

BELIZE



International Financial Services Commission

**POLICY GUIDELINES ISSUED BY THE
REGISTRAR OF MUTUAL FUNDS UNDER
SECTION 3(2)(D) OF THE MUTUAL FUNDS ACT,
(NO 12 OF 1999)**

REGISTRAR OF MUTUAL FUNDS

MARCH, 2001

MUTUAL FUNDS ACT POLICY GUIDELINES

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PART I

Guidelines on the Interpretation of the Act

These Guidelines are published under section 3(2)(d) of the Act. They are intended to assist in the construction of the Act and to help mutual funds practitioners and professional advisers understand its provisions and the regulatory policy objectives which underlie the Act.

The Guidelines are not intended to be fully comprehensive, but address the main issues on which clarification is considered desirable.

Guideline 1.1

Section 2(1) – Definitions of Administrator and Manager, sub-sections (b) of the definitions referring to a foreign person

The second tier of this definition covers the circumstances of a foreign domiciled fund management or administration company which carries on its business in Belize, for example, through a branch operation or representative office. In normal circumstances that person would be deemed to be carrying on business “in Belize” and would require a licence under section 22(1) of the Act. However, if that person is entitled to provide such services under the laws of a country which has been recognised by the Minister under section 2(3) of the Act, that person may apply to the Minister for an exemption under section 22(2) from the requirement to be licensed.

Guideline 1.2

Section 2(1) – Definition of Manager, in relation to an “investment adviser”

In normal circumstances a person who provides *only* investment *advice* (i.e. investment recommendations which carry no explicit or implied obligation of acceptance), whether to a mutual fund or to any other person,

would not be regarded as falling within the definition of a “manager” in this context and would therefore fall outside the scope of the Act. However, where the term “*investment adviser*” is used to describe a person who, for valuable consideration, provides investment management services to a mutual fund, that person would be regarded as falling within the definition of a “manager” and would be required to be licensed under the Act.

Guideline 1.3

Sections 8 and 18 – when a fund begins to “carry on its business or manage or administer its affairs”

These provisions require that no public fund or private or professional fund shall “*carry on its business or manage or administer its affairs*” unless it is registered or recognised respectively. In this context, a fund would be regarded as having commenced its business when a prospectus, or other document the purpose of which is to make an invitation to purchase or subscribe for shares of the fund, is published. This is in order to ensure that the basic investor protections which the Act provides are in place from the moment potential investors are approached.

Guideline 1.4

Section 10(2) and (3) – Consent to be Registered

An application for consent to be registered will be considered on the basis of a letter which describes the particulars of the proposed public fund. The letter should include details of the functionaries who will be involved in the operation of the fund and a description of the fund’s investment profile. In most circumstances the Minister’s consent, if granted, will be given subject to the submission of a satisfactory application for registration which, to be consistent with other applications for registration, must contain the information set down in Schedule 1 to the Act.

Guideline 1.5

Section 11(2)(b) – Functional Independence of the Custodian of a Public Fund

This section requires the day-to-day activities involved in custodianship of the property of a public fund to be carried on independent of the day-to-day activities of the fund's manager or administrator. Although this provision does not prohibit a public fund from having a custodian and a manager/administrator which is the same company, clear internal separation between the two respective operational functions must be demonstrated. This will be evidenced by different persons conducting the respective custodian and management/administration activities and by the existence of separate management reporting lines.

Guideline 1.6

Section 14(4) – Amendment to a Prospectus

The amendment which this section requires may be provided either by incorporation within a re-print of the whole prospectus or in the form of an addendum which makes clear its connection with the prospectus of the public fund.

PART II

Guidelines on the “fit and proper test” for Licensing

Guideline 2.1

Section 24(2)(a) of the Act - Scope of the “fit and proper” Assessment, Licensing of Managers and Administrators of Mutual Funds

The “fit and proper” assessment is both an initial test undertaken during

consideration of an application for licensing and a continuing and cumulative test which is applied to the ongoing conduct of a licence-holder's business – taking account of a licence-holder's history of compliance with all applicable laws, regulations and codes and the nature of its relationship with its Regulator.

An assessment of “fit and proper” status will be applied to the firm and to the key individuals (directors and managers) who are responsible for managing and controlling the firm's business. The assessment will also take account of, among other things, the nature and scope of the business proposed or being done; financial soundness; internal organisation and record keeping and systems of managerial control.

With regard to an individual, the assessment will take account of whether he or she has sufficient skills, knowledge and experience to properly carry out his or her duties and responsibilities specific to the business proposed or being done. The assessment will also take into account a person's reputation and character and will include such matters as whether he or she has a criminal record – convictions for dishonesty being especially relevant. Regard will also be had to bankruptcy proceedings and any regulatory action taken against an individual or a firm, whether in Belize or elsewhere.

The onus will always be on the applicant, individual or licence-holder, as the case may be, to provide satisfactory evidence that he or she is and continues to be a “fit and proper” person. Evidence merely of a minimum standard will not be sufficient. Rather, positive evidence will be required that the firm or individual meets a high standard. This is justified by the positions of trust, in respect of the money or other assets of an investor, that the firm and the individual occupy.

The assessment will have regard to the performance of an individual in the exercise of his or her duties and responsibilities. Incompetence or imprudence in the conduct of an institution's business or conduct that has threatened the interests of existing or future customers, whether by reason of action or failure to act, will reflect adversely on those responsible.

It may be determined that a person does not fulfil the “fit and proper” standard on the basis of several instances of conduct which, taken individually, might not lead to that conclusion. It may also subsequently be determined that a licence-holder or a key employee of a licence-holder does fulfil the “fit and proper” standard on the basis of information that was not available or that was not made available at the time of licensing.

The withholding by an applicant for licensing or a licence-holder of information which is relevant to the “fit and proper” assessment will certainly have a negative effect on the assessment of the individual or firm. It should also be noted that willfully providing false or misleading information when applying for a licence is an offence under the Act.

In carrying out an assessment, the Minister will not be restricted only to the information which is provided by the applicant. Regard will also be had to any matter which might not be directly related to the business of managing or administering mutual funds. For example, the Minister will wish to be informed of any legal proceedings which have been or are about to be instigated against the applicant firm, the licence-holder or a key individual.

Account will also be taken of key relationships that the applicant or licence-holder has or proposes to establish, such as with banks and auditors. Associations with accountants, lawyers and other finance firms who are themselves acknowledged to be of experience and in good standing by others in the marketplace or subject to prudent regulation and supervision in other jurisdictions will provide comfort. Conversely, an association with a firm that has been carrying on its business in contravention of the laws of any country or jurisdiction (such as an unlicensed bank or investment adviser) could adversely affect the assessment of the “fit and proper” status of its business associates.

Guideline 2.2

Key Elements of the “fit and proper” Assessment

Four key elements are relevant to the “fit and proper” assessment. These are: *integrity; financial stability, solvency and financial control; skill, competence and managerial control; and track record and viability.*

1. Integrity

- a)* Integrity involves the proper discharge of the responsibilities which come from being in a position of trust with regard to the investments and savings of others.
- b)* It concerns the firm's managers and employees behaving honourably towards customers, creditors, other firms in the market and regulatory bodies, whether in Belize or elsewhere.
- c)* It embraces behaviour which has an impact upon the community and the jurisdiction at large (e.g., avoiding the knowing assistance of money laundering) and is reflected by the general ethos and corporate culture of an applicant firm.
- d)* It involves dealing openly and honestly with the Regulator and informing the Regulator of anything which is relevant to the Regulator's duties.
- e)* Conversely, a desire to cover up deficiencies in the conduct of business would indicate a lack of integrity. Such action may also indicate a lack of knowledge and would have a bearing on the assessment of competence.

2. Financial Stability, Solvency and Financial Control

- a)* This test seeks to ensure a degree of stability in respect of the financial affairs of the licence-holder by requiring the maintenance of solvency and prudent financial control.
- b)* It involves the proper organisation and control of the firm's financial position and requires clear and robust financial recording and reporting systems and effective managerial oversight.

- c)** Solvency involves ensuring that a licence-holder is able to meet its liabilities when they fall due. It is also about maintaining adequate cover to enable the licence-holder to survive periods of market weakness or slack trading conditions.
- d)** Financial stability also concerns the proper control of the financial risks involved in a licence-holder's business.
- e)** Financial control requires that proper care and control is taken to protect customers' money and assets.

3. *Skill, Competence and Managerial Control*

- (a)** This test seeks to ensure that a licence-holder and its employees act to the highest standards of market practice and act in a way that upholds the best interests of investors and the reputation of Belize.
- (b)** It involves the demonstration of a soundly and prudently run business, one which is adequately resourced and well organised and one which maintains adequate records and well defined and documented operating and compliance procedures.
- (c)** It involves –
 - (i)** directors, managers and employees having adequate knowledge of and control over the business being done;
 - (ii)** managers ensuring that the business is operated in an efficient and reliable manner;
 - (iii)** managers and senior executives ensuring that the affairs of the licence-holder are properly organised; and,

- (iv) managers ensuring that employees are not required to perform duties or assume responsibilities that are unreasonable with regard to their skills and experience.
- (d) It requires a firm to establish clear internal managerial reporting lines, especially for compliance matters, and to ensure that its business is operated in full compliance with all statutory rules and regulations in force in Belize and any rules and regulations which may apply in any other country where the licence-holder is doing business.
- (e) It requires a licence-holder to demonstrate that its managers and employees have knowledge relevant to the business proposed or being done. Recognised professional qualifications and membership of professional institutions will be particularly relevant. Operational staff should be adequately trained and acquainted with the nature and risks of the financial instruments and the products with which they deal.
- (f) It includes the provision of or participation in structured training programmes which are designed to ensure that relevant skills and knowledge are transferred within the firm and the community.

4. *Track Record and Viability*

- a) This test seeks to ensure that an applicant for licensing and the individuals involved have sound and proven experience in carrying on the business for which they are seeking a licence.
- b) It seeks to ensure that a licence-holder's business plans are viable and realistic and that the firm will have a good probability of continuance in the future.

- c) It seeks to ensure that an applicant for licensing has soundly-based and legitimate reasons for wishing to do such business in Belize.
- d) It requires an applicant to establish a considered business plan, which takes account of the firm's projected financial position, its profitability and its resource requirements.

Guideline 2.3

Maintenance of the “fit and proper” Standard

Each applicant for licensing to provide management or administrative services to mutual funds will be considered on its own merits and both the company and the key individuals involved will be judged against the principles and standards that are outlined in this policy document.

Each existing licence-holder will be subject to a continuous ongoing assessment against the benchmark principles and standards set out in this document.

PART III

Guidelines on Miscellaneous Issues

These Guidelines are published under section 3(2)(d) of the Act. They provide guidance on certain matters of policy arising from the administration of the Act. The Guidelines cover mutual funds and applicants for licensing to provide management or administrative services to mutual funds.

These Guidelines are not intended to be and should not be regarded as being fully comprehensive on the matters covered herein.

Mutual Funds

Guideline 3.1

Foreign Functionaries of a Belize Mutual Fund

It is the objective of the Act to establish the credibility of Belize as a base for mutual funds and to reassure investors of the legitimacy and security of their investments.

The Act does not impose specific requirements with regard to the location of the manager, investment advisor, administrator, custodian or other functionary of a public or non-public fund. However, section 27(1) of the Act does provide that the Minister may impose any terms, conditions, limitations or restrictions upon the issue of a certificate of registration or a certificate of recognition as he may see fit to specify.

In this context, and with due regard to the objective of the Act, the Minister may, in certain cases, impose terms, conditions, limitations or restrictions upon the issue of a certificate to a mutual fund with regard to its functionaries.

A certificate will not, in principle, be subject to terms, conditions, limitations or restrictions when the mutual fund concerned has appointed functionaries that are incorporated in Belize or in a country or jurisdiction that has been recognised by the Minister under section 2(3) of the Act.

A foreign functionary that is incorporated in a non-recognised country or jurisdiction may also be acceptable, provided the country or jurisdiction is regarded as having a prudent system of regulation and supervision of mutual funds business.

Applications for Licensing

Guideline 3.2

Disclosure of Beneficial Ownership

An applicant for licensing must satisfy certain fundamental conditions before it may be granted a licence. Section 24 of the Act requires that evidence satis-

factory to the Minister must be provided that the applicant is “fit and proper” to be engaged in the business proposed; has or has available to him adequate knowledge, expertise, resources and facilities necessary for the nature and scope of the business proposed; and has appointed an auditor satisfying such conditions as may be prescribed. In addition, the granting of a licence should not be contrary to the public interest.

The beneficial ownership of an applicant for licensing is a core element in the assessment of its “fit and proper” status. It may also have implications for the assessment of the adequacy of knowledge, expertise, resources and facilities and with regard to the public interest.

Accordingly, all applications for licensing must provide full details (such as name and address in the case of an individual) of the ultimate beneficial owner(s) of the applicant. In certain circumstances it may also be necessary to submit resumés and references on individual beneficial owners in order to evidence that the licensing standards are fully satisfied.

Where an applicant is directly owned by a body corporate or a trust, as a minimum, details must be provided of the country or jurisdiction in which the company or trust is incorporated or constituted and of the beneficial owners or beneficiaries of that company or trust.

The jurisdiction of incorporation or constitution of such ownership companies or trusts will have a direct bearing on the assessment of the “fit and proper” status of the applicant. Unnecessarily complex or opaque ownership structures will not be acceptable.

Guideline 3.3

Bearer Shares

The particular characteristics of bearer shares are inconsistent with the disclosure and assessment of the beneficial ownership of an applicant for licensing. Consequently, an applicant for licensing is advised not to issue bearer shares.

Guideline 3.4

Regulation 4(1) of the Mutual Funds Regulations, 2000 – Sub-class – Public Fund - “is entitled to provide investment [management] services under the laws of ...”

The term “*is entitled*” sets down a requirement that the person is not prohibited or prevented from offering or providing such services in a recognised country or jurisdiction. An example of an “entitled person” would be an investment firm which is required to be and is properly authorised or licensed by the relevant competent authority in respect of the activity, such as investment management, the giving of investment advice or recommendations or arranging deals in investments.

A firm which is the subject of a suspension order or other regulatory or legal action which prevents it from carrying on that activity, or a firm which is not (for whatever reason) authorised or licensed in accordance with the laws of the recognised country or jurisdiction would not be regarded as an “entitled person” in this context.

Guideline 3.5

Regulation 9 of the Mutual Funds Regulations, 2000 - Exempt Family Trusts - “maintained by a group of family trusts for the sole purpose of facilitating investment”

This provision provides an exemption from the requirement to be recognised under the Act for an arrangement which is a mutual fund of which all the investors are “family trusts” who collectively pool their investments in the fund. The exemption will only apply when participation in the mutual fund does not involve any solicitation being made and the sole purpose of the fund is to facilitate the investment of monies. In this context –

“*family trusts*” would be regarded as trusts which have been established for the benefit of one or more members of the same family – which in this context would be regarded as including the father, sons,

daughters, including adopted and step children; and the immediate blood relations and the respective spouses of any of these persons;

“*maintained by*” would include an arrangement where the mutual fund is managed or administered by a third party on behalf of such family members.

It should be noted that a person who *for valuable consideration* provides management or administrative services to such a mutual fund would be required to be licensed under section 22 of the Act.