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Marketing, Segregation and NAV Requirements for Regulated Private Equity Funds

The Cayman Islands Monetary Authority has published rules regarding the contents of marketing materials, segregation of assets and the calculation of net asset values of Cayman Islands closed-ended funds registered under the Private Funds Law 2020 (as amended). The rule do not apply to the wholly owned investment vehicles of a private fund where its accounts are consolidated with those of the fund.

Content of Marketing Materials

The content requirements cover many of the terms which are market standard in the marketing materials produced for Cayman private equity funds but also terms which are less common including the addresses of directors, the place where constitutional documents, investor reports and information on prices may be obtained or inspected, whether the fund is registered or licenced outside the Cayman Islands and the regulatory authority supervising the fund's custodian and prime broker. In addition the rule requires the inclusion of a specific statement regarding the limitations on the obligations and liabilities of the Cayman Islands Monetary Authority for the performance of the fund or the accuracy of its marketing materials.

Cayman Islands private funds applying to be licenced or registered under the Law will need to ensure that their marketing materials comply with the law and existing Cayman Islands private funds will need to ensure that any updates to their marketing materials include the content requirements.

Segregation of Assets

The rule on the segregation of assets requires that the assets of a Cayman Islands private equity fund must be segregated and accounted for separately from that assets of its manager, operator and custodian. The overriding requirement stated in this rule is that the fund must ensure that its manager,

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operators and custodian do not use the financial assets and liabilities of the fund to finance their own or any other operations.

The rule sets out the following actions which are specified as not constituting the financing of a private equity fund's manager, operator or custodian:

- remitting to the relevant investors redemption, withdrawal or distribution proceeds being paid on behalf of the fund;
- paying fees, charges and expenses that are payable by an investor in connection with the purchase, conversion, holding, transfer, withdrawal or redemption of investment interests of the fund;
- acquiring or disposing of assets for investment purposes in accordance with the fund's constitutive documents and 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, marketing materials or as otherwise disclosed to investors; or
- transfer and reuse of assets as consented to by or on behalf of the fund, provided that a description of the arrangements entered into with any custodian allowing for the possibility of transfer and reuse (and the maximum permitted level of transfer and reuse) is disclosed in the marketing materials or otherwise disclosed to investors before they invest, and that any material changes thereto are also disclosed to investors.

The fund's directors, managing member, general partner or trustee are required to establish, implement and maintain (or oversee the establishment, implementation and maintenance of) strategies, policies, controls and procedures to ensure compliance with the rule consistent with the fund's marketing materials and appropriate for the size, complexity and nature of the fund's activities and investors.

Calculation of Asset Values

The rule on the calculation of asset values requires Cayman Islands private equity funds to establish, implement, and maintain a net asset calculation policy that ensures that its net asset value is fair, reliable, complete, neutral and free from material error and is verifiable. The net asset value calculation policy is required to be calculated in accordance with generally accepted accounting principles of a non-high risk jurisdiction (including IFRS and US, Japanese and Swiss GAAP). The methodology used to perform the fund's net asset value calculation must also be consistent with the accounting principles or reporting standards used to prepare the Fund's audited financial statements.

The net asset value calculation policy must be disclosed in the fund's constitutional documents or marketing materials, require calculations of net assets values at least annually, state how and when the net asset value will be published and identify pricing sources. Pricing models may be used for hard to value securities for which there is no active market price provided that they are capable of practical

implementation. The fund's marketing materials are also required to describe the inherent limitations of the net asset value calculation policy.

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