

CIMA Statement of Guidance for Mutual Funds

The Cayman Islands Monetary Authority (CIMA) issued its Statement of Guidance of Corporate Governance for Regulated Mutual Funds (SOG) in January 2014. In response to the SOG it is clear that regulated mutual funds (Funds) should take some immediate steps to ensure continued compliance with the expectations of CIMA.

Following on from industry comments that CIMA received during an extensive consultation process carried out last year, CIMA has now published on its website and in the Official Gazette its SOG. The SOG, which is applicable to all regulated mutual Funds, whether licensed or administered under section 4(1) or registered under section 4(3) of the Mutual Funds Law (the Law), confirms CIMA's expectation for the minimum standards of corporate governance practice and procedures for the board of directors, or equivalent (Governing Body) and each individual Operator (being a trustee, director or general partner) of a Fund.

CIMA's Guidance

Whilst intended as guidance only, the SOG confirms CIMA's position that a regulated Fund's governance structure must be appropriate and suitable to enable effective oversight, direction and management of the Fund, including oversight of its risk management procedures. To determine the appropriate governance framework for a Fund, regard should be given to factors such as its level of assets under management, number of investors, the complexity of the structure, the nature of the investment strategy and the structure of its operations. The SOG explicitly provides such is not prescriptive or exhaustive.

The SOG is not directly enforceable but might be used by CIMA when taking action pursuant to its powers under the Law with regard to a Fund's direction and management being conducted in a "fit and proper manner".

Key Provisions

Oversight

The SOG provides that the Governing Body of the Fund must (1) regularly take steps and request appropriate information to satisfy itself that the Fund is in compliance with applicable laws and regulations; (2) require regular reporting from the Fund's investment manager and other service providers to enable it to ensure that its delegates are performing to the required level and to allow for adequate oversight and supervision of all the activities being performed for the Fund. This is usually part achieved by service providers providing periodic reports for Board meetings (or equivalent).

Conflicts of Interest

Whilst no formal policy of conflict resolution must be documented, the Governing Body and Operators of the

Fund must identify, disclose, monitor and manage its conflicts of interest. The Governing Body must exercise independent judgement, always acting in the best interest of the Fund, taking into account the interests of the investors.

Governing Body Meetings

The SOG specifies that the Governing Body should (1) meet at least twice a year, whether in person or via a telephone or video conference call and (2) meet more frequently if the circumstances or size, nature and complexity of the Fund demand in order for responsibilities to be fulfilled. The proceedings of Governing Body meetings should be formally documented and where appropriate service providers attendance should be requested.

Risk Management

The SOG specifies that an Operator should ensure that it provides suitable oversight of the risk management policy and procedures of the Fund in order to endure that the Fund's various risks are appropriately monitored, managed and mitigated. One example is regular monitoring of the Fund's net asset valuation policy and that the calculation of its net asset value is being calculated in accordance with this policy.

Communication with Investors

The Governing Body should seek to communicate with investors of the Fund in a transparent manner, where possible and needed.

Directors – Public Database and Limits

A keenly debated aspect of the corporate governance review considered by CIMA during the industry consultation was the introduction of a public database of all fund directors. The available statistics from the CIMA consultation indicated strong support for such a database from the investor community and CIMA has said that it intends to proceed with the proposal, but for the regulated investment funds sector only. CIMA has said that the intention will be to provide only factual information which is of demonstrated benefit to stakeholders, not any sensitive or proprietary information. It is also envisaged that the Operators will also be able to keep such a database current.

Another proposal that was keenly debated was the introduction of a limit on the number of directorships held by any one director. CIMA has now said that it will not impose such a limit at this time, instead relying upon the proposed database as the means by which stakeholders will be aided with analysis and assistance in making informed choices.

Registration and Licensing of Directors

CIMA has now said that it will consider implementing new separate legislation to address the licensing and registration of directors. It is understood that CIMA will not require a director to be licensed until s/he reaches a threshold number of directorships, this will likely be higher than the initial proposed threshold number of six.

Conclusion – Action Required

In response to the SOG it is clear that the Governing Body and individual Operators of all regulated Funds should take some immediate steps to ensure continued compliance with the expectations of CIMA.

The Fund's current governance structure and the means by which that is documented should be closely reviewed to see if any changes are required or whether new practices and/or procedures ought to be implemented.

The Fund's documents should be reviewed to ensure that all actual or potential conflicts of interest have been properly disclosed and discussions should be held with the investment manager and all other service providers to ensure understanding as to the reporting mechanism between each of these delegates and the Fund's Governing Body.

The question of who, in the Fund's governance structure, should be given responsibility for properly documenting the decisions of the Governing Body is an important one that ought to be answered.

Campbells are able to provide a full copy of the SOG on request.

Campbells can advise on issues such as whether the Offering Documents is compliant with applicable Cayman law and also advise on filing obligations when changes to the Fund structure occur.

Should you have any queries regarding the above, or if we can be of any assistance, please do not hesitate to contact your usual Campbells contact or any of the following:



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