

Cayman Islands

New rules for regulated funds

The Cayman Islands Monetary Authority (CIMA) publishes new rules governing the segregation of assets and the contents of offering documents and marketing materials for regulated funds

As referenced in our updater on new registration requirements for Cayman Islands investment funds¹, CIMA has published related new rules:

Marketing Rules

- regarding the contents of offering documents (**Offering Documents**) for mutual funds (**Mutual Funds**) that are regulated under the Mutual Funds Law (as Revised) and the contents of marketing materials (**Marketing Materials**) of private funds (**Private Funds**) registered under the recently promulgated Private Funds Law 2020

Segregation Rules

- on the segregation of assets for both Mutual Funds and Private Funds.

OFFERING DOCUMENTS AND MARKETING MATERIALS

MUTUAL FUNDS

The Marketing Rules do not represent a fundamental change in contents of typical Offering Documents, but do require changes to be made to the documents.

Are all Mutual Funds caught by the Marketing Rules?

- yes, all Mutual Funds registered (or registering) under the Mutual Funds Law. The Marketing Rules include Section 4(4)(a) Mutual Funds that became registrable with effect from 7 February 2020 and then only if that fund has an Offering Document (which is not a requirement under the Mutual Funds Law)
- only those Mutual Funds which continue to offer equity interests (which are still open for investment) made pursuant to an Offering Document will be required to comply with the Marketing Rules

New rules for regulated funds

Which documents do the Rules impact?

- any document or series of documents on the basis of which equity interests in the Mutual Fund are offered for sale or where persons are invited to subscribe for or purchase equity interests in the Mutual Fund

What documentation is excluded by the Rules?

- any other notice, circular, advertisement, letter or other communication used in connection with the offer for sale of any equity interest in the Mutual Fund, and / or
- the invitation to any person to subscribe for or purchase any equity interest in the Mutual Fund if, before the offer or invitation is taken up or accepted, the prospective investor is given the opportunity to consider an Offering Document

Are there expected to be changes to existing Offering Documents?

- all Offering Documents will require some changes in order to comply with the Marketing Rules, such as:
 - adjustments to some marketing statements to match indicated language requirements
 - insertion of a mandatory authority statement concerning CIMA in specified form

PRIVATE FUNDS

The Marketing Rules do not represent a dramatic shift in the typical contents of Marketing Materials for Private Funds.

Are all Private Funds caught by the Marketing Rules?

- the Marketing Rules apply to any Private Fund that intends to prepare any Marketing Materials on the basis of which investors are solicited to purchase investment interests in a Private Fund (including offering documents)
- the Marketing Rules recognise that not all Private Funds will prepare Marketing Materials and that many Private Funds will accordingly not prepare updated Marketing Materials where there is no ongoing offering
- only new or ongoing offerings made pursuant to Marketing Materials must comply with the Marketing Rules

What are the expected changes to Marketing Materials for new or ongoing offerings?

- if a Private Fund conducts a new or ongoing offering pursuant to Marketing Materials, then the Marketing Materials will require some changes in order to comply with the Marketing Rules, such as:
 - insertion of a mandatory authority statement concerning CIMA in specified form

SEGREGATION OF ASSETS

The Segregation Rules are broadly similar for both Mutual Funds and Private Funds.

New rules for regulated funds

What are the Segregation Rules aiming to achieve?

- that service providers (the **Service Providers**) do not use any of the financial assets and liabilities of a fund to finance their own or any other operations in any way

What segregation policies are introduced in the new rule?

- none of the following shall, in itself, constitute the financing of the Services Provider's own operations:
 - a remittance to a relevant investor's redemption, withdrawal or distribution of proceeds being paid on behalf of the fund
 - payment of fees, charges and expenses that are payable by an investor in connection with the purchase, conversion, holding, transfer or redemption of equity or investment interests of the fund
 - acquiring or disposing of assets for investment purposes in accordance with the fund's constitutive documents, and Offering Document or Marketing Materials
 - paying fees, charges, expenses and taxes that are properly payable by the fund and as disclosed in and in accordance with the fund's constitutive documents, or Offering Document or Marketing Materials, or as otherwise disclosed to investors.

In each case, the operators of a regulated fund must establish, implement and maintain (or oversee the establishment, implementation and maintenance of) strategies, policies, controls and procedures to ensure compliance with the Segregation Rules consistent with the fund's Offering Document / Marketing Material and appropriate for the size, complexity and nature of the fund's activities and investors.

Enforcement

CIMA is granted enforcement powers in respect of both the Marketing Rules and the Segregation Rules under applicable legislation and is expected to have the ability to impose administrative penalties for non-compliance.

For further information on any aspect of this updater please contact your usual Marbury adviser.

1. See our updater New registration requirements for Cayman investment funds (24 February 2020) <https://marburys.com/new-registration-requirements-for-cayman-investment-funds/>