

SECURITIES (FUND MANAGEMENT) RULES 2023

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SECURITIES (FUND MANAGEMENT) RULES 2023

FSC Rules made by the Financial Services Commission under Section 93 of the Financial Services Act 2007 and section 98 and 155 of the Securities Act 2005.

PART 1

PRELIMINARY

1 Citation

This Act may be cited as the Securities (Fund Management) Rules 2023.

2 Interpretation

In these Rules—

“client” means an individual or legal person to whom a CIS manager provides, intends to provide or has provided a service in relation to a collective investment scheme;

“certified high net-worth investor” has the meaning given by rule 13;

“certified sophisticated investor” has the meaning given by Rule 11;

“designated investment” means security or a contractually-based investment (other than a funeral plan contract and a right to or interest in a funeral plan contract), including—

- (a) a life policy;
- (b) a share;
- (c) a debenture;
- (d) an alternative debenture;
- (e) a government and public security;
- (e) a warrant;
- (f) a certificate representing certain securities;
- (g) a unit;
- (h) a stakeholder pension scheme;
- (i) a personal pension scheme;
- (j) a pension scheme which provides safeguarded benefits (but only in relation to advising on conversion or transfer of pension benefits);
- (k) option;
- (l) future;
- (m) contract for differences

“elective professional client” has the meaning given in rule 6;

“eligible counterparty has the meaning given in rule 7;

“institutional investor” means a person whose main activity is to invest in financial instruments (in relation to the CIS Manager’s business in another jurisdiction or designated investments (in relation to the CIS Manager’s other business), including entities dedicated to the securitisation of assets or other financing transactions;

“per se eligible counterparty” has the meaning given by rule 8;

“professional client” has the meaning given by rule 5;

“retail client” has the meaning given by rule 10;

“self-certified professional investor” has the meaning given by rule 12;

3 Exemption from the requirement to be licensed

A CIS manager registered under these Rules is exempt from the requirement for a licence under section 9(1) of the Act and sections [] of the Act in respect of the management of a collective investment scheme for any of the following categories of clients—

- (a) a professional client;
- (b) an elective professional client;
- (c) the following eligible counterparties—
 - (i) a per se eligible counterparty;
 - (ii) an elective eligible counterparty;
- (d) the following retail clients—
 - (i) certified professional investor;
 - (ii) self-certified professional investor;
 - (iii) certified high net-worth investor.

4 Registration of CIS manager

- (1) A person may apply to the Commission in the form approved by the Commission to be registered as a CIS manager under these Rules in respect of a client referred to in Rule 3.
- (2) The Commission may register an applicant under paragraph (1) as a CIS manager in respect of a client if—
 - (a) the applicant is a body corporate;
 - (b) the applicant has a registered office in Mauritius;
 - (c) the Commission is satisfied that the applicant will be able, if registered, to comply with the requirements of the FSC Rules as to the financial and other resources requirements needed by the CIS manager for the collective investment scheme;
 - (d) applicant and each of its officers are fit and proper persons and meet the requirements relating to eligibility, duties and obligations, rules of ethics and other such conditions as may be specified in FSC Rules;
 - (e) the collective investment scheme will be internally managed by the person;
 - (f) only managed funds are structured as the collective investment scheme;
 - (g) the applicant holds the majority of their assets as land, directly or indirectly, through an entity which also meets the conditions (from (a) to (f));
 - (h) the applicant does not hold assets that are specified investments other than—
 - (i) contracts of insurance which relate to land held by the fund; and
 - (ii) shares through which the fund holds land; and
 - (i) The applicant will employ the investment strategies approved by the Commission.
- (3) In this rule, “internally managed” the fund management activities are being carried out by the CIS manager not through the appointment of another CIS manager.

PART 2

PROFESSIONAL CLIENTS, ELECTIVE PROFESSIONAL CLIENTS AND ELIGIBLE COUNTERPARTY

5 Professional client defined

- (1) A professional client is any of the following unless it is an eligible counterparty—
- (a) credit institution;
 - (b) investment firm;
 - (c) any other authorised or regulated financial institution;
 - (d) an insurance company
 - (e) a collective investment scheme or the management company of such a scheme;
 - (f) a pension fund or the management company of a pension fund
 - (g) commodity or commodity derivatives dealer
 - (h) a local authority;
 - (i) any other institutional investor;
 - (j) in relation to the CIS's manager's business in another jurisdiction , a large undertaking meeting two of the following size requirements on a company basis—
 - (i) balance sheet total of EUR 20,000,000;
 - (ii) net turnover of EUR 40,000,000;
 - (iii) own funds of EUR 2,000,000;
 - (k) in relation to business that is not the CIS manager's business in another jurisdiction , a large undertaking meeting any of the following conditions:
 - (l) a body corporate (including a limited liability partnership) which has (or any of whose holding companies or subsidiaries has) (or has had at any time during the previous two years) called up share capital or net assets of at least EUR 6,250,000 million (or its equivalent in any other currency at the relevant time);
 - (m) an undertaking that meets (or any of whose holding companies or subsidiaries meets) two of the following tests—
 - (i) a balance sheet total of EUR 12,500,000;
 - (ii) a net turnover of EUR 25,000,000;
 - (iii) an average number of employees during the year of 250;
 - (n) a partnership or unincorporated association which has (or has had at any time during the previous two years) net assets of at least EUR 6,000, 000 and calculated in the case of a limited partnership without deducting loans owing to any of the partners;
 - (o) a trustee of a trust (other than an occupational pension scheme, small self-administered pension scheme personal pension scheme or stakeholder pension scheme) which has (or has had at any time during the previous two years) assets of at least EUR 12,000, 00 calculated by aggregating the value of the cash and designated investments forming part of the trust's assets, but before deducting its liabilities;
 - (p) a trustee of an occupational pension scheme or small self-administered pension scheme, or a trustee or operator of a personal pension scheme or stakeholder pension scheme where the scheme has (or has had at any time during the previous two years)—
 - (i) at least 50 members; and

- (ii) assets under management of at least EUR 12,000,000 (or its equivalent in any other currency at the relevant time);
 - (q) a national or regional government, including a public body that manages public debt at national or regional level, a central bank, an international or supranational institution (such as the World Bank, the IMF, the ECB, the EIB) or another similar international organisation;
 - (r) another institutional investor whose main activity is to invest in financial instruments (in relation to the CIS manager's business in another jurisdiction) or designated investments (in relation to the firm's other business). This includes entities dedicated to the securitisation of assets or other financing transactions.
- (2) A CIS manager must categorise a local public authority or municipality which (in either case) does not manage public debt as a retail client, unless it is permitted to treat such a person as an elective professional client.

6 Elective professional client

A CIS Manager may treat a client other than a local public authority or municipality as an elective professional client if—

- (a) the CIS manager undertakes an adequate assessment of the expertise, experience and knowledge of the client that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved (the "qualitative test");
 - (b) where applicable, in relation the CIS manager's business in another jurisdiction in the course of that assessment, at least two of the following criteria are satisfied—
 - (i) the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;
 - (ii) the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds EUR 500,000;
 - (iii) the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged (the "quantitative test"); and
 - (c) the following procedure is followed—
 - (i) the client must state in writing to the firm that it wishes to be treated as a professional client either generally or in respect of a particular service or transaction or type of transaction or product;
 - (ii) the CIS manager must give the client a clear written warning of the protections and investor compensation rights the client may lose; and
 - (iii) the client must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections.
- (2) Before deciding to accept a request for re-categorisation as an elective professional client a CIS manager must take all reasonable steps to ensure that the client requesting to be treated as an elective professional client satisfies the qualitative test and, where applicable, the relevant quantitative test.
- (3) An elective professional client should not be presumed to possess market knowledge and experience comparable to a per se professional client.
- (4) A professional client shall keep the CIS manager firm informed about any change that could affect their current categorisation.
- (5) If a CIS manager becomes aware that a client no longer fulfils the initial conditions that made it eligible for categorisation as an elective professional client the CIS manager must take the appropriate action.

- (6) Where the appropriate action under paragraph (4) involves re-categorising that client as a retail client, the firm must notify that client of its new categorisation.

7 Eligible counterparty

- (1) In these Rules, an eligible counterparty is a client that is either a per se eligible counterparty or an elective eligible counterparty.
- (2) A client can only be an eligible counterparty in relation to eligible counterparty business
- (3) Where a client requests to be treated as an eligible counterparty, the following procedure shall be followed—
- (a) the CIS manager shall provide the client with a clear written warning of the consequences for the client of such a request, including the protections they may lose;
 - (b) the client shall confirm in writing the request to be treated as an eligible counterparty either generally or in respect of one or more investment services or a transaction or type of transaction or product and that they are aware of the consequences of the protection they may have lost as a result of the request.

8 Per se eligible counterparty

- (1) Each of the following is a per se eligible counterparty unless it is given a different categorisation under these Rules—
- (a) an investment entity;
 - (b) a credit institution.
 - (c) an insurance company;
 - (d) a collective investment scheme licensed under the Act or its management company;
 - (e) a pension fund or its management company;
 - (f) a financial institution authorised or regulated under the law in force in Mauritius;
 - (g) a national government or its corresponding office, including a public body that deals with public debt at the national level;
 - (h) a central bank; and
 - (i) a supranational organisation.
- (2) For the purposes of paragraph (1), a financial institution includes collective regulated institutions in the securities, banking and insurance sectors.

9 Elective eligible counterparty

- (1) A CIS manager may treat a client as an elective eligible counterparty in relation to business other than the CIS manager's business in another jurisdiction if—
- (a) the client is an undertaking and—
 - (i) is a per se professional client (except for a client that is only a per se professional client because it is an institutional investor; and:
 - (A) is a company which has (or any of whose holding companies or subsidiaries has) called up share capital of at least EUR 12,000,000; or
 - (B) meets the criteria in the rule on meeting two quantitative tests; and
 - (ii) requests such categorisation; and
 - (b) the firm adheres to the following procedure set out in rule 5(3).
- (2) Provided that it adheres to the procedure set out in rule 5(3), a CIS manager may treat a client as an elective eligible counterparty in relation to the CIS manager's business in another jurisdiction if the client—

- (a) is an undertaking;
 - (b) is a per se professional client, except for a client that is only a per se professional client because it is an institutional investor; and
 - (c) requests such categorisation.
- (3) The categories of elective eligible counterparties include an equivalent undertaking that is not from Mauritius provided the conditions and requirements of this Rule are satisfied.
 - (4) A CIS manager may obtain a prospective counterparty's confirmation that it agrees to be treated as an eligible counterparty either in the form of a general agreement or in respect of each individual transaction.
 - (5) A CIS manager must allow a professional client or an eligible counterparty to request re-categorisation as a client that benefits from a higher degree of protection.
 - (6) A professional client or eligible counterparty shall ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved.

PART 3

RETAIL CLIENTS

10 Retail client defined

In these Rules, “retail client” means a client who is not a professional client, eligible professional or an eligible counterparty.

11 Certified sophisticated investor

- (1) In these Rules, certified sophisticated investor is a retail client that—
 - (a) has a certificate that is signed within the last thirty-six months by a CIS manager confirming the retail client has been assessed by that CIS Manager as sufficiently knowledgeable to understand the risks associated with engaging in investment activity in high-risk investments.
 - (b) has completed and signed, within the period of twelve months ending on the day on which the communication is made, a statement in the terms set out in Schedule 2, and whose completion of the statement—
 - (i) indicates they qualify on the basis of having a certificate that meets the requirements under paragraph (a);
 - (ii) states that they accept that being a certified sophisticated investor will expose them to promotions for investment where there is a significant risk of losing all money that they invest and that they are aware that it is open to them to seek professional advice before making any investment in a high-risk investment.

12 Self-certified sophisticated investor

- (1) A self-certified sophisticated investor is an individual who has completed and signed, within the period of twelve months ending on the day on which the communication is made, a statement in the terms set out in Schedule 2 and whose completion of the statement—
 - (a) indicates that they meet the criteria in paragraph (2) to be categorised as a self-certified sophisticated investor; and
 - (b) states that they accept that being a self-certified sophisticated investor will expose them to promotions for investment where there is a significant risk of losing all money that they invest and that they are aware that it is open to them to seek professional advice before making any investment in a high-risk investment.

- (2) The criteria referred to in paragraph (1) is that the individual qualifies as a self-certified sophisticated investor on the basis that in the last two years have—
- (a) worked in private equity or the provision of finance for small and medium enterprises
 - (b) been a director of a company with a net turnover of EUR 1,200,000 or more;
 - (c) made two or more investments in an unlisted company; or
 - (d) been a member of a syndicate or network of business angels for more than six months.

13 Certified high net worth investor

- (i) A certified high net worth investor is an individual who has completed and signed, within the period of twelve months ending on the day on which the communication is made, a statement in the terms set out in Schedule 3, and whose completion of the statements—
- (a) indicates that they meet the criteria in paragraph (2) to be categorised as such; and
 - (b) states that they accept that being a high net-worth investor will expose them to promotions for investment where there is a significant risk of losing all money that they invest and that they are aware that it is open to them to seek professional advice before making any investment in a high-risk investment.
- (2) The criteria referred to in paragraph (1) is that the individual has—
- (a) a net income of EUR 120,000 per annum excluding one-off pension withdrawal; and
 - (b) net assets of EUR 300,000 excluding the individual's primary residence, pension including pension withdrawals) and any qualifying contracts of insurance.

14 Obligation of CIS manager

- (1) A CIS manager shall not influence, or seek to influence, the information that a retail client provides when completing a certificate for under these Rules.
- (2) A CIS manager shall encourage a retail client to complete a further certificate if the client's signed certificate indicates that they do not meet the criteria to be categorised as a certified sophisticated investor, self-certified sophisticated investor or high net worth investor, as applicable.

15 Commencement

These Rules come into force on [].

Made by the Mauritius Financial Services Commission on [*]

SCHEDULE 1 – CERTIFIED SOPHISTICATED INVESTOR STATEMENT

(Rule 11(1)(b))

| CERTIFIED SOPHISTICATED INVESTOR STATEMENT | |
|--|--|
| Please confirm whether you qualify as a sophisticated investor on the basis that in the last three years you have received a certificate from a authorised CIS manager confirming that you understand the risks involved with [type of investment]. | |
| <input type="checkbox"/> No | |
| <input type="checkbox"/> Yes | |
| If Yes what is the name of the authorised firm? [_____] | |
| OR | |
| This does not apply to me. | |
| <input type="checkbox"/> Yes | |
| I accept that being a certified sophisticated investor will expose me to promotions for investment where there is a significant risk of losing all money that I invest. I am aware that it is open to me to seek professional advice before making any investment in a high-risk investment. | |
| Signature: | |
| Date: | |

SCHEDULE 2 - SELF-CERTIFIED SOPHISTICATED INVESTOR STATEMENT

(Rule 12)

SELF-SCERTIFIED SOPHISTICATED INVESTOR STATEMENT

Please confirm whether you qualify as a self-certified sophisticated investor on the basis that A, B, C, or D apply to you.

In the last two years have you:

- A) Worked in **private equity or the provision of finance** for small and medium enterprises?

No []

Yes []

If Yes, what is or was the name of the business or organisation? [].

- B) Been a **director of a company** with a net turnover of EUR **1,200,000** or more?

No []

Yes []

If Yes, what is/was the name of the company? [].

- C) Made **two or more investments in an unlisted company**?

No []

Yes []

If Yes, how many **investments in unlisted listed companies** have you made in the last two years? [].

- D) Been a **member of a syndicate or network of business angels** for more than six months?

No []

Yes []

If Yes, what is or was the name of the syndicate or network [].

- E) None of the above apply to me.

Yes []

I accept that being a I accept that being a self-certified sophisticated investor will expose me to promotions for investment where there is a significant risk of losing all money that I invest. I am aware that it is open to me to seek professional advice before making any investment in a high-risk investment.

Signature:

Date

SCHEDULE 3 – HIGH NET-WORTH INVESTOR STATEMENT

(Rule 13)

HIGH NET-WORTH INVESTOR

Please confirm whether you qualify as a high net-worth investor on the basis that A or B apply to you.

In the last year did you have

an annual income of EUR **120,000 or more**?. Income does not include any one-off pension withdrawals.

No []

Yes []

If Yes please specify your income as defined above to the last **EUR 12,000** in the last year [].

Net assets of EUR **300,000 or more**? Net assets do **NOT** include you home (primary residence, your pension (or any pension withdrawals) or any rights under qualifying contracts of insurance.

I accept that being a I accept that being a high net-worth investor will expose me to promotions for investment where there is a significant risk of losing all money that I invest. I am aware that it is open to me to seek professional advice before making any investment in a high-risk investment.

Signature:

Date

SCHEDULE 4 – SPECIFIED INVESTMENTS

1. Deposits
2. Electronic money
3. Contracts of insurance (general insurance contracts and long-term insurance contracts)
4. Shares
5. Debentures (Bonds)
6. Government and public security
7. Warrant
8. Certificate representing a certain security
9. Units in a fund
10. Stakeholder pension scheme
11. Personal pension scheme
12. Pension scheme which provides safeguarded benefits
13. Options - including commodity options and option on a commodity future.
14. Futures - including commodity futures and rolling spot forex contract
15. Contracts for differences
16. Spread bets
17. Funeral plan contract
18. Regulated mortgage contract
19. Home reversion plan
20. Home purchase plan
21. Regulated sale and rent back agreement
22. Emissions auction products
23. Credit agreements
24. Rights to or interests in investments.