



FINANCIAL SERVICES ACT 2008

**AUTHORISED COLLECTIVE INVESTMENT SCHEMES (COMPENSATION)
REGULATIONS 2008**

Approved by Tynwald 17th July 2008

Coming into operation 1st August 2008

In exercise of the powers conferred on Treasury by section 25 of the Financial Services Act 2008¹, and of all other enabling powers, the following Regulations are hereby made:-

Citation and commencement

1. These Regulations may be cited as the Authorised Collective Investment Schemes (Compensation) Regulations 2008 and shall come into operation on 1 August 2008.

Interpretation

2. (1) The Scheme established by these Regulations is to be known for all purposes as the Collective Investment Schemes Compensation Scheme (in these Regulations referred to as "the Scheme").

(2) In these Regulations -

"the Act" means the Financial Services Act 2008;

"authorised person" means a person who –

- (a) is licensed under section 7 of the Act in respect of regulated business; or
- (b) has been the holder of a licence under any Act repealed by the Act; or
- (c) has been a holder of a licence under section 3 of the Banking Act 1975²;

"authorised collective investment scheme" has the same meaning as in the Collective Investment Schemes Act 2008³;

"compensation costs" has the meaning given by regulation 15;

¹ 2008 c.8

² 1975 c.9

³ 2008 c.7

"the compensation sum" has the meaning given by regulation 10(1);

"default" shall be construed in accordance with regulation 7;

"eligible liability" shall be construed in accordance with regulation 8;

"the Fund" has the meaning given by regulation 4(1);

"LIBOR" means the London inter bank offered rate;

"participant" has the meaning given by regulation 5;

"regulated business" means the business of acting as manager, trustee or fiduciary custodian of an authorised collective investment scheme;

"Scheme Manager" has the meaning given by regulation 3(1).

The Scheme Manager

3. (1) The Financial Supervision Commission (in these Regulations referred to as "the Scheme Manager") is charged with the administration of the Scheme in accordance with section 25 of the Act.

(2) The Scheme Manager shall, in respect of each financial year of the Scheme, and within three months after the end of that financial year, make and publish a report to the Treasury on the discharge of its functions as such and on the operation of the Scheme generally.

(3) The report shall include a balance sheet and income and expenditure account for the scheme.

(4) The Scheme Manager shall cause records to be kept sufficient to show and explain the transactions of the Scheme, such as to -

(a) disclose with reasonable accuracy, at any time, the financial position of the Scheme at that time; and

(b) enable the Scheme Manager to make the reports required by this regulation.

(5) Records required to be kept by this regulation shall be kept for a period of 10 years from the end of the financial year of the Scheme to which they relate.

The Compensation Fund

4. (1) For the purpose of compensating investors in authorised collective investment schemes, in cases where participants or former participants are unable, or likely to be unable, to satisfy claims in respect of any description of civil liability incurred by them in connection with that business, there shall be a fund (in these Regulations referred to as "the Fund").

(2) The Fund shall be held, managed and applied by the Scheme Manager in accordance with these Regulations.

(3) There shall be paid into the Fund -

- (a) money obtained by levying contributions from participants;
- (b) money borrowed by the Scheme Manager for the purposes of the Scheme;
- (c) money received as income from investments;
- (d) money received under any policy of insurance taken out for the purposes of the Scheme; and
- (e) any other money required by these Regulations to be paid into the Fund or received by the Scheme Manager and determined by it to be so paid.

(4) The assets of the Fund shall be invested from time to time in such manner as the Scheme Manager may direct, having regard to the need for prudence.

(5) The Scheme Manager may borrow money or otherwise incur indebtedness, for the purposes of the Scheme, in any way and on such terms as it thinks fit.

(6) The Scheme Manager may take out policies of insurance for the purposes of the Scheme.

(7) There shall be paid out of the Fund -

- (a) money required by the Scheme Manager for the payment of compensation sums to investors, together with interest payable on such sums in accordance with these Regulations;
- (b) money required for the arrangement, service and repayment of loans obtained by the Scheme Manager, or for the discharge of other indebtedness incurred for the purposes of the Scheme;
- (c) premiums on policies of insurance taken out by the Scheme Manager for the purposes of the Scheme; and
- (d) the compensation costs incurred by the Scheme Manager.

(8) The provisions of these Regulations are without prejudice to the Scheme Manager's general powers of management.

Participants

5. (1) Subject as follows, every authorised person is, for the purposes of the Scheme, a participant, if the person's business is, or includes, regulated business.

(2) A person is deemed to be a participant for the purposes of compensation in respect of liabilities to investors in Authorised Collective Investment Schemes incurred by the participant while it was a participant.

(3) A person is deemed to be a participant for the purposes of the levy of contributions in respect of the default of any other participant which occurred while that person was a participant.

Payment of compensation

6. (1) Where a participant is in default and the Scheme Manager is satisfied, on an application by or on behalf of an investor and on the basis of evidence submitted by or on behalf of that investor or which is otherwise available to the Scheme Manager, that the participant-

- (a) has an eligible liability to the investor; and
- (b) is unable, or likely to be unable, to meet that liability, in whole or in part,

then, as soon as it is so satisfied, and subject to the following regulations, the Scheme Manager shall determine to pay the investor a compensation sum out of the Fund in respect of that liability.

(2) Subject to the following regulations, the amount of the compensation sum payable to an investor in respect of a liability is the sum (not exceeding the amount of the liability which the Scheme Manager is satisfied that the participant is unable, or likely to be unable, to meet) which is determined by the Scheme Manager to be appropriate having regard to -

- (a) the investor's rights in respect of the liability;
- (b) any compromise of the liability;
- (c) any security or right of set-off available to the investor in respect of the liability;
- (d) the investor's ability, if any, to recover in respect of the liability from any third party also liable in respect of it; and
- (e) any other means whereby the investor has, or has had, or might have, an opportunity of recovering in respect of the liability, including any means of so recovering from the defaulting participant.

(3) Notwithstanding paragraph (1), the Scheme Manager may, where it is satisfied as there mentioned, but considers that immediate payment in full would not be prudent, having regard to other claims which may be made on the Fund, determine to make to the investor out of the Fund a payment on account of the compensation sum payable as there mentioned, which payment shall, for the purposes of these Regulations, be treated in all respects as the payment of a compensation sum, but without prejudice to the Scheme Manager's powers to make a determination in respect of the balance of the investor's claim.

Meaning of "default"

7. (1) A participant is to be regarded as in default where the Scheme Manager determines that it should be so regarded, on the basis that -

- (a) by virtue of one or more of the following paragraphs, the participant may be so determined; and
- (b) the participant is unable, or likely to be unable, to satisfy claims in respect of any description of civil liability incurred in connection with regulated business carried on by it.

(2) Where a participant is a body corporate incorporated in the Island, it may be determined to be in default -

- (a) on the making of a winding-up order against it; or
- (b) on the passing of a resolution for a voluntary winding-up in a case in which no statutory declaration has been made under section 218 of the Companies Act 1931; or
- (c) on the holding of a creditors' meeting summoned under section 226 of that Act; or
- (d) on the appointment of a receiver (whether or not by the Court); or
- (e) on the making of any voluntary arrangements with its creditors,

and a body corporate incorporated elsewhere may be determined to be in default on the occurrence of an event which appears to the Scheme Manager to correspond as nearly as may be to any of those mentioned above.

(3) Without prejudice to the generality of paragraph (2), a participant may be determined to be in default where it is a company incorporated in England and Wales and an administrator is appointed for it under Schedule B1 to the Insolvency Act 1986 (an Act of Parliament) or, it being a company incorporated elsewhere than in England and Wales, on the occurrence of an event which appears to the Scheme Manager to correspond as nearly as may be to the commencement of an administration under that Act.

(4) A participant may also be determined to be in default where it cannot be traced, does not have sufficient resources available to it in the Island, or is a corporation which has been wound up.

Meaning of "eligible liability"

8. (1) Subject to the provisions of this regulation, an "eligible liability" is a civil liability incurred by a participant in connection with regulated business done with, on behalf of, or in connection with, an investor who was, at the date of the participant's default, a holder of units in an authorised collective investment scheme of which the participant was, at that date, manager, trustee or fiduciary custodian.

(2) A liability owed by a participant to an investor at the date of the participant's default which was incurred by the participant in connection with regulated business done with, on behalf of, or in connection with the investor is an eligible liability.

(3) A liability incurred by a participant to account for property held in connection with regulated business, is an eligible liability.

(4) Where a liability is owed to any person acting as agent for one or more other persons, then, without prejudice to the status of the liability owed to the one or more other persons, the liability to the agent is not an eligible liability.

(5) Where a liability is owed to two or more persons jointly, being persons not carrying on business together with a view of profit, each of those persons shall be regarded, for the purpose of these Regulations, as owed their share of that liability.

Exceptions from entitlement to compensation

9. (1) An investor's application for compensation shall be rejected if submitted more than 6 months after the investor became aware, or ought reasonably to have become aware, of the default, unless the Scheme Manager determines that, by reason of exceptional circumstances, it ought to be allowed.

(2) An application shall be rejected if made in respect of a default occurring before the 1st November 1988.

(3) An application shall be rejected if made by a professional investor, so far as the liabilities of the participant were for that participant's own account (including liabilities to it as trustee or fiduciary custodian).

(4) An application by a business investor, or an experienced investor, shall be rejected in so far as it relates to money which was maintained with that investor's consent otherwise than in a segregated account.

(5) The Scheme Manager shall reject any application made by a person who has any responsibility for, or has directly or indirectly profited from, the circumstances giving rise to the participant's financial difficulties.

(6) The Scheme Manager may reduce the amount payable by way of compensation to the extent that payment of the full amount would provide benefits to the investor which are disproportionate to the benefits which might reasonably have been payable.

(7) For the purposes of this regulation, "business investor" means -

- (a) any Government, local authority or public authority (whether Manx or otherwise);
- (b) a company satisfying any of the criteria set out in paragraph (8).

(8) The criteria referred to in paragraph (7) are the following -

- (a) if the company is a body corporate which has more than 20 members or which, being a subsidiary, has a holding company which has more than 20 members, the company or any of its holding companies or any of its subsidiaries has a called up share capital or net assets of not less than £500,000; or
- (b) if the company is a body corporate other than one described in sub-paragraph (a), the company or any of its holding companies or any of its subsidiaries has a called up share capital or net assets of not less than £5 million; or
- (c) if the company has net assets of not less than £5 million.

(9) For the purposes of this regulation, "professional investor", in relation to any services provided by a participant, means a person who carries on regulated activities falling within Class 2 or Class 3 of the Regulated Activities Order 2008⁴ and for whom those services are provided in the course of carrying on that regulated activity.

⁴ SD 367/08

(10) For the purposes of this regulation, an individual is an "experienced investor" in relation to a transaction of any description in an investment of any description if in any period of 12 months that individual has so frequently entered into transactions of that description in investments of that description with or through the agency of reputable persons who carry on regulated activities falling within Class 2 or Class 3 of the Regulated Activities Order 2008, being transactions of substantial size, or of substantial size in relation to that individual's total wealth, that that individual can reasonably be expected to understand the nature of every transaction within that description of transaction, of every investment within that description of investment and the risks involved in entering into any transaction within that description of transaction in any investment within that description of investment.

(11) For the purposes of paragraph (10), regard shall be had to transactions entered into by an individual on their own behalf and to transactions entered into by that individual in the course of his employment by another person.

(12) An individual who is an experienced investor in relation to a transaction of any description in a readily realisable investment of any of the following descriptions –

- (a) a share;
- (b) a debenture;
- (c) a government security;

shall be deemed to be an experienced investor in relation to any such transactions in relation to transactions in units in a collective investment scheme.

(13) (a) An individual who is an experienced investor in relation to the transactions listed at (b) which are effected under the rules of a recognised or designated investment exchange (as defined in the Financial Services Rule Book 2008⁵) and in a contract of a type traded thereon shall be deemed to be an experienced investor in relation to transactions which are not so effected.

(b) The transactions referred to in this paragraph are any transactions in investments of the following description –

- (i) an option to acquire or dispose of —
 - (A) an investment of any type described elsewhere in paragraph 13 (b);
 - (B) currency of any country or territory,
 - (C) gold, palladium, platinum or silver; or
 - (D) a commodity or goods of any description except under an option entered into for commercial and not investment purposes; or
 - (E) an option to acquire or dispose of an option falling within sub-paragraph (A), (B), (C) or (D);
- (ii) rights under a contract for the sale of a commodity or goods of any other description under which delivery is to be made at a future date and at a price agreed on when the contract is made, except rights under a contract made for commercial and not investment purposes; or

⁵ SD 369/08

(iii) rights under a contract for differences, or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for that purpose in the contract.

(14) Where an individual who is an experienced investor in relation to a transaction of any description in an investment of any description is a trustee under a trust then, for the purposes of these Regulations, any other individual who is a fellow trustee of the first mentioned individual under the same trust is deemed to be an experienced investor in relation to transactions of that description in investments of that description effected or to be effected for the account of that trust.

(15) For the purposes of this regulation, a body of persons, whether incorporated or not, which carries on a business or acts as a trustee is an experienced investor in relation to a transaction of any description in an investment of any description if that transaction is entered into by that body through the agency of an individual who is a member of the body or an officer or employee of the body and who is an experienced investor in relation to transactions of that description in investments of that description.

Limits of compensation

10. (1) The sum payable to an investor in respect of a defaulting participant's liabilities to that investor (in these Regulations referred to as "the compensation sum") is limited as follows.

(2) Where the total amount of the defaulting participant's liabilities to the investor does not exceed £30,000, no limit applies.

(3) Where the total amount of the participant's liabilities to the investor exceeds £30,000 but does not exceed £50,000, the maximum payable is £30,000 plus 90 per cent, of so much of that amount as exceeds £30,000.

(4) Where the total amount of the participant's liabilities to the investor exceeds £50,000, the maximum payable is £48,000.

(5) The maximum amount which the Scheme Manager may determine to pay in any financial year of the Scheme, by way of compensation sums to investors, and interest on them, is the amount determined by the Scheme Manager as an amount which may be expected not to cause the compensation costs of the year to exceed the total sum available by way of levy of contributions in that year.

(6) Accordingly, if it appears to the Scheme Manager that the maximum amount is otherwise likely to be exceeded, it shall not determine to pay the full amount in respect of any undetermined claim but shall ensure, as far as it reasonably can, that all payments it then determines to make, taking into consideration any payment on account, are abated rateably one with another.

Interest

11. (1) The Scheme Manager shall pay interest to the investor on the compensation sum payable to that investor in respect of the period beginning with a date which is three months after the date on which the investor makes a valid claim and ending with the date on which, pursuant to a determination by the Scheme Manager (or to the extent relevant a determination to make a payment on account), compensation is payable in respect of it.

(2) Interest will be paid under this regulation at 2% below LIBOR.

(3) Interest payable under this regulation is not to be taken into account for the purposes of the limits imposed by paragraphs (1) to (4) of regulation 10.

Financial years

12. A financial year of the Scheme begins with 1st April in each year and ends with 31 March in the following year.

Declarations by participants

13. (1) Not later than 4 months from the end of each financial year of the Scheme, every person who was the manager of an authorised collective investment scheme at any time in that year shall furnish to the Scheme Manager a declaration in writing of the annual value of the property of every authorised collective investment scheme of which it was the manager.

(2) For the purposes of paragraph (1), the annual value of the property of an authorised collective investment scheme is found by the formula -

$$\frac{Q1 + Q2 + Q3 + Q4}{4}$$

where Q1 represents the total value of the property of the authorised collective investment scheme at the valuation point immediately preceding the end of the first quarter of the financial year of the Scheme, and Q2, Q3 and Q4 represent the value of such property at the valuation points immediately preceding the end of the second, third and fourth quarters respectively.

(3) For the purposes of this regulation, the property of an authorised collective investment scheme shall be valued in accordance with regulations 242 to 274 of the Financial Supervision (Authorised Collective Investment Schemes) Regulations 2005⁶, and this regulation shall be construed in accordance with those sections.

(4) The declaration shall be accompanied by a report by the participant's auditors as to whether the figures given in the declaration may, in the opinion of the person giving the report, reasonably be regarded as complying with these Regulations.

⁶ SD 836/05

Scheme Manager's power to estimate

14. (1) Where a participant fails to make a declaration as required by regulation 13, or the Scheme Manager believes the amount declared to be inaccurate, the Scheme Manager may itself, taking into account any information available to it, make an estimate of the amount which is to be regarded as the amount declared under regulation 13, which amount shall have effect, subject to paragraph (2), as the amount declared by the participant.

(2) Where the Scheme Manager has made an estimate which, by virtue of paragraph (1) has effect as an amount declared by a participant, the Scheme Manager may determine that any other figure, whether or not declared by the participant, shall have effect for the figure previously applying.

Compensation costs

15. (1) Where a participant has defaulted, compensation costs are those costs which fall to be met by the Scheme Manager, are directly attributable to the default, and arise from the payment of compensation or the establishment of compensation claims.

(2) In relation to a default, compensation costs are taken as including not only compensation sums, and any interest payable under these Regulations on such sums, but also -

- (a) any interest or other drawdown costs on indebtedness incurred to enable compensation to be paid; and
- (b) costs of establishing compensation claims, including legal and accountancy services, and other similar costs.

(3) The compensation costs of a year are those incurred in that year by the Scheme Manager, in respect of defaults of that or any previous year; and for this purpose -

- (a) any amount payable to an investor by way of compensation is treated as a cost incurred when, pursuant to a determination of the Scheme Manager, it is to be paid; and
- (b) any amount payable by way of interest is treated as incurred as it accrues.

(4) Amounts receivable under policies of insurance and amounts estimated as recoverable under regulation 20 shall be taken as reducing the compensation costs in the relevant year.

Levies on managers

16. (1) The amount of the contributions which may be levied from the manager of an authorised collective investment scheme in any one financial year of the Scheme is -

- (a) £50,000; and
- (b) an additional sum which shall be calculated in accordance with paragraph (2).

(2) The additional sum referred to in paragraph (1) shall be such sum as represents 0.09375% of -

- (a) the amount declared under regulation 13 in respect of the financial year of the Scheme immediately preceding the year in which the contribution is levied; or
- (b) such amount as may be estimated by the Scheme Manager in accordance with these Regulations.

Levies on trustees or fiduciary custodians

17. (1) The amount of the contributions which may be levied from the trustee or fiduciary custodian of an authorised collective investment scheme in any one financial year of the Scheme is -

- (a) £12,500, and
- (b) an additional sum which shall be calculated in accordance with paragraph (2).

(2) The additional sum referred to in paragraph (1) shall be such sum as represents 0.03125% of -

- (a) the aggregate of amounts declared under regulation 13 in respect of the financial year of the Scheme immediately preceding the year in which the contribution is levied; or
- (b) such amount as may be estimated by the Scheme Manager in accordance with these Regulations.

Method and timing of levies

18. (1) Where the Scheme Manager proposes to levy contributions it shall do so by notice in writing to the participant stating -

- (a) the amount of the contribution;
- (b) the method by which it is calculated; and
- (c) the date or dates on which payment of the contribution is to be due.

(2) Contributions under the Scheme are debts due to the Scheme Manager, to be paid into the Fund; and the Scheme Manager is under a duty to enforce payment of such debts, if need be by action at law.

(3) The Scheme Manager may make interim levies at an earlier date, which may, notwithstanding that the conditions imposed by regulation 14 are not fulfilled, be based on estimates of amounts to be regarded as the amounts declared by participants.

Co-operation with Scheme Manager

19. (1) A participant shall co-operate with the Scheme Manager in making available all information, books and documents, and otherwise render all such assistance, as is necessary to assist the Scheme Manager to perform its functions under these Regulations.

- (2) The requirement imposed by paragraph (1) shall apply -

- (a) in the case of a participant in relation to which an administration order has been made in England and Wales, to the administrator; and
- (b) in the case of a participant in relation to which a winding up order has been made, to the liquidator; and
- (c) in a case where the members of a participant have resolved that the participant should be wound up, to the liquidator; and
- (d) in the case of a participant where a receiver has been appointed (whether or not by the Court), to the receiver; and
- (e) in the case of a participant which has made any voluntary arrangements, to the supervisor of those arrangements; and
- (f) in any other case where an event occurs which appears to the Scheme Manager to correspond as nearly as may be to any of the events referred to in sub-paragraphs (a) to (e), to the person corresponding to the administrator, liquidator, receiver or supervisor, as the case may be.

Rights of Scheme Manager against defaulting participant

20. (1) Where a participant is in default, this regulation has effect for the subrogation of the Scheme Manager to the rights of investors who apply for compensation under the Scheme.

(2) Notwithstanding any other provision of these Regulations, the Scheme Manager shall not pay or determine to pay a compensation sum out of the Fund in respect of a liability unless the investor has agreed that -

- (a) its existing rights in respect of that liability, or in respect of any part of that liability required by the Scheme Manager, shall vest in the Scheme Manager;
- (b) it will execute any document (including any declaration of trust), do any act or provide any assistance to the Scheme Manager to enable it to exercise those rights;
- (c) it will pay to the Scheme Manager any amount which is received in respect of those rights, after deduction of any amount which under paragraph (4), the Scheme Manager would have been required to pay to it; and
- (d) where relevant, any prospect of recovering in excess of the compensation sum payable under these Regulations (and interest on it) will be in the hands of the Scheme Manager, who may compromise the claim.

(3) Where the investor so agrees, the participant's liability to the investor is extinguished or, as the case may be, reduced and there is hereby conferred on the Scheme Manager a right of recovery against the participant, being a right otherwise identical to the investor's right in respect of the liability agreed to be vested in the Scheme Manager.

(4) Any amount received by the Scheme Manager by virtue of this regulation shall be paid into the Fund, up to the amount of the compensation sum paid to the investor in respect of his liability,

interest on it at 2 per cent over LIBOR, and the costs of recovery. Any balance shall be paid to the investor.

(5) The difference between any amount paid into the Fund under the preceding paragraph and the relevant estimate earlier made shall be treated as reducing or, as the case may be, increasing the compensation costs for the year in which it is so paid for the relevant category of regulated business.

Revocation

21. The Authorised Collective Investment Schemes (Compensation) Regulations 1988⁷ are revoked.

Made this 19th day of June 2008.

A. R. Bell Minister for the Treasury

EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations provide for the establishment of a fund out of which compensation is to be paid to investors in the event that a manager, trustee or fiduciary custodian of an authorised collective investment scheme is unable or likely to be unable to satisfy claims in respect of any description of civil liability incurred in connection with a regulated business. The Regulations further provide for the levying of contributions from managers, trustees or fiduciary custodians and the administration of the compensation fund.

⁷ G.C. 279/88