



BERMUDA

INVESTMENT FUNDS (SPECIFIED JURISDICTION FUND)
(JAPAN) RULES 2012

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TABLE OF CONTENTS

1	Citation
2	Application
3	Interpretation
4	Constitution of a fund
5	Publication of unit prices
6	Annual and periodical reports
7	Submission of activity reports
8	Functions of fund administrator
9	Functions of custodian
10	Custodian to supervise sub-custodian
11	Functions of investment manager
12	Investment manager may delegate
13	Standards and principles of financial reports
14	Minimum information for inclusion in financial statements
15	Functions of auditor
16	Concurrence with auditing standards by auditor
17	Additional audit adherence
18	Audited financial statements
19	Consent of auditor to publish report

The Bermuda Monetary Authority, in exercise of the power conferred by section 37 of the Investment Funds Act 2006, as read with paragraph 6 of the Investment Funds (Specified Jurisdiction Fund) (Japan) Order 2012, makes the following Rules:

INVESTMENT FUNDS (SPECIFIED JURISDICTION FUND) (JAPAN) RULES 2012

Citation

1 These Rules may be cited as the Investment Funds (Specified Jurisdiction Fund) (Japan) Rules 2012.

Application

2 These Rules apply to a fund authorised and classified in accordance with paragraph 5 of the Investment Funds (Specified Jurisdiction Fund) (Japan) Order 2012 as a specified jurisdiction fund for Japan.

Interpretation

3 In these Rules, unless the context otherwise requires—

“accounting principles” or “GAAP” means generally accepted accounting principles;

“the Act” means the Investment Funds Act 2006;

“fund” means specified jurisdiction fund for Japan;

“registered or principal office” means the registered or principal office of the fund in Bermuda;

“reporting standards” or “IFRS” means International Financial Reporting Standards.

Constitution of a fund

4 (1) The constitution of a fund shall provide for the following matters—

(a) the terms upon which units are issued, including the terms and circumstances, if any, upon which the rights and restrictions attaching to the units may be changed; and

(b) the appointment of an auditor.

(2) The constitution of a fund shall be made available for inspection by a participant or prospective participant of the fund at the fund’s registered or principal office, or if the fund has a service provider in Bermuda, at the office of the service provider.

(3) Copies of the constitution shall be made available to a participant or prospective participant on payment of any reasonable costs associated with the making and forwarding of such copies.

Publication of unit prices

5 A fund shall ensure that the issue and redemption or repurchase prices for its units at the most recent issue and redemption or repurchase date is made available on request without charge at the fund’s registered or principal office, or if the fund has a service provider in Bermuda, at the office of the service provider.

Annual and periodical reports

6 (1) A fund shall, within six months of the end of its financial year or within such other period as may be specified in the fund’s prospectus, prepare and distribute, or cause

INVESTMENT FUNDS (SPECIFIED JURISDICTION FUND) (JAPAN) RULES
2012

to be prepared and distributed, an annual report to participants of the fund without charge, which shall include the audited financial statements of the fund.

(2) The operator of a fund may prepare periodical reports in accordance with the fund's prospectus and distribute such reports, including interim financial statements, to participants of the fund.

Submission of activity reports

7 (1) The operator of a fund shall submit to the Authority, no later than twenty business days from the last day of each month, a written report on the activities of the fund for the reporting period.

(2) A report shall contain the following information—

- (a) the name of the fund together with all previous names;
- (b) the net asset value of each unit held by participants of the fund;
- (c) the percentage change in the net asset value of the fund and each unit from the previous reporting period;
- (d) the value of the net assets of the fund;
- (e) the number and value of new subscriptions for the reporting period;
- (f) the number and value of redemptions or repurchases in the reporting period; and
- (g) the total number of units in issue at the end of the reporting period.

(3) In this Rule, "reporting period" means reporting on a monthly basis.

Functions of fund administrator

8 (1) The fund administrator shall administer the fund in accordance with—

- (a) the Act and these Rules;
- (b) the fund's constitution;
- (c) the fund's prospectus;
- (d) the specific contractual arrangements; and
- (e) any proper directions given from time to time by the operator—
 - (i) pursuant to a power conferred on the operator by the fund's constitution; and
 - (ii) which is consistent with the provisions of the documents referred to in subparagraphs (a), (b), (c) and (d).

(2) Where relevant, the fund administrator shall ensure—

- (a) that the issue, transfer, conversion and redemption or repurchase of units of the fund are carried out in accordance with the fund's constitution,

INVESTMENT FUNDS (SPECIFIED JURISDICTION FUND) (JAPAN) RULES
2012

- prospectus, subscription agreement, and all applicable laws and these Rules;
- (b) that the net asset value of the units and their issue, conversion and redemption or repurchase prices, are calculated in accordance with the fund's constitution, prospectus, and subscription agreement, and that such prices are made available to participants or potential participants of the fund;
 - (c) that the following are available—
 - (i) the necessary office facilities, equipment, and personnel required to enable the fund administrator to carry out its functions; and
 - (ii) the general administrative services required by the fund to carry out its business affairs and to ensure compliance with all applicable laws and these Rules;
 - (d) that subject to the Act, these Rules, and the Companies Act 1981, periodical reports are prepared for participants of the fund in such form as the operator of a fund may determine;
 - (e) that the accounts of the fund and financial books and records are maintained in good order where such accounts, books and records are required—
 - (i) by the Act and these Rules;
 - (ii) by the Companies Act 1981;
 - (iii) by any other law; and
 - (iv) by the fund's constitution, prospectus, and subscription agreement;
 - (f) except where a separate registrar is appointed, that the register required by the fund's constitution is maintained;
 - (g) except where the fund administrator maintains the register, that the procedures of the registrar and the directions given to the registrar relating to the maintenance of the register are effectively monitored; and
 - (h) that the distribution to the participants of the fund of all dividends, or other distributions which may from time to time be declared, are paid by the fund on its units.
- (3) A fund administrator shall—
- (a) keep a copy of the register at its offices for inspection by participants of the fund during normal office hours;
 - (b) prepare, or where a registrar has been appointed, ensure that the registrar prepares and, if required, seals new certificates and balance certificates on behalf of the fund;

INVESTMENT FUNDS (SPECIFIED JURISDICTION FUND) (JAPAN) RULES
2012

- (c) ensure that certificates for units in the fund are issued or cancelled in accordance with the provisions, if any, of the fund's constitution; and
- (d) provide, or where a separate registrar is appointed, ensure that the registrar provides, such facilities as may from time to time be necessary with respect to the replacement of certificates or transfer of units of the fund.

Functions of custodian

- 9 (1) A custodian shall, where relevant—
- (a) provide for the safekeeping of the certificates and documents of title to investments of the fund; and
 - (b) carry out or cause to be carried out such directions of the fund administrator, investment manager, and the operator in relation to any investments as may be provided by contract, unless those directions conflict with the fund's constitution, prospectus, the subscription agreement, or applicable laws and these Rules.
- (2) A custodian shall be entitled to request from the fund administrator or from the fund, and the fund administrator or the fund shall provide upon such request, copies of records and information relating to the following—
- (a) the receipt and application of subscription monies for units of the fund;
 - (b) the issue, conversion, and redemption or repurchase of units of the fund;
 - (c) the transfer of the net proceeds received on the sale of investments of the fund;
 - (d) the application of all capital and income of the fund; and
 - (e) the calculation in accordance with the fund's constitution, prospectus, and subscription agreement, of the net asset value of the units thereof and their issue, conversion, and redemption or repurchase prices.

Custodian to supervise sub-custodian

10 A custodian shall maintain an appropriate level of supervision over each sub-custodian and make necessary periodic enquiries to confirm that each sub-custodian continues to competently discharge its obligations.

Functions of investment manager

- 11 (1) The fund's investment manager shall—
- (a) ensure that the subscription monies received by the fund are applied in accordance with the fund's constitution, prospectus, and subscription agreement;
 - (b) ensure that on the sale of any assets of the fund the net proceeds of the sale are remitted to the custodian within reasonable time limits;

INVESTMENT FUNDS (SPECIFIED JURISDICTION FUND) (JAPAN) RULES
2012

- (c) ensure that the income of the fund is applied in accordance with the fund's constitution, prospectus, and subscription agreement;
 - (d) ensure that the investment of the assets of the fund is in accordance with the fund's investment objectives and within any investment restrictions as stated in the fund's constitution, prospectus, and subscription agreement; and
 - (e) provide within a reasonable time such information and directions as may be required to enable the custodian or any sub-custodian to perform its contractual obligations in respect of the fund.
- (2) The investment manager shall deposit with or to the order of the custodian, or any sub-custodian, all certificates or documents of title to the investments of the fund.
- (3) The investment manager shall establish or monitor procedures for the holding of investments of the fund by the custodian or any sub-custodian.
- (4) Except as provided in paragraph (5), the investment manager of a fund shall not on behalf of such fund—
- (a) sell any units short if, as a result of such short sale, the total value of all units sold short on behalf of such fund would immediately following such short sale exceed the value of its net assets;
 - (b) borrow money if, as a result of such borrowing, the aggregate amount of outstanding borrowings effected on behalf of such fund would immediately following such borrowing exceed ten per cent of the value of its net assets, except that—
 - (i) the limitation on borrowing may be temporarily exceeded in special situations including, without limitation, a merger of the fund with another investment fund, or other type of collective investment scheme;
 - (ii) the limitation on borrowing may be exceeded if—
 - (A) the objective of such fund is to invest all, or substantially all, of the proceeds of the issue of its units in real property, including interests in real property; and
 - (B) the investment manager considers that any borrowing in excess of such limitation is necessary to ensure the sound management of the assets of such fund or to protect the interests of the investors in such fund;
 - (c) acquire the shares of any one company which is not a fund if, as a result of such acquisition, the total number of shares of such company carrying voting rights held by all investment funds managed by the investment manager would exceed fifty per cent of the total number of all issued and outstanding shares of such company carrying voting rights;
 - (d) acquire any investment which is not listed on an appointed stock exchange or which is not readily realizable if, as a result thereof, the total value of all

INVESTMENT FUNDS (SPECIFIED JURISDICTION FUND) (JAPAN) RULES
2012

such investments held by such fund would immediately following such acquisition exceed fifteen per cent of the value of its net assets, provided that the investment manager shall not be restricted from acquiring any investment where the method of valuation of such investment is clearly disclosed in such fund's prospectus; or

- (e) enter into any transactions which are detrimental to the interests of the fund's participants or which are contrary to the proper management of the assets of the fund including, without limitation, transactions which are intended to benefit the investment manager or third parties other than the participants in the fund.

(5) Nothing in paragraph (4) shall prevent an investment manager on behalf of a fund from acquiring all or any shares, units, interests or other investments in any company, unit trust, partnership or other person where such company, unit trust, partnership or other person—

- (a) is an investment fund or other type of collective investment scheme;
- (b) forms part of a master fund or feeder fund or other similar structure or group of companies or entities; or
- (c) is a special purpose entity which directly facilitates the investment objective or strategy (in whole or in part) of the fund.

Investment manager may delegate

12 An investment manager may appoint a sub-adviser, or sub-advisers, as it thinks fit to carry out on its behalf any and all of the obligations of the investment manager, but the investment manager shall remain responsible to the fund for the performance by such persons of any function so delegated.

Standards and principles of financial reports

13 (1) Financial statements and other financial information distributed by or on behalf of the fund, and financial information used in the determination of net asset value, shall be prepared in accordance with reporting standards or accounting principles as specified in the fund's prospectus.

(2) A fund shall adopt IFRS or appropriate GAAP in preparing its financial statements, and in making such a determination, the operator of the fund shall consider—

- (a) the requirements of any securities authorities or other agencies or supervisory or regulatory bodies to which the fund is subject;
- (b) the jurisdiction in which the majority of participants, or potential participants, in the fund reside;
- (c) the jurisdictions in which the sponsor, promoter and investment manager are located; and
- (d) the proposed business of the fund and the nature of its proposed investments.

INVESTMENT FUNDS (SPECIFIED JURISDICTION FUND) (JAPAN) RULES
2012

Minimum information for inclusion in financial statements

14 The financial statements of a fund shall disclose the following minimum information—

- (a) in relation to the statement of net assets, balance sheet, or statement of assets and liabilities—
 - (i) cash and bank balances;
 - (ii) accrued investment income receivable;
 - (iii) amounts receivable on subscriptions for the fund's units;
 - (iv) receivables in respect of sales of investments;
 - (v) unamortised organisation costs;
 - (vi) loans and other forms of borrowing;
 - (vii) the amounts payable on redemption or repurchase of the fund's units;
 - (viii) the amounts payable on distribution; and
 - (ix) net asset value of each investment;
- (b) in relation to the statement of operations, or statement of income and expenses—
 - (i) investment income by category;
 - (ii) other income;
 - (iii) such other expenses as are material, including amortisation of organisation costs, auditors' fees, legal fees, and other professional fees;
 - (iv) taxes;
 - (v) net income;
 - (vi) realised gains or losses on investments and foreign currencies, unless separately disclosed in the statement of changes in net assets or in the financial position; and
 - (vii) unrealised gains or losses on investments and foreign currencies, unless separately disclosed in the statement of changes in net assets or in the financial position;
- (c) a statement of material changes in net assets or in financial position of the fund; and
- (d) in relation to the notes to financial statements—
 - (i) unless the reporting standards have been followed, the jurisdiction whose accounting principles has been followed in the preparation of the financial statements;

- (ii) significant accounting policies, including—
 - (A) the basis of valuation of investments including the basis of valuation of unquoted and unlisted investments;
 - (B) the basis of recognition of investment income;
 - (C) foreign currency translation policies and disposition of gains or losses;
 - (D) the basis of amortisation of organisation costs, if material; and
 - (E) any other accounting policy adopted to deal with items which are judged material;
- (iii) any changes to accounting policies made during the period; and
- (iv) an analysis of the material contingent liabilities not provided for in the financial statements.

Functions of auditor

15 (1) An auditor shall be responsible for determining which auditing standards shall be applied in his audit and, in making his selection, the auditor shall consider the reporting standards or accounting principles approved by the fund for the preparation of the financial statements to be audited.

(2) An auditor shall—

- (a) audit the financial statements to be included in an annual report to the participants of the fund in accordance with the reporting standards or the applicable accounting principles; and
- (b) make a report to the participants in accordance with the reporting standards or accounting principles, as the case may be.

Concurrence with auditing standards by auditor

16 An auditor shall consider, in determining whether or not to accept the appointment as auditor, whether or not he concurs with the choice of reporting standards or applicable accounting principles to be applied in preparing the financial statements.

Additional audit adherence

17 An auditor shall, in addition to the specific requirements of these Rules, adhere to the auditing requirements of any securities exchange or other supervisory or regulatory bodies to which the fund is subject.

Audited financial statements

18 Subject to the requirements of the reporting standards or relevant accounting principles, as the case may be, and those of any relevant securities exchanges or other supervisory or regulatory bodies, audited financial statements of a fund shall include—

INVESTMENT FUNDS (SPECIFIED JURISDICTION FUND) (JAPAN) RULES
2012

- (a) a statement of net assets, a balance sheet, or a statement of assets and liabilities;
- (b) a statement of operations, or a statement of income and expenses;
- (c) a statement of changes in net assets or in the financial position;
- (d) a statement of retained earnings or deficit, if appropriate; and
- (e) notes to the financial statements containing disclosure as required by—
 - (i) the reporting standards or the relevant accounting principles;
 - (ii) any securities exchanges or other supervisory or regulatory bodies to which the fund is subject; and
 - (iii) such further information as is required by the Act, these Rules, the Companies Act 1981, and any relevant provisions of the fund's constitution and prospectus.

Consent of auditor to publish report

19 A fund shall not publish or distribute any report of the auditor in respect of the fund without receiving the written consent of the auditor.

Made this 4th day of June 2012

Chairman
Bermuda Monetary Authority