFMD custodian where they are —
 - (a) transferable securities including those that embed derivatives, money market instruments or units of investment funds; and
 - (b) capable of being registered or held in an account directly or indirectly in the name of the AIFMD custodian.
- (2) In accordance with applicable national law, financial instruments that are only directly registered in the name of the investment fund with the issuer itself or its agent, such as a registrar or a transfer agent, shall not be held in custody.

45. Safekeeping duties with regard to assets held in custody.

- (1) To comply with the obligations laid down in section 94(1) of the Act with respect to financial instruments to be held in custody, an AIFMD custodian shall ensure that —
 - (a) the financial instruments are properly registered in accordance with section 94(2)(b) of the Act;

- (b) records and segregated accounts are maintained in a way that ensures their accuracy and, in particular, records the correspondence with the financial instruments and cash held for investment funds;
 - (c) reconciliations are conducted on a regular basis between the AIFMD custodian's internal accounts and records and those of any third party to whom custody functions are delegated in accordance with subsection 97 of the Act;
 - (d) due care is exercised in relation to the financial instruments held in custody in order to ensure a high standard of investor protection;
 - (e) all relevant custody risks throughout the custody chain are assessed and monitored and the AIFM is informed of any material risk identified;
 - (f) adequate organisational arrangements are introduced to minimise the risk of loss or diminution of the financial instruments, or of rights in connection with those financial instruments as a result of fraud, poor administration, inadequate registering or negligence; and
 - (g) the investment fund's ownership right or the ownership right of the AIFM acting on behalf of the investment fund over the assets is verified.
- (2) Where an AIFMD custodian has delegated its custody functions to a delegate in accordance with subsection 97 of the Act, paragraph (1)(b) to (e) shall continue to apply to the AIFMD custodian, and paragraphs (1)(b) to (g) and regulation 45 shall also apply to the delegate.
 - (3) An AIFMD custodian's safe-keeping duties under paragraphs (1) and (2) shall include a right to a look-through approach to underlying assets held in accordance with or by financial arrangements, and any legal structures controlled directly or indirectly by the investment fund or the AIFM acting on behalf of the investment fund.
 - (4) The requirement referred to in paragraph (1) shall not apply to fund of funds structures or master-feeder structures where the underlying investment funds have an AIFMD custodian that keeps in custody the assets of these investment funds.

46. Safekeeping duties with regard to ownership verification and record-keeping.

- (1) In order to comply with the obligations referred to in subsections 95 (1) and (2) of the Act, an AIFMD custodian shall at least —
 - (a) have access without undue delay to all relevant information it needs in order to perform its ownership verification and record-keeping

- duties, including relevant information to be provided to the AIFMD custodian by third parties;
- (b) possess sufficient and reliable information for it to be satisfied of the investment fund's ownership right, or of the ownership right of the AIFM acting on behalf of the investment fund, over the assets;
 - (c) maintain a record of those assets for which it is satisfied that the investment fund, or the AIFM acting on behalf of the investment fund, holds the ownership; and
- (2) For the purposes of subparagraph (c), the custodian shall —
- (a) register in its record, in the name of the investment fund, assets, including their respective notional amounts, for which it is satisfied that the investment fund or the AIFM acting on behalf of the investment fund holds the ownership; and
 - (b) be able to provide at any time a comprehensive and up-to-date inventory of the investment fund's assets, including their respective notional amounts.
- (3) For the purpose of paragraph (1) —
- (a) the AIFM shall ensure that, at least once a year and without undue delay, relevant third parties provide the AIFMD custodian with certificates or other documentary evidence for each sale or acquisition of assets or a corporate action resulting in the issue of financial instruments; and
 - (b) the AIFMD custodian shall —
 - (i) ensure that there are procedures in place so that registered assets cannot be assigned, transferred, exchanged or delivered without the AIFMD custodian or its delegate having been informed of such transactions;
 - (ii) have access without undue delay to documentary evidence of each transaction and position from the relevant third party; and
 - (iii) in all circumstances ensure that an appropriate verification and reconciliation procedure exists that is implemented and applied and frequently reviewed.
- (4) The requirements referred to in paragraphs (1) and (3)(b) shall not apply to fund of funds structures and master-feeder structures where the underlying investment funds have an AIFMD custodian that provides ownership verification and record-keeping functions for the investment fund's assets.
- (5) An AIFMD custodian shall ensure that the AIFM establishes and implements appropriate procedures to —

- (a) verify that the assets acquired by the investment fund it manages are appropriately registered in the name of the investment fund, or in the name of the AIFM acting on behalf of the investment fund; and
 - (b) check the consistency between the positions in the AIFM's records and the assets for which the AIFMD custodian is satisfied that the investment fund, or the AIFM acting on behalf of the investment fund, holds the ownership.
- (6) An AIFMD custodian shall establish and implement an escalation procedure to address situations where an anomaly is detected, and include the steps to notify the AIFM and the Commission if the situation cannot be clarified or corrected.
- (7) An AIFMD custodian's duties under this regulation shall apply on a look-through basis to —
 - (a) underlying assets held in accordance with or by financial arrangements; and
 - (b) any legal structures established by the investment fund or by the AIFM acting on behalf of the investment fund for the purposes of investing in the underlying assets and that are controlled directly or indirectly by the investment fund, or by the AIFM acting on behalf of the investment fund.
- (8) For the purpose of this regulation, the AIFM shall ensure that all instructions and relevant information related to the investment fund's assets are sent to the AIFMD custodian, so that the AIFMD custodian is able to perform its own verification or reconciliation procedure.

47. Oversight duties: general requirements.

- (1) For the purpose of establishing, implementing and applying oversight procedures that are appropriate to the investment fund and the assets in which it invests, the AIFMD custodian at the time of its appointment, shall assess the risks associated with the nature, scale and complexity of the investment fund's strategy and the AIFM's organization, which procedures shall be regularly updated.
- (2) In performing its oversight duties under section 96 of the Act, an AIFMD custodian shall perform ex-post controls and verifications of processes and procedures that are under the responsibility of the AIFM, the investment fund or an appointed third party.
- (3) An AIFMD custodian shall establish a clear and comprehensive escalation procedure to deal with situations where potential irregularities are detected in the course of its oversight duties, the details of which shall be made available to the Commission upon request.

48. Duties regarding subscription and redemptions.

- (1) In order to comply with section 96 of the Act, the AIFMD custodian shall ensure that the investment fund, the AIFM or the designated entity has established, implements and applies an appropriate and consistent procedure to —
 - (a) reconcile the subscription orders with the subscription proceeds, and the number of equity interests issued with the subscription proceeds received by the investment fund;
 - (b) reconcile the redemption orders with the redemptions paid, and the number of equity interests cancelled with the redemptions paid by the investment fund; and
 - (c) verify on a regular basis that the reconciliation procedure is appropriate.
- (2) An AIFMD custodian shall ensure and regularly check —
 - (a) for the purposes of paragraph (1)(a) through (c), the consistency between the total number of equity interests in the investment fund's accounts and the total number of outstanding equity interests that appear in the investment fund's register; and
 - (b) that the procedures, which shall be verified for effectiveness, regarding the sale, issue, re-purchase, redemption and cancellation of equity interests of the investment fund comply with the applicable national law, and with the investment fund's constitutive documents.
- (3) The frequency of the AIFMD custodian's checks shall be consistent with the frequency of subscriptions and redemptions.

49. Duties regarding the valuation of assets.

- (1) To comply with section 96(b) of the Act, the AIFMD custodian shall —
 - (a) verify on an ongoing basis that appropriate and consistent procedures are established and applied for the valuation of the assets of the investment fund in compliance with section 83(1) of the Act and these Regulations and with the investment fund's constitutive documents; and
 - (b) ensure that the valuation policies and procedures are effectively implemented and periodically reviewed.
- (2) An AIFMD custodian's procedures shall be conducted at a frequency consistent with the frequency of the investment fund's valuation policy as defined in section 83(1) of the Act.

- (3) Where an AIFMD custodian considers that the calculation of the value of the equity interests of the investment fund has not been performed in compliance with section 83(1) of the Act, it shall —
 - (a) notify the AIFM or the investment fund; and
 - (b) ensure that timely remedial action is taken in the best interest of the investors in the investment fund.
- (4) Where an external valuer was appointed an AIFMD custodian shall verify that the external valuer's appointment is in accordance with section 85 of the Act.

50. Duties regarding the carrying out of the AIFM's instructions.

- (1) To comply with section 96(c) of the Act, the AIFMD custodian shall establish and implement appropriate procedures —
 - (a) to verify that the investment fund and AIFM comply with applicable laws and with the investment fund's constitutive documents; and
 - (b) to monitor the investment fund's compliance with investment restrictions and leverage limits set in the investment fund's offering documents.
- (2) The procedures implemented by the AIFMD custodian shall an escalation procedure where the investment fund has breached one of the limits or restrictions referred to in paragraph (a) and be proportionate to the nature, scale and complexity of the investment fund.

51. Duties regarding the timely settlement of transactions.

- (1) To comply with section 96(d) of the Act, the AIFMD custodian shall —
 - (a) establish and implement a procedure to detect any situation where a consideration related to the operations involving the assets of the investment fund, or of the AIFM acting on behalf of the investment fund, is not remitted to the investment fund within the usual time limits;
 - (b) notify the AIFM; and
 - (c) where the situation has not been remedied, request the restitution of the financial instruments from the counterparty where possible.
- (2) Where transactions do not take place on a regulated market, the usual time limits shall be assessed with regard to the conditions attached to the transactions (OTC derivative contracts or investments in real estate assets or in privately held companies).

52. Duties related to the investment fund's income distribution.

- (1) To comply with section 96(e) of the Act, the AIFMD custodian shall —
 - (a) ensure that appropriate measures are taken where the investment fund's auditors have expressed reserves on the annual financial statements and the investment fund, or the AIFM acting on behalf of the investment fund, shall provide the AIFMD custodian with all information on reserves expressed on the financial statements; and
 - (b) check the completeness and accuracy of dividend payments, once they are declared by the AIFM, and, where relevant, of the carried interest.
- (2) Where an AIFMD custodian considers that the income calculation has not been performed in compliance with applicable law or with the investment fund's constitutive documents, it shall notify the AIFM or the investment fund and ensure that timely remedial action has been taken in the best interest of the investment fund's investors.

53. Due diligence.

- (1) To fulfil the obligations set out in section 97(2)(c) of the Act, the AIFMD custodian shall implement and apply an appropriate documented due diligence procedure for the selection and ongoing monitoring of the delegate and that procedure shall be reviewed regularly, at least once a year, and made available upon request to the Commission.
- (2) When selecting and appointing a delegate to whom safe-keeping functions are delegated in accordance with section 97(1) of the Act, the AIFMD custodian shall exercise all due skill, care and diligence to ensure that entrusting financial instruments to this delegate provides an adequate standard of protection, and shall —
 - (a) assess the regulatory and legal framework, including country risk, custody risk and the enforceability of the delegate's contracts so as to enable the AIFMD custodian to determine the potential implication of an insolvency of the third party and inform the AIFM immediately if the segregation of assets is insufficient to protect the assets and rights of the investment fund from that third party's insolvency;
 - (b) assess whether the delegate's practice, procedures and internal controls are adequate to ensure that the financial instruments of the investment fund, or of the AIFM acting on behalf of the investment fund, are subject to a high standard of care and protection;
 - (c) assess whether the delegate's financial strength and reputation are consistent with the tasks delegated and that assessment shall be

- based on information provided by the potential third party as well as other data and information, where available; and
- (d) ensure that the delegate has the operational and technological capabilities to perform the delegated custody tasks with a satisfactory degree of protection and security.
- (3) An AIFMD custodian shall exercise all due skill, care and diligence in the periodic review and ongoing monitoring to ensure that the delegate continues to comply with the criteria and the conditions set out in section 97 of the Act and shall —
- (a) monitor the delegate's performance and its compliance with the AIFMD custodian's standards;
 - (b) ensure that the delegate exercises a high standard of care, prudence and diligence in the performance of its custody tasks and, in particular, that it effectively segregates the financial instruments in line with the requirements under regulation 38; and
 - (c) review the custody risks associated with the decision to entrust the assets to the delegate and, without undue delay, notify the investment fund or AIFM of any change in those risks.
- (4) For the purpose of paragraph 3(c) —
- (a) the review shall be based on information provided by the third party and other data and information where available;
 - (b) the AIFMD custodian shall increase the frequency and the scope of the review during market turmoil or when a risk has been identified; and
 - (c) where the AIFMD custodian becomes aware that the segregation of assets is no longer sufficient to ensure protection from insolvency because of the law of the country where the third party is located, it shall immediately inform the AIFM.
- (5) Where the delegate sub-delegates any of its delegated functions, the conditions and criteria set out in paragraphs (1), through (4) shall apply *mutatis mutandis*.
- (6) An AIFMD custodian shall monitor compliance with section 93(1) of the Act.
- (7) An AIFMD custodian shall devise contingency plans for each market in which it appoints a delegate and each contingency plan shall include the identification of an alternative provider, if any.
- (8) An AIFMD custodian shall take measures, including termination of the contract, that are in the best interest of the investment fund and its investors where the delegate no longer complies with the requirements.

54. Segregation obligations.

- (1) Where safe-keeping functions have been delegated wholly or partly to a delegate, an AIFMD custodian shall ensure that the delegate complies with section 97(3)(c) of the Act by verifying that the delegate —
 - (a) keeps and maintains records and accounts which enable it at any time and without delay to distinguish the assets of the AIFMD custodian's investment fund clients from its own assets, assets of its other clients, assets held by the AIFMD custodian for its own account, and assets held for clients of the AIFMD custodian that are not investment funds;
 - (b) maintains accurate records and accounts including correspondence to the assets safe-kept for the AIFMD custodian's clients;
 - (c) conducts, on a regular basis, reconciliations between its internal accounts and records and those of the third party to whom it has delegated safekeeping functions;
 - (d) introduces adequate organisational arrangements to minimise the risk of loss or diminution of financial instruments or of rights in connection with those financial instruments as a result of misuse of the financial instruments, fraud, poor administration, inadequate record-keeping or negligence; and
 - (e) where the delegate is an entity that is subject to effective prudential regulation and supervision that has the same effect as The Bahamas and is effectively enforced, takes the necessary steps to ensure that the investment fund's cash is held in an account or accounts in accordance with section 94(1) to 94(2) of the Act.
- (2) Where an AIFMD custodian has delegated its custody functions, in monitoring the delegate's compliance with its segregation obligations, the AIFMD custodian shall —
 - (a) ensure that the financial instruments belonging to its clients are protected from that delegate's insolvency; and
 - (b) assess what additional arrangements are to be made to minimise the risk of loss and maintain an adequate standard of protection where, according to the applicable law, related to property or insolvency, the requirements of paragraph (1) are insufficient to protect the client's financial instruments.
- (3) Paragraphs (1) and (2) shall apply *mutatis mutandis* when the delegate has decided to sub-delegate all or part of its safe-keeping functions.

55. Loss of a financial instrument held in custody.

- (1) In relation to a financial instrument held in custody by the AIFMD custodian or by a delegate or subdelegate, a loss of a financial instrument

held in custody in accordance with section 98 of the Act shall be deemed to have taken place where —

- (a) a stated right of ownership of the investment fund is demonstrated not to be valid because it either ceased to exist or never existed;
 - (b) the investment fund has been definitively deprived of its right of ownership over the financial instrument; or
 - (c) the investment fund is definitively unable to directly or indirectly dispose of the financial instrument.
- (2) Where a financial instrument is lost within the meaning of paragraph (1) —
- (a) the AIFMD custodian shall immediately notify the AIFM;
 - (b) the AIFM shall ascertain the loss of a financial instrument through a documented process, which shall be established and maintained by the AIFM and readily available to the Commission upon request; and
 - (c) the AIFM shall immediately notify investors using a durable medium where a loss is ascertained.
- (3) In the event of the insolvency of a delegate —
- (a) the AIFM and the AIFMD custodian shall closely monitor the insolvency proceedings to determine whether all or some of the financial instruments entrusted to the third party are lost within the meaning of paragraph (1); and
 - (b) the AIFM shall ascertain the loss of a financial instrument held in custody as soon as one of the circumstances under paragraph (1) occurs with certainty, which shall be no later than at the end of the insolvency proceedings.
- (4) For the purposes of this regulation —
- (a) a financial instrument held in custody shall not be deemed to be lost within the meaning of paragraph (1) where an investment fund is definitively deprived of its right of ownership in respect of a particular instrument, but this instrument is substituted by or converted into another financial instrument or instruments;
 - (b) a loss of a financial instrument held in custody shall be ascertained irrespective of whether the circumstances listed in paragraph (1) are the result of fraud, negligence or other intentional or non-intentional behaviour; and
 - (c) **“durable medium”** refers to the method used to notify the investor and can be stored, accessed easily, and reproduced at convenience.

56. AIFMD custodian liability discharge for other losses.

- (1) An AIFMD custodian shall not be liable under section 99 of the Act where the AIFMD custodian can prove that —
 - (a) the event that led to the loss is not the result of any act or omission of the AIFMD custodian or of a delegate to whom the custody of financial instruments held in custody has been delegated; and
 - (b) the AIFMD custodian could not have reasonably prevented the occurrence of the event that led to the loss having —
 - (i) taken all precautions incumbent on a diligent AIFMD custodian as reflected in common industry practice; and
 - (ii) applied rigorous and comprehensive due diligence measures.
- (2) The requirements referred to in paragraphs (1)(a) and (b) may be deemed to be met where —
 - (a) natural events beyond human control or influence occur;
 - (b) the the financial instruments held in custody are impacted by the adoption of any law, decree, regulation, decision or order by any government or governmental body, including any court or tribunal; or
 - (c) war, riots or other major upheavals occur.
- (3) The requirements referred to in paragraphs (1)(a) and (b) shall not be deemed to be met where —
 - (a) an accounting error, operational failure, or fraud has occurred; or
 - (b) the AIFMD custodian or delegate failed to apply the segregation requirements concerning the financial instruments held in custody.
- (4) An AIFMD custodian and the delegate shall not be liable under section 99 of the Act where the AIFMD custodian has ensured that the AIFMD custodian and the delegate have —
 - (a) established, implemented, applied and maintained structures and procedures, and ensured expertise which are adequate and proportionate to the nature and complexity of the assets of the investment fund in order to identify in a timely manner and monitor on an ongoing basis external events that may result in loss of a financial instrument held in custody;
 - (b) assessed on an ongoing basis whether any event presents a significant risk of loss of a financial instrument held in custody; and
 - (c) informed the AIFM of the significant risks identified and took appropriate actions, if any, to prevent or mitigate the loss of financial instruments held in custody, where actual or potential external events have been identified that are believed to present a significant risk of loss of a financial instrument held in custody.

- (5) Paragraph (4) shall apply *mutatis mutandis* to the delegate when the AIFMD custodian has contractually transferred its liability in accordance with section 98(4) and 100 of the Act.

57. Objective reasons for the AIFMD custodian to contract a discharge of liability.

- (1) An AIFMD custodian shall not discharge itself of liability unless there are objective reasons.
- (2) The objective reasons for contracting a discharge under sections 98 and 99 of the Act shall be —
- (a) limited to precise and concrete circumstances characterizing a given activity; and
 - (b) consistent with the AIFMD custodian's policies and decisions.
- (3) The AIFMD custodian shall consider objective reasons each time it intends to discharge itself of liability.
- (4) The AIFMD custodian shall be deemed to have objective reasons for contracting the discharge of its liability in accordance with sections 98 and 99 of the Act when the AIFMD custodian can demonstrate that it had no other option but to delegate its custody duties to a delegate particularly, where —
- (a) the law of the applicable jurisdiction requires that certain financial instruments be held in custody by a local entity and local entities exist that satisfy the delegation criteria laid down in sections 98 and 99 of the Act; or
 - (b) the AIFM insists on maintaining an investment in a particular jurisdiction despite warnings on the risk by the AIFMD custodian.
- (5) For the purposes of this regulation “**investment fund**” includes an EU AIF.

PART VII - INVESTMENT FUND ADMINISTRATOR

58. Self-administered investment fund.

- (1) Notwithstanding section 34 of the Act, a self-administered investment fund shall not be required to appoint an investment fund administrator.
- (2) An investment fund intending to operate and conduct business as a self-administered investment fund shall submit an application to the Commission in the prescribed form along with the prescribed fee.

59. Inter-company indebtedness.

Where an investment fund administrator owes a debt to its parent company and wants the debt to be considered as a part of capital, the debt shall be considered as part of capital and shall —

- (a) be subordinate to all other liabilities of the investment fund administrator, both in terms of its entitlement to income and its rights in a liquidation; and
- (b) not be settled without the prior written consent of the Commission.

60. Requirement for directors.

- (1) An investment fund administrator that is licensed by the Commission shall have a minimum of two individual directors.
- (2) Upon application to the Commission for licensing, the investment fund administrator shall in respect of any director, submit the prescribed application form and all documents required thereunder, including biographical details and an account of the professional qualifications and experience of each of its directors.
- (3) Where an investment fund administrator after being licensed intends to appoint a director it shall submit the information required in paragraph (2) to the Commission for its approval, prior to the appointment of that director.

61. Duties of an investment fund administrator.

An investment fund administrator shall —

- (a) generate routine financial reports, including NAV calculation on behalf of a fund;
- (b) maintain accurate records of the funds which it administers and its investors;
- (c) maintain a register of operators for funds which it administers, which register shall include the name, address, date of appointment, and date of resignation or removal of the operator;
- (d) receive and administer subscriptions and redemptions for the fund;
- (e) conduct appropriate due diligence on all investors to the funds under administration; and,
- (f) submit to the Commission all regulatory filings on behalf of the fund and its operator, investment manager, and custodian.

62. Requirements for paid up capital and professional indemnity insurance.

An investment fund administrator licensed by the Commission shall maintain unless otherwise permitted by the Commission —

- (a) where it is the holder of an unrestricted investment fund administrator's licence —
 - (i) shareholders' equity, inclusive of its paid up capital and non-distributable reserves, of not less than two hundred and fifty thousand United States dollars or the equivalent sum in a currency acceptable to the Commission; or
 - (ii) shareholders' equity, inclusive of its paid up capital and non-distributable reserves, of not less than one hundred and seventy-five thousand and fifty United States dollars or the equivalent sum in a currency acceptable to the Commission and indemnity insurance coverage of not less than five hundred thousand or the equivalent sum in a currency acceptable to the Commission;
- (b) where it is the holder of a restricted investment fund administrator's licence —
 - (i) shareholders' equity, inclusive of its paid up capital and non-distributable reserves, of not less than one hundred and twenty-five thousand United States dollars or the equivalent sum in a currency acceptable to the Commission; or
 - (ii) shareholders' equity, inclusive of its paid up capital and non-distributable reserves, of not less than one hundred thousand United States dollars or the equivalent sum in a currency acceptable to the Commission and indemnity insurance coverage of not less than two hundred and fifty thousand United States dollars or the equivalent in a currency acceptable to the Commission.

63. Notification of termination of administration agreement.

For the purpose of section 55(3) and (4) of the Act, an investment fund shall upon the termination of an investment fund administration agreement, provide written notice to the Commission of such termination providing the particulars as set out in the *Fifth Schedule*.

64. Annual declaration of an investment fund administrator.

The annual declaration made by an investment fund administrator under section 54(2) of the Act, providing the particulars as set out in Form B in the *Ninth Schedule*.

65. Requirements for Chief Executive Officer.

- (1) For the purpose of section 38 of the Act, an investment fund administrator licensed by the Commission shall submit to the Commission for prior approval, the biographical details and details the professional qualifications and experience of the individual to be appoint as the Chief Executive Officer.
- (2) The individual appointed under paragraph (1), shall have a minimum of ten years relevant experience.

66. Duties of Chief Executive Officer.

A Chief Executive Officer shall —

- (a) be responsible for providing strategic leadership for the investment fund administrator;
- (b) establish long-range goals, strategies, plans and policies for the investment fund administrator;
- (c) ensure that expenditures of the investment fund administrator are within the authorized annual budget of the investment fund administrator;
- (d) assess the principal risks of the investment fund administrator and ensure that these risks are being monitored and managed;
- (e) ensure effective internal controls and management information systems are in place;
- (f) ensure that the investment fund administrator has appropriate systems to enable it to conduct its activities both lawfully and ethically;
- (g) ensure that the investment fund administrator maintains high standards of corporate citizenship and social responsibility wherever it does business;
- (h) act as a liaison between the investment fund administrator and the Commission;
- (i) communicate effectively with shareholders, employees, government authorities, other stakeholders and the public; and
- (j) keep abreast of all undertakings, activities and all external factors affecting the investment fund administrator and ensure that processes and systems are in place to ensure that the management of the investment fund administrator is adequately informed.

67. Requirements for compliance officer.

- (1) An investment fund administrator shall appoint, with the prior approval of the Commission, an appropriately skilled individual as compliance officer.

- (2) An investment fund administrator shall submit to the Commission biographical details and an account of the professional qualifications and experience of its intended compliance officer for approval by the Commission.

68. Duties of compliance officer.

A compliance officer shall —

- (a) take all reasonable steps to ensure that the operations of the investment fund administrator are carried out in accordance with investment funds laws;
- (b) take all reasonable steps to ensure that the investment fund administrator maintains professional standards and best standards of the investment funds industry;
- (c) take all reasonable steps to ensure that the investment fund administrator institutes practices to ensure the highest possible level of compliance;
- (d) make such reports to the Commission regarding investment funds for which it is the administrator as the Commission may require; and
- (e) take all reasonable steps to ensure that the investment fund administrator is meeting its obligations and is complying with the Act and these Regulations.

69. Outsourcing of Compliance function.

- (1) For the purpose of regulation 69, and notwithstanding the requirement of section 20 of the Financial Transactions Reporting Act, 2018 (*No. 5 of 2018*), that the compliance officer be at senior management level, an investment fund administrator may, with the prior approval of the Commission, outsource the compliance function in whole or in part.
- (2) Where the investment fund administrator intends to outsource the compliance function, the investment fund administrator shall —
 - (a) notify the Commission in writing of its intention to outsource the compliance function providing the Commission with the particulars and regulatory status of the proposed compliance officer, including whether the person is an employee of a parent company or a company affiliated with the investment fund administrator;
 - (b) satisfy the Commission that the proposed compliance officer has the relevant qualifications, knowledge, experience, managerial resources and operational capacity to meet the obligations of a compliance officer; and

- (c) provide the Commission with a copy of the executed outsourcing contract with the investment fund administrator.
- (3) With respect to paragraph (2)(c), the outsourcing contract shall stipulate —
 - (a) the outsourced services to be provided;
 - (b) the responsibilities of the outsourced compliance officer and the investment fund administrator;
 - (c) the terms of service regarding the inspection of the records by the licensee or by any person authorized by the investment fund administrator;
 - (d) the terms of service including remuneration, conditions of amendment, termination, indemnification and any other considerations;
 - (e) the right of the Commission to access documents of the investment fund administrator including the working papers and notes of the compliance officer;
 - (f) the protection of clients' confidentiality in accordance with the laws of The Bahamas; and
 - (g) the prohibition of the sub-contracting, delegating, or appointment of any other person of the outsourced compliance functions by the compliance officer.
- (4) Notwithstanding the outsourcing of the compliance function, the responsibility for the compliance function remains with the investment fund administrator, who shall monitor the performance of all compliance functions to ensure the proper and effective performance thereof.

70. Appointment of Money Laundering Reporting Officer.

- (1) An investment fund administrator shall, where required by the Commission, appoint a Money Laundering Reporting Officer with the prior approval of the Commission.
- (2) Where a Money Laundering Reporting Officer must be appointed by the investment fund administrator, the investment fund administrator shall ensure that that person —
 - (a) will have a sufficient level of authority and independence to perform the role without interference by any other person;
 - (b) will report directly to the investment fund's administrator's board of Directors or a committee thereof, or to Senior Management;

- (c) has a sound understanding of the money laundering and terrorist financing risks to the licensee as well as an understanding of how the Anti-Money Laundering and Counter Financing of Terrorism framework applies to the licensee's business;
 - (d) has the relevant academic and professional qualifications for the role; and
 - (e) has practical experience.
- (3) The Commission shall determine the fitness and propriety of the person the licensee intends to appoint as Money Laundering Reporting Officer and may waive any requirement with respect to the appointment of a Money Laundering Reporting Officer subject to such conditions as the Commission may consider appropriate.
- (4) The provisions of regulation 67 shall apply *mutatis mutandis*.

PART VIII – AUDITOR

71. Approval of auditor.

- (1) A regulated person shall obtain the Commission's prior approval before the appointment of an auditor.
- (2) A regulated person seeking the approval of the Commission on the appointment of an auditor, shall satisfy the Commission that the auditor
 - (a) in the case of an individual, is a member in good standing of The Bahamas Institute of Chartered Accountants; or
 - (b) in the case of a firm of accountants, that the partners of the firm are all members of The Bahamas Institute of Chartered Accountants in good standing, or are members in good standing of any other international accounting body approved by the Commission.
- (3) The Commission may require that a regulated person provides the Commission with such other information relevant to the individual or accounting firm referred to in paragraph (2).
- (4) Where an audit of a regulated person is required under the Act or these Regulations, such audit shall adhere to the International Financial Reporting Standards as set by the International Financial Reporting Board, or Generally Accepted Accounting Principles as set by the United States Financial Accounting Standards Board.

PART IX – REPORTING

72. Reporting of annual financial statements to investors.

An investment fund or an EU AIF shall make its annual audited financial statements available to investors within four months of the end of the investment fund's financial year or within such extension of that period as the Commission may allow.

73. Production of report.

- (1) An investment fund or EU AIF shall produce at least one report in respect of each financial year.
- (2) The report required under paragraph (1) shall contain an analysis of the investment fund's performance and such other information as the Commission may require from time to time.

74. Reporting of information to investors.

Where the Commission requires that information be reported to investors under section 112 of the Act, the operators of an investment fund or an EU AIF shall take reasonable steps to advise its investors of such information.

PART X – STANDARD OPERATIONAL REQUIREMENTS FOR INVESTMENT FUNDS

75. Accounting standards for unaudited financials.

- (1) For the purpose of section 47(1) of the Act, the unaudited accounts kept by an investment fund shall adhere to the International Financial Reporting Standards as set by the International Financial Reporting Board, or Generally Accepted Accounting Principles as set by the United States Financial Accounting Standards.
- (2) Once every three years, an investment fund shall have an accountant confirm that the unaudited financials have been maintained in accordance with the standard set out in paragraph (1), and such accountant shall be either a member of The Bahamas Institute of Chartered Accountants in good standing, or a member in good standing of any other international accounting body approved by the Commission.

76. Independence.

- (1) An investment fund or EU AIF that is a unit trust shall have an investment fund administrator that is independent of the operator, investment fund manager, AIFM, custodian, or AIFMD custodian unless the investment fund administrator, operator, investment fund manager, AIFM, custodian, or AIFMD custodian are deemed to be independent of each other under paragraph (5).
- (2) Subject to paragraph (3), an investment fund or EU AIF that is a company, an investment condominium or a partnership shall have an operator that is independent of the investment fund administrator, the investment fund manager, the custodian, the AIFM, and the AIFMD custodian of the investment fund unless —
 - (a) the fund is specifically exempted by the licensor; or
 - (b) the operator is deemed to be independent of the investment fund administrator, operator, custodian, or AIFMD custodian under paragraph (5).
- (3) An investment fund that is an investment condominium shall not be required to have an operator that is independent from its administrator.
- (4) Paragraphs (1) and (2) do not apply to an investment fund that is a self-administered fund.
- (5) Where the investment fund administrator, operator, custodian and the AIFMD custodian are companies with the same parent company, the investment fund administrator, operator, custodian and the AIFMD custodian shall be deemed to be independent of each other where —
 - (a) they are subsidiaries of a financial institution;
 - (b) neither the investment fund administrator, operator, custodian or the AIFMD custodian is a subsidiary of the other;
 - (c) at least one director of a custodian or AIFMD custodian is not also a director of the investment fund administrator, operator, or the AIFMD custodian; and
 - (d) the investment fund manager, custodian or the AFMID custodian, the investment fund administrator and the operator of the investment fund or EU AIF sign an undertaking with the Commission that they will act independently of each other in their dealings with the investment fund or EU AIF; or
 - (e) the investment fund or EU AIF is established in a jurisdiction that applies similar rules to those provided in these Regulations with respect to the independence of persons carrying out the functions of the investment fund manager, custodians or AFMID custodians, operators and investment fund administrators.

77. Availability of register of investors.

An investment fund or EU AIF shall maintain a register of investors and a current copy of the register shall be kept at the principal office of the investment fund or EU AIF.

78. Advertising and public announcements.

No person shall publish, make or issue an advertisement or other invitation, including a public announcement, for persons to invest in an investment fund or EU AIF, unless the advertisement or other invitation —

- (a) contains sufficient relevant information so that it is not misleading; and
- (b) where it is made, issued or published outside The Bahamas, complies with any laws in the jurisdiction where the advertisement or other invitation is made, issued or published; or
- (c) where it is made, issued or published in The Bahamas it is approved by the Commission prior to publication upon application containing the information as set out in the *Fourth Schedule* and payment of the prescribed fee.

79. Documents to be submitted in English.

- (1) All documents submitted to the Commission or required by the Commission must be in English or accompanied by a certified translation in English.
- (2) All documents and records of the investment fund or EU AIF that are kept or maintained by the investment fund administrator must be in English or accompanied by a certified translation in English.

PART XI - APPLICATION PROCEDURE AND FORMS

80. Application for investment fund licence.

An application made to the Commission for an investment fund licence under section 11(1) of the Act, shall contain the particulars set out in Form A of the *Third Schedule* and shall be accompanied by the prescribed non-refundable application fee.

81. Application for investment fund manager registration.

An application made to the Commission for the registration of an investment fund manager under section 26(4) of the Act, shall contain the particulars set out

in Form B of the *Third Schedule* and shall be accompanied by the prescribed non-refundable application fee.

82. Application for AIFM licence.

An application made to the Commission for an AIFM licence under section 27(2) of the Act, shall contain the particulars set out in Form C of the *Third Schedule* and shall be accompanied by the prescribed non-refundable application fee.

83. Application for investment fund administrator's licence.

- (1) An application for an investment fund administrator's licence shall contain the particulars set out in Form D of the *Third Schedule* and shall be accompanied by the non-refundable application fee.
- (2) The Commission shall review every application made under paragraph (1) and shall notify the applicant in writing of its decision.
- (3) No person shall operate as a licensed investment fund administrator until it has paid the prescribed annual fee and has received, from the Commission, such evidence of licensing as determined by the Commission.

84. Review of application by Commission.

- (1) The Commission shall review an application for licensing or registration made under this Part and shall notify the applicant in writing of its decision.
- (2) No person shall operate as a regulated person until —
 - (a) it has paid the prescribed annual fee; and
 - (b) it has received from the Commission such evidence of licensing or registration as determined by the Commission.

85. Change of information in application form.

A regulated person shall notify the Commission within seven days of any change to the information in the application form for the licensing or registration of the regulated person.

86. Waiver of particulars.

The Commission may, in respect of any application for licensing or registration waive certain of the particulars required as part of the licensing or registration process.

PART XII – MISCELLANEOUS

87. Fixed administrative penalties.

The *Tenth Schedule* shall apply to a person who is in breach of a provision of the Act or these Regulations.

88. Offences.

A person who —

- (a) distributes or possesses for distribution, any offering document, advertisement or other invitation or offer to subscribe for an equity interest in an investment fund or EU AIF, that does not comply with these Regulations;
- (b) makes any false or misleading representation regarding the nature or performance of financial information of an investment fund or EU AIF;
- (c) gives false or misleading information regarding an investment fund's or EU AIF's operators, investment fund managers, investment fund advisors, investment fund administrators, custodians, AIFMs, AIFMD custodians, professional advisors or auditors;
- (d) fails to disclose the payment of any fee or charge required to be disclosed by these Regulations; or
- (e) breaches any of these Regulations regarding the operation of an investment fund or EU AIF or a non-Bahamas based investment fund in The Bahamas,

commits an offence and is liable on summary conviction to a fine of one hundred and fifty thousand dollars or to imprisonment for three years or to both such fine and imprisonment.

89. Revocation of *S.I. No. 94 of 2003*.

The Investment Funds Regulations, 2003, is hereby revoked.

FIRST SCHEDULE

(Regulation 4)

OFFERING DOCUMENT

Information to be disclosed in the offering document of the investment fund —

- 1. Details of investment fund.**
 - (a) Name, registered office and place and date of the creation of the investment fund, with an indication of its duration if limited; and
 - (b) Address of principal office of the investment fund.
- 2. Investment objectives and restrictions.**

Details of investment objectives and investment policy, including a summary of the investment and borrowing restrictions. In the event that there are no such investment or borrowing restrictions, include a statement to this effect.
- 3. Risks.**

A description of the risks involved in an investment in the investment fund.
- 4. Operators and principals.**

The names and addresses of the following parties —

 - (a) parties related to the investment fund;
 - (b) the auditors;
 - (c) the Attorneys (if applicable); and
 - (d) the bankers.
- 5. Characteristics of equity interests.**
 - (a) Minimum investment (if any);
 - (b) A description of the different types of equity interest in the investment fund including their currency of denomination;
 - (c) Form of certification; and
 - (d) Frequency of valuation and dealing, including subscription and redemption days and valuation days.

6. Application and redemption procedures.

- (a) Procedure for subscribing and redeeming equity interests in the investment fund;
- (b) The interval between the applicable date of redemption and the dispatch of the redemption proceeds subject to the discretion of the operators to determine otherwise in accordance with the provisions in the constitutive documents; and
- (c) The circumstances in which redemption of equity interests in the investment fund may be suspended.

7. Valuation of property and pricing.

- (a) The method of pricing the underlying assets of the investment fund and the circumstances under which it can change;
- (b) The policy of the investment fund for valuing unquoted securities that it holds;
- (c) The method of calculating the issue and redemption prices; and
- (d) The method of determining the value of the assets and liabilities of the investment fund and the net asset value accordingly.

8. Distribution policy.

- (a) The distribution policy and the approximate dates on which dividends will be paid (if applicable);
- (b) Name and registered office of paying company.

9. Fees and charges.

- (a) The level of all fees and charges payable by an investor, including all charges levied on subscription and redemption and switching (in the case of umbrella investment funds);
- (b) The level of all fees and charges payable by the investment fund; and
- (c) Disclosure of entitlement to brokerage or other transaction benefits of any connected persons to the investment fund.

10. Reports and accounts.

- (a) The date of the investment fund's financial year; and
- (b) A specified time in which the audited financial statements will be made available to investors.

11. Warnings.

Prominently display warnings reading substantively as follows —

- (a) Important - if you are in doubt about the contents of this offering document, you should consult your financial advisor; and
- (b) A warning that the price of equity interests in the investment fund and the income from them (where income is distributed) may be subject to market fluctuations.

12. General information.

- (a) A list of constitutive documents and an address in The Bahamas where they may be inspected free of charge or purchased;
- (b) The date of publication of the offering document;
- (c) A statement that the operators of the investment fund accept responsibility for the information contained in the offering document as being accurate as at the date of publication;
- (d) Where details of an investment fund not regulated by the Commission are disclosed in the offering document, there must be a statement that such an investment fund is not regulated by the Commission; and
- (e) A statement that in licensing of or granting an exemption to the investment fund, the Commission does not take responsibility for the financial soundness of the investment fund or for the correctness of any statements made or opinions expressed in this regard.

SECOND SCHEDULE

(Regulation 6)

PART A

CONTENTS OF THE CONSTITUTIVE DOCUMENTS

- 1. Name of Investment Fund.**
- 2. Governing law.**
- 3. For an investment fund that is a unit trust —**
 - (a) A statement that the trust deed is binding on each investor as if the investor had been a party to it and is bound by its provisions and authorizes and requires the trustee and the investment fund administrator to do as required of them by the terms of the trust deed;
 - (b) A provision that an investor is not liable to make any further payment after the investor has paid the purchase price for the units that the investor holds or owns and that no further liability can be imposed on the investor in respect of those units; and
 - (c) A declaration that the property of the investment fund is held by the trustee on trust for the investors of the units *pari passu* according to the number of units held or owned by each investor.
- 4. Investment and borrowing restrictions.**

List the investment and borrowing restrictions of the investment fund. In the event that there are no such investment or borrowing restrictions, include a provision to this effect.
- 5. Suspension and deferral of dealing.**

Provision for —

 - (a) the circumstances under which the dealing in equity interests of an investment fund can be deferred or suspended;
 - (b) the maximum interval allowed between the applicable redemption date and the payment of redemption proceeds.

6. Meetings.

There shall be provisions regarding the manner in which meetings shall be conducted in accordance with regulation 14, if applicable.

7. Distribution policy and date.

Provision for the payment of annual income, if any, and when any such distribution can be made.

8. Annual accounting period.

Provision establishing the date in the calendar year that the annual accounting period shall end.

9. Base currency.

A statement of the base currency of the investment fund.

10. Alteration of the constitutive documents.

Provision for alteration of the constitutive documents shall be made in the manner set out in paragraph (5) of regulation 6.

11. Termination of investment fund.

A statement of the circumstances in which the investment fund may be terminated.

12. Exemption standard.

Provision that nothing in the constitutive documents may provide that the operator, custodian, AIFMD custodian, investment fund administrator, investment fund manager, AIFM or investment advisor of the investment fund shall be exempted from any liability to investors imposed under Bahamian law in the case of willful default.

PART B

**INFORMATION TO BE INCLUDED IN THE CONSTITUTIVE DOCUMENTS
OR MATERIAL AGREEMENTS OF THE INVESTMENT FUND**

1. Role of custodian or AIFMD custodian.

A statement to list the duties of the custodian or AIFMD custodian, as applicable, as set out in the Act and these Regulations.

2. Role of investment fund administrator.

- (a) a statement to list the duties of the investment fund administrator as set out in regulation 62; and
- (b) a statement that the administration agreement could be terminated in the manner set out in section 55 of the Act.

3. Role of investment fund manager.

A statement to list the duties of the investment fund manager as set out in section 62 of the Act.

4. Role of AIFM.

A statement to list the duties of the AIFM as set out in Part II of the Act and in Division II of Part IV of these Regulations.

5. Fees and charges.

The following shall be stated —

- (a) the level of all fees and charges payable by an investor, including all charges levied on subscription and redemption and switching (in the case of umbrella investment funds); and
- (b) the level of all fees and charges payable by the investment fund.

THIRD SCHEDULE

(FORM A)

(Regulation 80)

INFORMATION TO BE CONTAINED IN THE APPLICATION FORM FOR AN INVESTMENT FUND LICENCE

1. Details of the investment fund —

- (a) name of the investment fund.
- (b) fund vehicle [and registered office] —
 - (i) company;

- (ii) partnership;
- (iii) trust;
- (iv) investment condominium;
- (c) evidence of approval of SMART fund structure, if applicable;
- (d) applicable law, date and country of incorporation;
- (e) quotation on any stock exchange and authorization granted by other regulatory bodies;
- (f) details of registration with any other regulatory authority —
 - (i) launch - date and place;
 - (ii) dealing – daily or weekly or other;
- (g) minimum initial subscription;
- (h) valuation of assets – daily or weekly or other;
- (i) pricing- forward or historic or other;
- (j) currency;
- (k) distribution of offering document - distributor or place;
- (l) category of fund licence —
 - (i) standard;
 - (ii) professional;
 - (iii) SMART;
- (m) fund type —
 - (i) equity;
 - (ii) bond;
 - (iii) fund of funds;
 - (iv) feeder;
 - (v) umbrella;
 - (vi) other;
- (n) fee structure —

- (i) level of all charges payable by investor;
- (ii) level of all charges payable by investment fund; and
- (o) investment objective.

2. Details of Principal Office —

- (a) name; and
- (b) address.

3. Details of the parties related to the investment fund.

Submit the following information for all relevant parties including the administrator, manager, custodian, operator, and promoter —

- (a) name;
- (b) registered office and business address;
- (c) details of licensing or registration with other regulatory or self-regulatory organizations, if applicable;
- (d) which, if any, of these companies are connected persons;
- (e) where applicable, list directors or officers appointed to more than one of these companies; and
- (f) provide sufficient evidence to prove —
 - (i) the sound reputation of each promoter;
 - (ii) the sound reputation and expertise of the person undertaking the administration of the investment fund; and
 - (iii) that the business of investment fund and any offering of equity interests will be carried out in a proper way;
- (g) indicate whether the fund is to be self-administered.

4. The approved auditor —

- (a) name;
- (b) registered office and business address;
- (c) licence or registration number of The Bahamas Institute of Chartered Accountants; or

- (d) name and address of any prescribed international accounting body that the auditor is licensed or registered with; and
 - (e) details of licence or registration of the approved auditor.
5. **Attorney –**
- (a) name;
 - (b) address; and
 - (c) details of enrolment as counsel and attorney.
6. **Banker –**
- (a) name; and
 - (b) address.

**APPLICATIONS SHOULD BE ACCOMPANIED BY THE FOLLOWING
DOCUMENTS**

1. Offering documents.
2. Certified copies of constitutive documents.
3. Copies of certificates and other documents of proof for information contained in submitted résumés.
4. Financial statements (if any) to be signed off by approved auditor.
5. Letter from the investment fund administrator confirming its consent to act.
6. Letter from investment fund manager or AIFM (as applicable) confirming its consent to act.
7. Letter from approved auditor confirming its consent to act.
8. Prescribed application fee (non-refundable).
9. Any other additional relevant documentation as requested by the Commission.

FORM B

(Regulation 81)

**INFORMATION TO BE CONTAINED IN THE APPLICATION FORM FOR AN
INVESTMENT FUND MANAGER'S REGISTRATION**

1. General details of applicant.

- A. Type of Applicant – individual, company or partnership.
 - (a) Copy of CV, if individual; and
 - (b) Audited or unaudited financial statements, in the case of a company or partnership.
- B. Required information —
 - (a) name of applicant;
 - (b) address of applicant;
 - (c) telephone number;
 - (d) fax number;
 - (e) e-mail address and website (if any); and
 - (f) name of contact person, in the case of a company.

2. Additional information,

- (a) In the case of an Investment Fund Manager registered under the Securities Industry Act 2011 (*No. 10 of 2011*) —
 - (i) Registration number;
- (b) In the case of an Investment Fund Manager's licensed in a prescribed Jurisdiction —
 - (i) Copy of licence;
 - (ii) Level of regulatory capital; and
 - (iii) Level of professional indemnity insurance maintained;
- (c) Investment Fund Manager not registered under the Securities Industry Act 2011 (*No. 10 of 2011*) or licensed in a prescribed jurisdiction —

- (i) in the case of an individual —
 - (aa) copy of passport; and
 - (bb) original or certified copy of police certificate; or
- (ii) in the case of a company —
 - (aa) certificate of incorporation;
 - (bb) constitutive documents;
 - (cc) register of shareholders and directors; and
 - (dd) due diligence documents on all directors and shareholders.

Application must be signed by or on behalf of the applicant and must be accompanied by the following documents —

1. Copies of certificates and other documents of proof for information contained in résumés.
2. Financial statements (if any).
3. Prescribed application fee (non-refundable).
4. Any other additional relevant documentation as requested by the Commission.

FORM C

(Regulation 82)

INFORMATION TO BE CONTAINED IN THE APPLICATION FORM FOR AN AIFM LICENCE

1. **Details of the applicant —**
 - (a) name of applicant;
 - (b) address of applicant;
 - (c) telephone number;
 - (d) fax number;

- (e) e-mail address (if any); and
- (f) name and address of contact person or persons.

2. Details of applicant's principal office in The Bahamas (if any) —

- (a) address;
- (b) telephone number; and
- (c) fax number.

3. Address of registered office in The Bahamas.

4. General details.

State or provide, as applicable —

- (a) place and date of incorporation and registered office;
- (b) authorized share capital;
- (c) shareholders equity;
- (d) professional indemnity insurance or own funds;
- (e) if a private company, provide following details on principal shareholders —
 - (i) a complete résumé;
 - (ii) financial and net worth statements certified by their accountants or bankers;
- (f) if a public company, provide the name and address of body that provides regulatory oversight;
- (g) a complete résumé for every director and the chief executive officer of the company, if any;
- (h) a complete résumé for senior officers as specified by the Commission;
- (i) audited financial statements for the past two years (where available);
- (j) current quarterly unaudited financial statements (where available);
- (k) if applicant is the holder of a licence under the provisions of section 4 of the Banks and Trust Companies Regulation Act (*Ch. 316*), provide a copy of its licence;

- (l) the value of the investment funds or EU AIFs under its management;
- (m) the Member State in which the AIFM is authorized or intends to apply for authorization;
- (n) all requirements listed in Division I of Part IV of these Regulations;
- (o) statement of intention to delegate any functions;
- (p) name and address of auditors and name and address of any accounting body that the auditor is registered with;
- (q) name and address of principal bankers, and contact; and
- (r) name and address of attorney.

**APPLICATION MUST BE SIGNED BY OR ON BEHALF OF THE
APPLICANT AND MUST BE ACCOMPANIED BY THE FOLLOWING
DOCUMENTS**

1. Copies of certificates and other documents of proof for information contained in résumés.
2. Financial statements (if any).
3. Two character references for each director.
4. Prescribed application fee (non-refundable).
5. Any other additional relevant documentation as requested by the Commission.

FORM D

(Regulation 83)

**INFORMATION TO BE CONTAINED IN THE APPLICATION FORM FOR AN
INVESTMENT FUND ADMINISTRATOR'S LICENCE**

1. **Details of the applicant —**
 - (a) name of applicant;
 - (b) address of applicant;

- (c) telephone number;
- (d) fax number; and
- (e) e-mail address (if any).

2. Type of licence applied for —

- (a) unrestricted; or
- (b) restricted.

3. Details of applicant's principal office in The Bahamas (if any) —

- (a) address;
- (b) telephone number; and
- (c) fax number.

4. Address of registered office in The Bahamas.

5. Records in The Bahamas.

Address in The Bahamas where administration records of the investment funds under its administration are available.

6. General details.

State or provide, as applicable —

- (a) place and date of incorporation and registered office;
- (b) authorized share capital;
- (c) shareholders equity;
- (d) if private company, provide following details on principal shareholders —
 - (i) a complete résumé;
 - (ii) financial and net worth statements certified by their accountants or bankers;
- (e) if a public company, provide the name and address of body that provides regulatory oversight;
- (f) a complete résumé for every director and the Chief Executive Officer;
- (g) a complete résumé for senior officers including the compliance officer, and the chief financial officer;

- (h) audited financial statements for the past two years (where available);
 - (i) current quarterly unaudited financial statements (where available);
 - (j) if applicant is the holder of a licence under the provisions of section 4 of the Banks and Trust Companies Regulation Act (*Ch. 316*), provide a copy of its licence;
 - (k) name and address of auditors and name and address of any accounting body that the auditor is registered with;
 - (l) all requirements listed in Part VII of these Regulations;
 - (m) name and address of principal bankers, and contact; and
 - (n) name and address of attorney.
7. **Individual agents resident in The Bahamas (if any):**
- (a) names;
 - (b) complete résumés.
8. **Restricted investment fund administrator.**

State the investment funds that the applicant would propose to administer when licensed in The Bahamas.

**APPLICATION MUST BE SIGNED BY OR ON BEHALF OF THE
APPLICANT AND MUST BE ACCOMPANIED BY THE FOLLOWING
DOCUMENTS**

1. Copies of certificates and other documents of proof for information contained in résumés.
2. Financial statements (if any).
3. Prescribed application fee (non-refundable).
4. Any other additional relevant documentation as requested by the Commission.

FOURTH SCHEDULE

(Regulation 78)

**APPLICATION FOR APPROVAL OF PUBLICATION OF ADVERTISEMENT
OR OTHER INVITATIONS MADE TO PERSONS IN THE BAHAMAS**

General details —

1. Name of investment fund.
2. Bahamas-based or Non-Bahamas based.
3. Jurisdiction of licence or registration.
4. Investment fund registration or licence number.
5. Names of directors of investment fund.
6. Contents of the advertisement or other invitation to invest.
7. Name of newspaper, journal or other media.
8. Summary of schedule of advertisement.

**APPLICATION MUST BE ACCOMPANIED BY THE FOLLOWING
DOCUMENTS**

1. Prescribed application fee (non-refundable).
2. Any other additional relevant information as requested by the Commission.

FIFTH SCHEDULE

(Regulation 63)

Notification of termination of administration agreement —

1. Name of investment fund.
2. Investment fund licence number.

3. Name and address of outgoing investment fund administrator.
4. Effective date of termination of agreement with outgoing investment fund administrator.
5. Name and address of successor investment fund administrator.
6. Commencement date of agreement with successor investment fund administrator.
7. Reasons for termination of agreement with outgoing investment fund administrator.
8. Any other additional information required by the Commission.

SIXTH SCHEDULE

(Regulation 15)

FORM A

NOTIFICATION OF TRANSFER OF INVESTMENT FUND FROM THE BAHAMAS

1. Name of investment fund.
2. Evidence of the licensing or registration of the investment fund from the jurisdiction to which it intends to transfer.
3. Effective date of transfer.
4. Date of termination of relationship with investment fund administrator (if applicable).
5. Date of termination of relationship with investment fund manager or AIFM and investment fund advisor (if applicable), or the investment fund advisor (if applicable).
6. Name and registration details of representative if the investment fund seeks to continue to offer its equity interests for sale to accredited investors in or from The Bahamas.
7. If a company, please attach a certified copy of the certificate of continuation under foreign law issued by the Registrar General of The Bahamas and the certificate of continuation or registration issued by the competent authority of the transferee jurisdiction.

8. If a unit trust, please attach a certified copy of the deed of change of domicile.
9. If a partnership, please attach a certified copy of the resolution of the general partners providing for the transfer of the partnership and any certificate of registration or licence issued by the competent authority of the transferee jurisdiction.
10. Any other additional information required by the Commission.

FORM B

(Regulation 15)

**NOTIFICATION OF TRANSFER OF INVESTMENT FUND TO THE
BAHAMAS**

1. Name of the investment fund.
2. Name of the investment fund administrator;
3. Name of the investment fund manager or AIFM if applicable.
4. Address of registered office or principal office Investment Fund or the Investment Fund Administrator in The Bahamas;
5. Name and address of the operators of the investment fund.
6. The current offering document.
7. Evidence that the investment fund has complied with the laws of the jurisdiction outside The Bahamas for transfer of the investment fund.
8. Evidence of the surrender of the license of the investment fund transferring, in the foreign jurisdiction.
9. Any other additional information as required by the Commission.
10. The proposed date of transfer of the investment fund.
11. Any other additional information required by the Commission.

SEVENTH SCHEDULE

(Regulation 15)

**NOTIFICATION OF TRANSFER OF INVESTMENT FUND
ADMINISTRATOR**

1. Name of the investment fund.
2. The Investment fund licence number.
3. Name and address of the existing investment fund administrator.
4. Effective date of termination of relationship with the existing investment fund administrator.
5. Name of the new investment fund administrator;
6. Effective date of commencement of relationship with the new investment fund administrator.
7. If the investment fund is transferring from an unrestricted investment fund administrator to a restricted investment fund administrator, the Commission shall be advised of the licence status of the latter administrator; and
8. Any other additional information as the Commission may deem necessary.

EIGHTH SCHEDULE

(Regulation 16)

APPLICATION FOR APPROVAL TO RE-LAUNCH A SUSPENDED FUND

1. **Details of investment fund —**
 - (a) name of investment fund;
 - (b) investment fund licence or registration number;
 - (c) effective date of suspension;
 - (d) reasons for suspension; and

- (e) proposed date for re-launch of investment fund.
2. Details of re-launch.
- Please attach details pertaining to the re-launch of the investment fund and any supporting documents.

APPLICATION MUST BE ACCOMPANIED BY —

- (a) a copy of the resolution of directors or other confirmation of the approval of the operators or investors, as applicable, of the investment fund for the re-launch of the investment fund;
- (b) the prescribed fee; and
- (c) any other additional information required by the Commission.

NINTH SCHEDULE

FORM A

(Regulation 17)

ANNUAL DECLARATION FOR INVESTMENT FUND

I,the Secretary or Operator or Senior Officer of (name of fund) having investment fund licence number (.....), confirm that all of the information filed with the Commission in respect of (name of fund) is current and applicable as at the date of this declaration.

Signed:

Date:

FORM B

(Regulation 64)

ANNUAL DECLARATION FOR AN INVESTMENT FUND ADMINISTRATOR

We or I, as the holder of an unrestricted or restricted investment fund administrator's licence confirm that all of the information filed with

the Commission on behalf of(name of investment fund administrator) is current and applicable as at the date of this declaration.

Signed:

Date:

FORM C

(Regulation 23)

ANNUAL DECLARATION FOR AN INVESTMENT FUND MANAGER

We or I,the Secretary or Senior Officer of (name of investment fund manager) having investment fund manager registration number (.....), confirm that all of the information filed with the Commission in respect of (name of fund) is current and applicable as at the date of this declaration.

Signed:

Date:

FORM D

(Regulation 26)

ANNUAL DECLARATION FOR AN AIFM

We or I,the Secretary or Senior Officer of(name of AIFM) having AIFM licence number (.....), confirm that all of the information filed with the Commission in respect of (name of fund) is current and applicable as at the date of this declaration.

Signed:

Date:

TENTH SCHEDULE

(Regulation 87)

FIXED ADMINISTRATIVE PENALTIES

TABLE A

The following table represents penalties for non-compliance of an Investment Fund —

INVESTMENT FUNDS REGULATIONS, 2020

	Requirement	Timelines to Comply	Legislative Reference (IFA)	Penalty for First Infraction*
Financial Reporting	Audited financial statements	Within 6 months of end of fiscal year end	Section 109	\$200 each day that financials are outstanding
	General financial reporting	As required	Section 110	\$200 each day of non-compliance
Statutory Obligations	Annual declaration	Annually - before 31st January	Section 43(1)(a)	\$100 each day of non-compliance
	Amendments to offering and constitutive documents	Immediately	Section 10(5)	\$100 each day of non-compliance
	Reporting or information to investors	Within 21 days of occurrence	Section 112	\$100 each day of non-compliance
	Ongoing statutory reporting obligations	Within 5 days of change	Section 111	\$100 each day of non-compliance
	Change in operators	Immediately	Section 10(5)	\$100 each day of non-compliance
	Change in registered office or principal office	Immediately	Section 10(5)	\$100 each day of non-compliance
	Surrender of licence	21 days prior to the effective date of surrender	Section 21(1)	\$200 each day of non-compliance
	Notification of transfer from The Bahamas	Within 14 days of being issued the licence from the foreign jurisdiction	Section 19(1)	\$100 each day of non-compliance
	Notification of transfer to The Bahamas	At least 21 days prior to the effective date of transfer	Section 20(1)	\$100 each day of non-compliance
	Notification of dismissal of investment fund administrator	Within 14 days of terminating the agreement and appointing new investment fund administrator	Section 55 (4)	\$100 each day of non-compliance
Notification of appointment of new investment fund administrator	Immediately upon the expiration of the notice period in the administration	Section 55(3)	\$100 each day of non-compliance	

INVESTMENT FUNDS REGULATIONS, 2020

		agreement or any extension granted by Commission		
	Notification of voluntary surrender of licence	At least 21 days prior to intended date of surrender	Section 21(2)	\$100 each day of non-compliance
	Inform in writing of suspending activity	Within 14 days of suspension	Section 22(2)	\$100 each day of non-compliance
	Winding up or closure	Within [30] days (or such other time period prescribed) before such commencement	Section 49	\$100 each day of non-compliance

***Note:** Subsequent infractions of a filing requirement within the same calendar year referred for enforcement action.

TABLE B

The following table represents penalties for non-compliance of an investment fund administrator —

	Requirement	Timelines to Comply	Legislative Reference (IFA)	Penalty for First Infraction*
Financial Reporting	Audited financial statements	Within 4 months of end of fiscal year end	Section 109	\$200 each day that financials are outstanding
	Requirement for paid up capital and professional indemnity insurance	Ongoing	Section 58	\$200 each day of non-compliance Revocation of licence after [90] days of non-compliance
	General financial reporting	As required	Section 110	\$200 each day of non-compliance
Statutory Obligations	Annual declaration (all)	Annually - before 31st January	Section 43(1)(a)	\$100 each day of non-compliance
	Notification of change in principal office	Within 14 days of change	Section 52	\$100 each day of non-compliance
	Notification of change in obligations to the investment fund	Immediately	Section 52	\$100 each day of non-compliance

INVESTMENT FUNDS REGULATIONS, 2020

Notification of occurrence of any business in contravention of the Act or other applicable legislation	Immediately	Section 52	\$100 each day of non-compliance
Notification of when fund is operating in a manner prejudicial to investors or creditors	Immediately	Section 60	\$200 each day of non-compliance
Ongoing statutory reporting obligations	Within 5 days of change	Section 111	\$100 each day of non-compliance
Reporting or information to investors	Within 21 days of occurrence	Section 112	\$100 each day of non-compliance
Winding Up or Closure	Within 30 days after commencement	Section 49	\$100 each day of non-compliance
Change in transfer or disposal of shares	Immediately	Section 57	\$200 each day of non-compliance
Notification of termination of administration	At the same time notice is given to the fund	Section 55	\$200 each day of non-compliance

***Note:** Subsequent infractions of a filing requirement within the same calendar year referred for enforcement action.

TABLE C

The following table represents penalties for non-compliance of an operator —

	Requirement	Timelines to Comply	Legislative Reference (IFA)	Penalty for First Infraction*
Financial Reporting	General financial reporting	As required	Section 110	\$200 each day of non-compliance

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Statutory Obligations	To ensure fund compliance	Ongoing	Section 61	\$200 each day of non-compliance
	Ongoing statutory reporting obligations	Within 5 days of change	Section 111	\$100 each day of non-compliance
	Reporting or information to investors	Within 21 days of occurrence	Section 112	\$100 each day of non-compliance
	Annual declaration	Annually	Section 43(1)(a)	\$100 each day of non-compliance

***Note:** Subsequent infractions of a filing requirement within the same calendar year referred for enforcement action.

TABLE D

The following table represents penalties for non-compliance for investment fund managers —

	Requirement	Timelines to Comply	Legislative Reference (IFA)	Penalty for First Infraction*
Financial Reporting	Requirement for paid up capital or own funds and professional indemnity insurance	Ongoing	Section 63 (2)(b)	\$200 each day of non-compliance
	General financial reporting	As required	Section 110	\$200 each day of non-compliance
Statutory Obligations	Annual declaration	Annually	Section 43(1)(a)	\$100 each day of non-compliance
	Ongoing statutory reporting obligations	Within 5 days of change	Section 111	\$100 each day of non-compliance
	Reporting or information to investors	Within 21 days of occurrence	Section 112	\$100 each day of non-compliance
	Winding up or closure	Within 30 days after commencement	Section 49	\$100 each day of non-compliance
	Delegation of functions	Before delegation takes effect	Section 65	\$200 each day of non-compliance

***Note:** Subsequent infractions of a filing requirement within the same calendar year referred for enforcement action.

TABLE E

The following table represents penalties for non-compliance of a custodian —

	Requirement	Timelines to Comply	Legislative Reference (IFA)	Penalty for First Infraction*
Financial Reporting	General financial reporting	As required	Section 110	\$200 each day of non-compliance
	Segregation of fund assets	Ongoing	Section 71	\$200 each day of non-compliance
	Ongoing statutory reporting obligations	Within 5 days of change	Section 111	\$100 each day of non-compliance
	Reporting or information to investors	Within 21 days of occurrence	Section 112	\$100 each day of non-compliance
	Annual declaration	Annually	Section 43(1)(a)	\$100 each day of non-compliance

*Note: Subsequent infractions of a filing requirement within the same calendar year referred for enforcement action.

TABLE F

The following table represents penalties for non-compliance of an AIFMD custodian —

	Requirement	Timelines to Comply	Legislative Reference (IFA)	Penalty for First Infraction*
Financial Reporting	Annual report	No later than 6 months after end of fiscal year end	Section 101	\$200 each day that financials are outstanding
	General financial reporting	As required	Section 110	\$200 each day of non-compliance
Statutory Obligations	Annual declaration	Annually	Section 43(1)(a)	\$100 each day of non-compliance
	Reporting or information to investors	Ongoing	Sections 102 and 112	\$100 each day of non-compliance
	Occurrence of any change to appointment of	Immediately	Section 91(4)	\$100 each day of non-compliance

INVESTMENT FUNDS REGULATIONS, 2020

	AIFMD custodian			
	Cash flow monitoring	Ongoing	Section 93	\$200 each day of non-compliance
	Ongoing statutory reporting obligations	Within 5 days of change	Section 111	\$100 each day of non-compliance
	Safekeeping of assets	Ongoing	Sections 94 and 95	\$200 each day of non-compliance
	Delegation of functions	Before delegation takes effect	Section 97	\$200 each day of non-compliance

***Note:** Subsequent infractions of a filing requirement within the same calendar year referred for enforcement action.

TABLE G

The following table represents penalties for non-compliance of an AIFM —

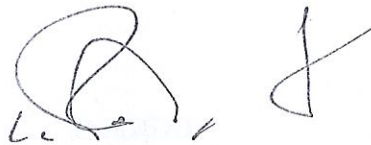
	Requirement	Timelines to Comply	Legislative Reference (IFA)	Penalty for First Infraction*
Financial Reporting	Notification to Commission of marketing or managing EU AIFs	Within 3 months of the coming into operation of these Regulations or immediately when Regulations in force	Section 72(1)	\$200 each day of non-compliance
	Requirement for capital or own funds and professional indemnity insurance	Ongoing	Sections 31(f) and 74	Revocation of licence for non-compliance
	General financial reporting	As required	Section 110	\$200 each day of non-compliance
Statutory Obligations	Annual declaration	Annually	Section 43(1)(a)	\$100 each day of non-compliance
	Reporting or information to investors	Within 21 days of occurrence	Section 112	\$100 each day of non-compliance
	Compliance with the Act	Immediately	Section 76	\$100 each day of non-compliance

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	Ongoing statutory reporting obligations	Within 5 days of change	Section 111	\$100 each day of non-compliance
	Delegation of functions	Before delegation takes effect	Section 88	\$200 each day of non-compliance

*Note: Subsequent infractions of a filing requirement within the same calendar year referred for enforcement action.

Made this 30th day of January, 2020.



MINISTER RESPONSIBLE FOR FINANCE