



BERMUDA

INVESTMENT FUND OFFERING DOCUMENT RULES 2019

BR 134 / 2019

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In exercise of the powers conferred upon it by section 38 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 Offering Document Rules 2019.

Interpretation

- 2 In these Rules—

“the Act” means the Investment Funds Act 2006;

“investment fund” 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;

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“participant” has the meaning given in section 2 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.

Requirement for, and approval of the offering document

- 4 (1) Every investment fund shall prepare an offering document which shall—
- (a) comply with these Rules; and
 - (b) be submitted to, and approved by, the Authority,

before such offering document is used by the investment fund for the offering of units to participants or potential participants.

- (2) Upon application for authorisation or registration—
- (a) the operator of an investment fund shall submit to the Authority a copy of the offering document that it proposes to issue; and
 - (b) in the case of a company fund registered under section 6 of the Segregated Accounts Companies Act 2000, or a unit trust fund operating segregated accounts, the operator of such a fund shall submit to the Authority a copy of the offering document or supplement for each segregated account that is to be operated as an investment fund.

Publication and availability of offering document

5 (1) Subject to paragraph 3, every operator of an investment fund shall publish the offering document, or otherwise make copies available to participants and potential participants.

(1A) Where material changes have been made to an offering document ("updated offering document") in accordance with the Act, the operator of the investment fund shall forthwith publish the updated offering document, or otherwise make copies of the updated offering document available to participants and potential participants.

(1B) An operator that fails to comply with the duty imposed on it under subparagraph (1A), shall be liable to a late fee in accordance with the Fourth Schedule to the Bermuda Monetary Authority Act 1969.

(2) The offering document or updated offering document shall be made available to participants without charge at the registered or principal office of the investment fund in Bermuda or at the office in Bermuda of at least one of the fund's service providers.

[Rule 5 paragraphs (1A) and (1B) inserted and paragraph (2) amended by BR 83 / 2023 rule 2 effective 29 September 2023]

Contents of offering document

6 An offering document shall, in addition to any requirements under the Act and other applicable enactments, contain the following—

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- (a) the name of the investment fund and the address of its registered or principal office in Bermuda;
- (b) a statement whether the investment fund is authorised or registered or has been given equivalent regulatory approval, as the case may be, (or intends to be authorised or registered or given equivalent regulatory approval) in any jurisdiction or with any supervisory or regulatory authority, outside Bermuda;
- (c) the date of incorporation or establishment of the investment fund (indicating whether or not the duration is limited);
- (d) where applicable, an indication of stock exchanges or markets where the securities are, or are to be, listed or dealt in;
- (e) the names, addresses and other relevant particulars of directors, officers, resident representatives, auditors, fund administrators, custodians, registrars, promoters, legal advisers, investment managers, and other persons having significant involvement in the affairs of the investment fund;
- (f) a description of the investment fund's investment objectives, including its financial objectives, investment policy and any limitations on that investment policy and an indication of any investment techniques and instruments, and any borrowing powers;
- (g) a description of the investment fund's material risks, including in relation to a company fund registered under section 6 of the Segregated Accounts Companies Act 2000 or a unit trust fund operating segregated accounts, a statement on any potential risks associated with the operation of segregated accounts;
- (h) details of the capital of the investment fund including, where applicable, any existing initial or founder capital;
- (i) details of the principal rights and restrictions attaching to the units, including with respect to currency, voting rights, circumstances of winding up or dissolution, certificates, entry in registers and other similar details;
- (j) a description of the intentions with respect to the declaration of dividends or distribution of profits;
- (k) the procedures and conditions for the issue of units;
- (l) the procedures and conditions for the redemption and sale of units and the circumstances in which such redemption may be suspended;
- (m) a description of the basis for the determination of the issue and redemption prices (including the frequency of dealings) and an indication of the places where information as to the prices may be obtained;

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- (n) a description of the basis and frequency of valuation of the investment fund's assets;
- (o) particulars of any material provisions of any contract engaging the services of any and all directors, trustees, managers, partners, service providers and any other third parties receiving or likely to receive fees from the investment fund;
- (p) a description of the potential conflicts of interest between the investment fund, its directors, trustees, managers, partners and its service providers;
- (q) the date of the financial year end of the investment fund;
- (r) information on the nature and frequency of financial reports to be distributed to participants;
- (s) a statement of the place where copies of the constitution and any annual or periodic report of the investment fund may be inspected and obtained;
- (t) particulars relating to the main business activity of the custodian and any co-custodian;
- (u) in the case of a Professional Closed Fund or a Private Fund which is a closed-ended investment fund, the name of the designate responsible for segregation and safekeeping functions related to the investment fund property, and the relevant provisions that set out the segregation and safekeeping arrangements; and
- (v) particulars of the experience of investment managers.

Disclaimer

7 The offering document shall state the following—

- (a) in relation to all authorised investment funds—

"Authorisation by the Bermuda Monetary Authority does not constitute a guarantee by the Authority as to the performance of the investment fund or its creditworthiness.

Furthermore, in authorising such a fund, the Authority shall not be liable for the performance of the investment fund or the default of its operators or service providers, nor for the correctness of any opinions or statements expressed in the offering document.";

- (b) in relation to all registered investment funds—

"Registration by the Bermuda Monetary Authority does not constitute a guarantee by the Authority as to the performance of the fund or its creditworthiness.

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Furthermore, in registering such a fund, the Authority shall not be liable for the performance of the fund or the default of its operators or service providers, nor for the correctness of any opinions or statements expressed in the offering document."

Additional information

8 The operator of a fund shall also include in the offering document any other material information which is within its knowledge or which it can obtain by making reasonable enquiries, being information which investors would reasonably require for the purpose of making an informed judgment about the merits of investing in the fund.

Revocation of Fund Prospectus Rules 2007

9 The Fund Prospectus Rules 2007 are hereby revoked.

Commencement

10 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 83 / 2023]