



Jersey

**FINANCIAL SERVICES (INVESTMENT BUSINESS
(QUALIFYING SEGREGATED MANAGED
ACCOUNTS – EXEMPTION)) (JERSEY)
ORDER 2014**

Arrangement

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Made

25th November 2014

Coming into force

26th November 2014

THE CHIEF MINISTER, in pursuance of Articles 4(1)(a)(i), 4(1)(a)(ii), 7(2)(a)(ii), 7(2)(b) and 42 of the Financial Services (Jersey) Law 1998¹, and on the recommendation of the Jersey Financial Services Commission, orders as follows –

1 Interpretation

In this Order –

“Business Day” means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day appointed as a public holiday or bank holiday under Article 2 of the Public Holidays and Bank Holidays (Jersey) Law 1951²;

“Calendar Quarter Date” means each of 31st March, 30th June, 30th September and 31st December in each calendar year;

“Charging Period” means the annual period (or part thereof) specified in the QSMA Fee Notice, which may or may not correspond with a calendar year, in respect of which a QSMA Fee applies;

“Client” in relation to an Operator and for the purposes of the condition contained in paragraph 5 of Schedule 2, means each of the following –

- (a) the legal owner of a QSMA or, where a QSMA is jointly owned, its Participants jointly;
- (b) a Reference Fund; and
- (c) the Operator when dealing in an investment on its own account;

“Due Date” means the date (or dates) specified in a QSMA Fee Notice by which a QSMA Fee in respect of a Charging Period is to be paid to the Commission;

“Eligible Employee” means –

- (a) an individual that is a senior employee, partner or director of an Employer or of a company in the same group as the Employer; or
- (b) a trust, company, partnership or other scheme or arrangement established for the sole benefit of an individual referred to in paragraph (a);

“Employee Vehicle” means an entity described in paragraph (b) of the definition “Eligible Employee”;

“Employer” means a person registered under the Law to conduct any of the following –

- (a) Relevant FSB Services;
- (b) fund services business in relation to class Y, as referred to in Part 5 of the Schedule to the Law Classes Order; or
- (c) investment business in relation to any one or more of classes B, C or D, as referred to in Part 5 of the Schedule to the Law Classes Order;

“Employment Connection” means a connection that exists between 2 Participants in an SMA where one is an Employer and the other is an Eligible Employee;

“Family Connection” means –

- (a) a connection that exists between 2 Participants in an SMA (respectively the “First Participant” and the “Second Participant”) by reason that the First Participant is –
 - (i) the wife, husband or civil partner of the Second Participant,
 - (ii) a Relative of the Second Participant,
 - (iii) the wife, husband or civil partner of a Relative of the Second Participant, or
 - (iv) the wife, husband or civil partner of the Second Participant’s wife, husband or civil partner; or
- (b) a connection that exists between 2 Participants in an SMA (either or both of which is a Family Vehicle) by reason that at least one Beneficiary of the Family Vehicle has a Family Connection described in paragraph (a) with –
 - (i) at least one other natural person who is a Participant in the SMA, or
 - (ii) at least one Beneficiary of another Family Vehicle that is a Participant in the SMA;

“Family Vehicle” means a trust, company, partnership or other scheme or arrangement established for the benefit of –

- (a) a natural person; or
- (b) 2 or more natural persons, who are all connected to each other by virtue of a Family Connection described in paragraph (a) of that defined expression,

and a reference to a Beneficiary in this Order is to such a natural person;

“Fee Exemption” means, in respect of a Charging Period, such complete or partial exemption from the requirement to pay the QSMA Fee relating to that Charging Period, as may be specified in the QSMA Fee Notice, and which shall be subject to such conditions, if any, relating to its availability as are specified therein;

“Law” means the Financial Services (Jersey) Law 1998³;

“Law Classes Order” means the Financial Services (Financial Service Business) (Jersey) Order 2009⁴;

“Mandate Document” means an investment management agreement or other mandate in written form, such as a revocable power of attorney, pursuant to which the Operator is appointed to undertake Relevant Activity in connection with an SMA;

“New Participant Date” in relation to a QSMA, means any date falling after the Qualification Date on which a person becomes a Participant in the QSMA;

“Operator” means in relation to an SMA, a person appointed to undertake Relevant Activity in connection with it;

“Participant” means the legal owner of an SMA or, where an SMA is jointly owned, a joint legal owner of that SMA (and “Participants” shall mean all of the latter);

“person” includes a Family Vehicle, an Employee Vehicle and any entity referred to in Article 2(2)(a)(ii);

“Qualification Date” in relation to a QSMA, means the first date on which it qualified as a QSMA or, if it ceased (for any reason) to qualify as such but then re-qualified as a QSMA, the subsequent date on which it most recently qualified as such;

“Qualifying Segregated Managed Account” and “QSMA” mean an SMA which qualifies as such in accordance with Article 2;

“Qualifying Strategies” in relation to an SMA, means one or more hedge-fund strategies which replicate (or are comprised of material elements from) one or more hedge-fund strategies currently employed by the Operator in respect of one or more Reference Funds (and which, for the avoidance of doubt, may permit co-investment into the same investments and other assets as those Reference Funds);

“QSMA Fee” means, in respect of a Charging Period, a fee (or fees) in such amount as is specified in a QSMA Fee Notice and which is to be paid by the Due Date relating thereto;

“QSMA Fee Notice” means a notice published by the Commission in accordance with Article 15(5) of the Financial Services Commission (Jersey) Law 1998⁵ which specifies the QSMA Fee in respect of one or more Charging Periods, the Due Dates relating thereto and which may specify one or more Fee Exemptions in connection with such Charging Periods and the conditions to which the same may be subject;

“QSMA Warning” means the warning set out in Schedule 3 or, in respect of a particular SMA, a warning with words to the like effect approved in advance by the Commission;

“Reference Fund” means a collective investment fund or an unregulated fund in respect of which the Operator is appointed to provide Relevant FSB Services;

“Relative” means brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, for which purpose –

- (a) any relationship of the half blood shall be treated as a relationship of the whole blood and the stepchild or adopted child of a person as his or her child; and
- (b) an illegitimate child shall be treated as the legitimate child of his or her mother and reputed father;

“Relevant Activity” means discretionary investment management within the meaning given in Article 2(2)(b) of the Law (referred to as class B within the Law Classes Order) undertaken by an Operator in connection with an SMA;

“Relevant FSB Services” means fund services business in relation to any one or more of classes U, X, ZG and ZJ as referred to in Part 5 of the Schedule to the Law Classes Order;

“Relevant Period” means a Charging Period within which the Operator relies (or purports to rely) upon the exemption conferred by Article 3(1);

“Relevant Time”, in relation to an SMA, means –

- (a) the Qualification Date; and
- (b) each New Participant Date;

“Reporting Date”, in relation to a Calendar Quarter Date, means the date falling 15 Business Days after the Calendar Quarter Date;

“Required Amount” means one million United States dollars (or the equivalent of that amount in another currency);

“Required Commitment” in relation to an SMA, means any one of the following –

- (a) a cash sum of not less than the Required Amount has been paid into the SMA by the Participant or by the Participants jointly;
- (b) investments with a net asset value of not less than the Required Amount have been contributed into the SMA by the Participant or by the Participants jointly;
- (c) a sum which in the aggregate is not less than the Required Amount is, through a combination of (a) and (b), paid and contributed into the SMA by the Participant or by the Participants jointly; or
- (d) the Participant or the Participants jointly are subject to a legal obligation in favour of the Operator to make a payment or contribution described in any of paragraphs (a) to (c) upon the Operator’s demand or notice requiring the same; and

“Segregated Managed Account” and “SMA” mean a portfolio of investments (or investments and other assets) in respect of which the Operator is, in relation to some or all of the investments comprised within it, appointed to undertake Relevant Activity.

2 Qualifying Segregated Managed Accounts

- (1) An SMA in relation to which the conditions set out in Schedule 1 are satisfied shall also be a QSMA for so long as such conditions are satisfied.
- (2) The condition set out in paragraph 5 of Schedule 1 is not to be taken to not be satisfied by reason only of –
 - (a) a person, who lacks the requisite Family Connection, acquiring a legal interest in a Family Vehicle or in an SMA in which a Family Vehicle is also a Participant if, at the time such interest was acquired, the person was –
 - (i) a senior employee, partner or director of the Family Vehicle or of a company in the same group as the Family Vehicle, or
 - (ii) a trust, company, partnership or other scheme or arrangement established for the sole benefit of an individual referred to in clause (i) of sub-paragraph (a);
 - (b) the acquisition, by a person who lacks the requisite Family Connection, of a legal interest in a Family Vehicle or in an SMA by succession on the death or bankruptcy of a person who, immediately prior to death or bankruptcy, had such interest or a greater interest from which the succession interest was derived; or
 - (c) the acquisition, by a person who lacks the requisite Employment Connection, of a legal interest in an Employee Vehicle or in an SMA by succession on the death or bankruptcy of a person who, immediately prior to death or bankruptcy, was a Participant and had such interest or a greater interest from which the succession interest was derived.
- (3) The requirement for an acknowledgement by a Participant within the condition set out in paragraph 7 of Schedule 1 shall be deemed to be satisfied where the Participant has executed a Mandate Document within which the QSMA Warning was contained in a prominent position.

3 Exemption

- (1) The Law shall not apply to an Operator that is in compliance with the conditions set out in Schedule 2 when, in relation to a QSMA, that Operator carries on Relevant Activity.
- (2) The exemption conferred by paragraph (1) is amended so that it is limited to Article 7 of the Law.
- (3) Articles 12, 18, 23, 24, 25, 25A, 25B, 25C, 26, 28, 32, 33, 34, 35, 36, 37, 38, 39 and 41 of the Law shall continue to apply to a person exempted

from registration by virtue of paragraph (1) as if, in respect of Relevant Activity to which that exemption applies, the person were a registered person.

- (4) A reference to registered persons in the Articles of the Law referred to in paragraph (3) and the reference to persons registered by the Commission in Article 5 of the Law shall be construed accordingly.
- (5) The condition set out in paragraph 3 of Schedule 2 shall not be deemed to have been complied with unless the Commission has confirmed in writing its receipt of the notice submitted by the Operator.
- (6) The condition set out in paragraph 6 of Schedule 2 is not to be taken to not be satisfied where the Commission has, in respect of one or more Calendar Quarter Dates, confirmed to the Operator that it is satisfied that –
 - (a) it would be (or was) impractical for the Operator to report some or all of the information required in accordance with that paragraph; and
 - (b) such impracticality is not (or was not) the result of, or materially caused by, circumstances involving fault on the part of the Operator or its staff.

4 Citation and commencement

This Order may be cited as the Financial Services (Investment Business (Qualifying Segregated Managed Accounts – Exemption)) (Jersey) Order 2014 and shall come into force on the day after it is made.

SENATOR I.J. GORST

Chief Minister

SCHEDULE 1

(Article 2(1))

QSMA CONDITIONS

1. A single Operator is appointed in relation to the SMA.
2. The SMA is not in the name of the Operator.
3. The Operator does not have ownership or custody of any of the investments comprised within the SMA.
4. If there is more than one Participant in relation to the SMA, neither the legal nor beneficial interests of the Participants in –
 - (a) the investments comprised in the SMA; or
 - (b) any returns generated thereon (whether of an income or capital nature),are represented by any formal division or unitisation.
5. If there is more than one Participant in relation to the SMA, at each Relevant Time the Participants at such time are either –
 - (a) all connected to each other by way of a Family Connection; or
 - (b) with the exception of one Participant that is an Employer, all connected to that Employer by way of an Employment Connection.
6. Upon (or immediately prior to) the Qualification Date the Required Commitment has been made by the Participant or, where there is more than one Participant in relation to the SMA upon (or immediately prior to) such date, by the Participants jointly.
7. Upon (or immediately prior to) –
 - (a) the Qualification Date, each Participant; and
 - (b) each New Participant Date, each person becoming thereon a Participant,has been given the QSMA Warning in writing and has acknowledged it to the Operator in writing.
8. Only one or more Qualifying Strategies are employed by the Operator in relation to the SMA and no other strategies.

SCHEDULE 2

(Article 3(1))

OPERATOR CONDITIONS

1. The Operator is a person registered under the Law in respect of Relevant FSB Services.
2. The Operator is a person appointed to undertake the investment management of one or more hedge-funds and either holds itself out as being a hedge-fund manager or is generally perceived as such.
3. Unless it has previously submitted such a notice, the Operator has given notice to the Commission (in such form and containing such particulars as the Commission may from time to time publish) that it has been appointed as the Operator of a QSMA and intends to rely upon the exemption conferred by Article 3(1).
4. Unless (or subject to the extent that) a Fee Exemption applies, the QSMA Fee in respect of the Relevant Period has been paid by or on behalf of the Operator by the Due Date relating thereto.
5. When conducting Relevant Activity to which the exemption in Article 3(1) applies, the Operator ensures that all Clients are, as between each other, dealt with fairly and that no Client is given unfair advantage.
6. For so long as it conducts Relevant Activity to which the exemption in Article 3(1) applies, the Operator, no later than the Reporting Date corresponding to a Calendar Quarter Date, informs the Commission (in such form as the Commission may from time to time publish) of –
 - (a) the number of QSMAs at the Calendar Quarter Date in respect of which the Operator had placed reliance upon the exemption conferred by Article 3(1); and
 - (b) the value of the investments under management in connection with those QSMAs, the same being reported as a single aggregated figure only.

SCHEDULE 3

(Article 1)

QSMA WARNING

[insert Operator's name] (the “**Operator**”) intends to provide discretionary investment management services (the “**Services**”) to you, its client(s), in connection with a segregated managed account which it is intended will be a Qualifying Segregated Managed Account (a “**QSMA**”) pursuant to the provisions of the Financial Services (Investment Business (Qualifying Segregated Managed Accounts – Exemption)) (Jersey) Order 2014⁶ (the “**QSMA Order**”). In respect of its provision of the Services in connection with your QSMA, the Operator, when in compliance with the conditions specified in the QSMA Order, will be subject to only some, and importantly therefore not all, of the provisions of the Financial Services (Jersey) Law 1998⁷, as amended (the “**Law**”). The Operator would not, in such circumstances, be registered by the Commission in respect of its provision of the Services even though the Operator may be registered pursuant to the Law to conduct *investment business*. Additionally, whilst the Operator is required by the QSMA Order to be registered pursuant to the Law to conduct *fund services business* in at least one relevant class of such activity, such licensing will not apply to the Operator's activities and provision of the Services in connection with your QSMA.

Participation in a QSMA in respect of which the Operator is placing reliance on the QSMA Order (such QSMA, a “Relevant QSMA”) is only suitable for professional or highly sophisticated and experienced investors. In addition, participation in a Relevant QSMA is intended only for those making the prescribed minimum financial contribution or commitment of US\$1 million (or currency equivalent). (If you intend to become a joint owner of a Relevant QSMA but your own financial contribution would be less than such amount, you should take particular care to ensure that participation in such QSMA is suitable for you). Investment in a Relevant QSMA may involve special risks that could lead to the loss of all or a substantial portion of your investment as well as the possibility of incurring financial liabilities in excess of your investment. You are wholly responsible for ensuring that all aspects of your proposed participation in a Relevant QSMA and the risks involved are acceptable to you.

It must be distinctly understood that the Jersey Financial Services Commission: (i) has not evaluated or approved your QSMA; and (ii) does not take any responsibility for the financial soundness of a party's participation in a Relevant QSMA or for the correctness of any statements made, or opinions expressed, with regard to the same by any party. The Commission is protected by the Law against liability arising from the discharge of its functions thereunder.

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- 1* chapter 13.225
 - 2* chapter 15.560
 - 3* chapter 13.225
 - 4* chapter 13.225.04
 - 5* chapter 13.250
 - 6* R&O.182/2014
 - 7* chapter 13.225