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OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Code of Conduct Group (Business Taxation)
Subject:	The EU list of non-cooperative jurisdictions for tax purposes – Cayman Islands: final legislation and assessment under criterion 2.2 = Rule on Calculation of Net Asset Values for Registered Private Funds

July 2020

Rule

Calculation of Net Asset Values
- Registered Private Funds

1. Statutory Authority

1.1. These Rules are issued pursuant to section 34 of the Monetary Authority Law (2020 Revision) ("MAL"), which provides that the Cayman Islands Monetary Authority (the "Authority") may, after private sector consultation, issue or amend rules or statements of principle or guidance concerning the conduct of licensees and their officers and employees, and any other persons to whom and to the extent that the regulatory laws may apply.

1.2. These Rules should also be read in conjunction with the Authority's Rules on Contents of Marketing Material of Registered Private Funds.

2. Objective

2.1. To set out the Authority's rules on the Calculation of Net Asset Values for Registered Private Funds (each subparagraph of paragraph 5 below referred to as a "Rule," and collectively, the "Rules"), pursuant to the MAL.

3. Scope

3.1. These Rules apply to all Private Funds registered under section 7 of the Private Funds Law, 2020 (the "PFL") other than Alternative Investment Vehicles.

4. Definitions

4.1. ***Fund*** means any Private Fund registered under section 7 of the PFL that is not an Alternative Investment Vehicle.

4.2. ***NAV (Net Asset Value)*** means the value of a Fund's total assets (including accrued interest, dividends and other receivables), minus the value of the Fund's total liabilities (including accrued expenses (including fees) and other payables).

4.3. ***NAV Calculation Policy*** means the pricing and valuation practices,

policies, and procedures to calculate a Fund's NAV that are established and maintained in accordance with the requirements of the PFL and the Rules.

4.4. ***Fair Value*** means the price that would be received for the sale of an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.

4.5. ***Hard-to-Value Assets*** means investments for which there is no active market price for identical assets or liabilities that the fund can access at the NAV calculation date.

4.6. ***Pricing Models*** include any pricing models or determination methods used to value investments.

4.7. ***Section 16 Person*** means a person appointed by a Fund under section 16 of the PFL to perform valuations of its assets.

4.8. All other capitalised terms used in the Rules shall have the meanings ascribed to them in the PFL.

5. NAV Calculation Policy

5.1. A Fund must establish, implement, and maintain a NAV Calculation Policy that ensures a Fund's NAV is fair, reliable, complete, neutral and free from material error and is verifiable.

5.2. The NAV Calculation Policy shall be calculated in accordance with the International Financial Reporting Standards, or generally accepted accounting principles of the United States of America, Japan or Switzerland or a Non-High Risk Jurisdiction.

5.3. The methodology used to perform the NAV calculation must be consistent with the accounting principles or reporting standards used to prepare the Fund's audited financial statements.

5.4. The NAV Calculation Policy must:

5.4.1 be written and disclosed in the Fund's constitutional documents or Marketing Materials or other form of Investor communication typically used by the Fund;

5.4.2 describe the Fund's practical and workable pricing and valuation policies, practices, and procedures;

5.4.3 require the valuing of assets regularly, at least annually;
5.4.4 state the value of assets, how it will be used, and when and how it will be published;
5.4.5 state the accounting principles or reporting standards that will be followed;
5.4.6 define the role and responsibilities of the Section 16 Person in the valuation process;
5.4.7 identify the price sources for each investment type and a practical escalation of resolution procedure for the management of exceptions; and
5.4.8 incorporate internal controls that are appropriate to the size, complexity, and nature of the Fund's operations.

5.5. Unless otherwise required by the financial reporting frameworks set out in 5.3, the NAV Calculation Policy must require the Fund to value the investments within its portfolio(s) using Fair Value.

5.6. In estimating the Fair Value for an investment, the Fund should apply a technique or techniques that is or are appropriate considering the nature, facts, and circumstances of the investment.

5.7. A Fund may use Pricing Models to determine a Fair Value for Hard-to-Securities.
5.7.1 A Fund must, to the extent appropriate to address the risk of material error, calibrate Pricing Models, by verifying the inputs used in the Pricing Model and testing whether the Pricing Model reflects current market conditions, for example, by applying the model and inputs to a similar instrument for which pricing information is available or other appropriate means.
5.7.2 Any Pricing Models must be capable of practical implementation by the Section 16 Person.

5.8. The Fund must require the Section 16 Person to apply the Fund's NAV Calculation Policy; unless there is satisfactory reason not to do so, deviations from the NAV Calculation Policy must be disclosed in the Fund's Marketing Materials. Where they are likely to have an effect on the reported NAV, they must be disclosed to the Fund's investors and agreed by the Operator(s) in advance of the determination or production of the NAV.

5.9. In addition to any disclosure required by Rule 5.8, a Fund's constitutional documents or Marketing Materials or other form of Investor communication must explicitly describe the inherent limitations potential limitations and conflicts of the NAV Calculation Policy, and any material involvement by the Fund's investment manager / advisor in the pricing of the Fund's portfolio, or otherwise in the calculation, determination or production of the NAV and any conflicts of interest caused by such involvement.

5.10. The NAV of the Fund shall be communicated directly to the investors (as recorded on the official register of the entity), including to each particular investor their share of the balance or NAV per unit, by the Service Provider charged in 5.8 with the NAV Calculation. reports must be addressed directly to the Fund's investors.

5.11. The Fund's Operator(s) have ultimate responsibility for oversight of the entire net asset valuation process, and must approve, and review at least annually, the NAV Calculation Policy and any Pricing Models.

6. Enforcement

6.1. Whenever there has been a breach of the Rules, the Authority's regulatory policies and procedures as contained in its Enforcement Manual will apply, in addition to any other powers provided in the PFL and the MAL.