

Specialist Fund

A proposed new fund targeting the institutional alternative market and with a minimum investment of \$100,000.

Qualifying Fund

A proposed new fund targeting non-retail investors.

Introduction

In March 2007, the Funds Review Group, a body appointed by the Isle of Man government, recommended that two new Isle of Man investment funds be created, namely:

- A specialist fund targeting the institutional alternative market and with a minimum investment of \$100,000;
- A qualifying fund targeting non-retail investors.

Detailed proposals and draft regulations (the Financial Supervision (Specialist Fund) (Exemption) Order 2007 and the Financial Supervision (Qualifying Fund) (Exemption) Order 2007; both incorporating feed back from consultation with the funds industry) have now been published by the Isle of Man Financial Supervision Commission ("FSC").

The Specialist Fund

The Specialist Fund is targeted at the institutional alternative market, has a minimum subscription of US\$100,000, and has the following characteristics:

- Investors must be specialist investors, meaning (a) institutions and professional investors or (b) corporations or individuals with a self certified net worth (excluding principal residence) of not less than \$1-million who make an initial subscription of not less than \$100,000 for each investor. Functionaries and employees/officers/members of functionaries may also invest not less than US\$100,000.
- A person investing as agent will be required to certify that the person on whose behalf the investment is made is a specialist investor; and life assurance companies will be required to certify that the underlying policyholder is a specialist investor.
- The offering document must contain all material information and contain prescribed information and risk warnings.
- The fund's governing body is responsible for ensuring that a suitable

The new funds will be launched at the InvestHedge Conference in London in September 2007 and we believe that this note may be of general assistance to you in evaluating whether they meet your requirements. We will, of course, issue updated notes as the proposals are updated and finalised.

This note deals principally with the specialist fund and the qualifying fund. Another note deals with the position of existing Experienced Investor Funds (EIFs) (see our note "Proposals affecting the continued operation of EIFs" at <http://www.simcocks.com/advocates/funds.html>).

asset manager or investment adviser is appointed.

- An administrator regulated in the Isle of Man or an acceptable jurisdiction must be appointed.
- One non-executive director who is independent of the promoter must be appointed.
- Where an administrator outside the Isle of Man is appointed, an Isle of Man resident director who is a licensed

fiduciary in the Isle of Man or is provided by a licensed fiduciary must be appointed to the board. This director can be the same individual as the non-executive director referred to above.

- The board of directors will be responsible for ensuring that the Fund is managed in accordance with its constitutional documents.
- Not required to have a custodian.

The Qualifying Fund

The Qualifying Fund is targeted at non-retail investors, has a minimum investment as agreed between its manager and governing body, and has the following characteristics:

- ~ A Qualifying Fund must have a promoter licensed in the Isle of Man or in an acceptable jurisdiction.
- ~ Investors must be qualifying investors, meaning (a) institutions and professional investors or (b) persons who certify themselves as being sufficiently experienced to understand the features and risks of investing in an unauthorised and unapproved fund such as the fund and who have been advised as to the suitability of the investment for them by a financial adviser who has been assessed as being acceptable by the fund's promoter.
- ~ A person investing as agent will be required to certify that the persons on whose behalf the investment is made such as an investor; and life assurance companies will be required to certify that the underlying policyholder is such an investor.
- ~ The offering document must contain all material information and contain prescribed information and risk warnings.
- ~ A Qualifying Fund must have a manager licensed in the Isle of Man. The manager is responsible for the administration of the fund and for determining whether the fund is and continues to be operated

in accordance with its constitutional documents. The manager also has certain FSC reporting requirements.

- ~ The fund must appoint a suitable asset manager or investment adviser, who must be approved by the manager. In assessing whether an asset manager or investment adviser is suitable, the fund's governing body is required to take into account its regulated status and the regulated status of any person providing investment services to it.
- ~ The promoter is required to be licensed for that purpose in an acceptable jurisdiction. We are awaiting further clarification from the FSC as to which jurisdictions will be acceptable and what type of regulation within each acceptable jurisdiction will qualify as being for the purpose of acting as the promoter of a Qualifying Fund.
- ~ One non-executive director who is independent of the promoter must be appointed, and an Isle of Man resident director is required (these can be the same individual).
- ~ A custodian which is authorised either in the Isle of Man or in an acceptable jurisdiction is required.

Contact Us

If you would like further information or legal advice on any of the matters referred to in this document, please contact Peter Chemaly at Simcocks by telephone (+44 1624 690 300) or by email at pchemaly@simcocks.com

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This document is intended to provide a general overview and should not in any way be construed as legal advice. Always seek specific advice in respect of any particular issue.

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