



BERMUDA

INVESTMENT FUND RULES 2019

BR 135 / 2019

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In exercise of the powers conferred upon it by section 37 of the Investment Funds Act 2006, the Bermuda Monetary Authority makes the following Rules:

Citation

- 1 These Rules may be cited as the Investment Fund Rules 2019.

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Interpretation

2 In these Rules—

“the Act” means the Investment Funds Act 2006;

“external valuer” means a person who—

- (a) makes the final determination on the net asset value of an investment fund;
- (b) is independent of the investment fund, the investment manager and any other persons connected to the investment fund or the investment manager; and
- (c) is a fit and proper person to act as such in relation to the investment fund;

“fit and proper person” shall be construed as provided in paragraph 1 of the Schedule to the Act;

“fund administrator” has the meaning given in section 2 of the Act;

“fund administration provider business” has the meaning given under section 2(2) of the Fund Administration Provider Business Act 2019;

“investment fund” has the meaning given in section 2 of the Act;

“investment manager” has the meaning given in section 2 of the Act;

“offering document” has the meaning given in section 2 of the Act;

“operator” has the meaning given in section 2 of the Act;

“participant” has the meaning in under section 2 of the Act;

“service provider” has the meaning in under section 2 of the Act;

“standard fund” means a class of investment fund as provided under section 11(1)(d) of the Act.

Application

3 These Rules shall apply to all investment funds that are authorised or registered by the Authority under the Investment Funds Act 2006.

Custodian appointed to standard fund to be licensed by Authority

4 Except where the administrator of a standard fund is carrying on fund administration provider business in Bermuda, the custodian of the investment fund must be a person licensed by the Authority under the Banks and Deposit Companies Act 1999, the Trusts (Regulation of Trust Business) Act 2001 or the Investment Business Act 2003.

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Professional Closed Fund to designate responsibility for segregation and safekeeping arrangements

5 (1) The operator of a Professional Closed Fund shall designate responsibility for segregating and safekeeping the investment fund property to a fit and proper person to act as such, based on the nature of the investment fund property.

(2) The name of the designate and the relevant provisions that set out the segregation and safekeeping arrangements shall be disclosed to the Authority and to investors.

Private Fund to designate responsibility for segregation and safekeeping arrangements

6 (1) The operator of a Private Fund which is a closed-ended investment fund shall designate responsibility for segregating and safekeeping the investment fund property to a fit and proper person to act as such, based on the nature of the investment fund property.

(2) The name of the designate and the relevant provisions that set out the segregation and safekeeping arrangements shall be disclosed to the Authority and to investors.

Valuations

7 (1) The operator of an investment fund shall carry out valuations of the assets and liabilities of an investment fund for the purposes of determining the net asset value of the investment fund.

(2) The operator shall ensure that such valuations are performed at least—

- (a) monthly for standard funds;
- (b) quarterly for institutional funds, administered funds and specified jurisdiction funds; or
- (c) annually for registered funds.

(3) The operator of an investment fund shall file with the Authority 20 business days after the period referred to in sub-paragraph (2) valuations referred to in sub-paragraph (1) in a format prescribed by the Authority.

(4) Where an operator fails to comply with the duty imposed on it under subparagraph (3), it shall be liable to a late fee in accordance with the Fourth Schedule to the Bermuda Monetary Authority Act 1969.

[Rule 7 paragraphs (3) and (4) inserted by BR 82 / 2023 rule 2 effective 29 September 2023]

Valuation and pricing method to be disclosed to investors

8 The valuation and pricing method adopted by an investment fund under paragraph 7 shall be disclosed to investors in the offering document, and the valuation method shall be consistently applied (unless change is desirable in the interests of investors).

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Persons to perform valuation function

9 (1) The operator of an investment fund shall ensure that the valuation function is performed by—

- (a) an external valuer;
- (b) the investment manager, provided that the valuation task is functionally independent from the portfolio management, and any remuneration policy, or other appropriate measures ensure that conflicts of interest are mitigated and that undue influence upon the employees is prevented; or
- (c) the fund administrator, provided that the fund administrator has systems in place that provide for the timely and accurate generation of net asset valuations.

(2) Where a fund administrator performs the valuation function under subparagraph (1)(c) such fund administrator shall—

- (a) be fully familiar with applicable valuation principles and pricing policies of the investment fund;
- (b) ensure that it has satisfactory arrangements in place, designed to achieve appropriate independence in pricing decisions, as well as effective reconciliations of investment and cash positions.

Condition applicable if external valuer does not perform valuation

10 (1) Where the valuation function is not performed by an external valuer, the investment fund shall have its valuation procedures or valuations, or both, verified by—

- (a) an external valuer; or
- (b) where appropriate, its auditor during the annual audit procedures carried out in accordance with the Act and these Rules.

(2) The operator shall ensure that the valuation procedures of the investment fund are at all times objective and proper.

Constitution of fund to be available for inspection

11 (1) The operator of an investment fund shall make available copies of the fund's constitution for inspection by participants and potential participants.

(2) The operator shall permit a copy of the constitution to be inspected without charge at the registered or principal office of the fund in Bermuda or at the office in Bermuda of at least one of the service providers of the fund.

(3) The operator shall make available copies of the constitution to participants or potential participants who request them on payment of any reasonable costs associated with the making and distribution of such copies.

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Publication of prices for units

12 The issue and redemption prices for units of an investment fund shall be published on its website or otherwise made available without charge at the registered or principal office of the fund in Bermuda, or at the office of at least one of the service providers of the fund located in Bermuda.

Financial reports: authorised investment funds

13 (1) The operator of an authorised investment fund shall, within six months after the end of the financial year of the investment fund, prepare a financial report containing audited financial statements of the investment fund.

(2) The financial report shall be distributed or otherwise made available to all participants in the investment fund without charge.

(3) An operator that fails to prepare a financial report in accordance with subparagraph (1), shall be liable to a late fee in accordance with the Fourth Schedule to the Bermuda Monetary Authority Act 1969.

[Rule 13 paragraph (3) inserted by BR 82 / 2023 rule 3 effective 29 September 2023]

Financial reports: registered investment funds

14 (1) In the case of a registered Professional Class A, Professional Class B or Professional Closed fund the operator shall, within six months after the end of the financial year of the investment fund, prepare a financial report containing audited financial statements of the investment fund.

(2) In the case of a registered Private fund the operator shall, within six months after the end of the financial year of the investment fund, prepare a financial report containing audited or unaudited financial statements of the investment fund.

(3) A financial report prepared in accordance with subparagraph (1) or (2), shall be distributed or otherwise made available to all participants in the investment fund without charge.

(4) In the case of a registered Professional Class A, Professional Class B or Professional Closed fund, where an operator fails to prepare a financial report in accordance with subparagraph (1), it shall be liable to a late fee in accordance with the Fourth Schedule to the Bermuda Monetary Authority Act 1969.

(5) In the case of a registered Private fund, where an operator fails to prepare a financial report in accordance with subparagraph (2), it shall be liable to a late fee in accordance with the Fourth Schedule to the Bermuda Monetary Authority Act 1969.

[Rule 14 revoked and substituted by BR 82 / 2023 rule 4 effective 29 September 2023]

Financial statements

15 Where financial statements are required in respect of an investment fund, such fund shall prepare the financial statements in accordance with any one of the following standards or principles —

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- (a) International Financial Reporting Standards (IFRS);
- (b) Generally Accepted Accounting Principles ('GAAP') in Bermuda, Canada, the United Kingdom or the United States of America; or
- (c) such other GAAP as the Authority may recognise upon the grant of an application.

Audit

16 Where an audit of an investment fund is required, a registered or authorised investment fund shall have the audit of its financial statements conducted in accordance with any one of the following standards—

- (a) International Standards on Auditing (ISA);
- (b) Generally Accepted Auditing Standards ('GAAS') in Bermuda, Canada, the United Kingdom or the United States of America; or
- (c) such other GAAS as the Authority may approve upon the grant of an application.

Revocation of Fund Rules 2007

17 The Fund Rules 2007 are hereby revoked.

Commencement

18 These Rules shall come into operation on 1 January 2020.

Made this 23rd day of December 2019

Executive Chairman
Bermuda Monetary Authority

[Operative Date: 01 January 2020]

[Amended by:

BR 82 / 2023]