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BRITISH VIRGIN ISLANDS

New Securities, Investment Law, Mutual Funds Regulations Enacted

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The Securities and Investment Business Act, 2010 (“SIBA”) was enacted by the British Virgin Islands’ House of Assembly on April 12, 2010, and published in the Official Gazette. The SIBA and the Mutual Funds Regulations, 2010 (the “MFR”) became law on May 17, 2010, save for Part II of the SIBA, 2010, which deals with the public issuance of securities in a non-mutual funds context to persons located in the British Virgin Islands.

The SIBA:

- regulates persons carrying on “investment business” in or from within the British Virgin Islands;
- regulates the public issuance of securities in a non-mutual funds context to persons located in the British Virgin Islands;
- together with the MFR repeals and replaces the Mutual Funds Act, 1996 (the “MFA”), but the SIBA and the MFR do not make any substantial changes to the current mutual funds regime; and
- introduces a new market abuse regime covering insider dealing and market manipulation.

Part I — Investment Business

The SIBA provides that no person may carry on “investment business” of any kind in or from within the British Virgin Islands unless licensed by the BVI Financial Services Commission (the “FSC”) to carry on such

investment business, and applies to, amongst others, broker dealers, investment advisors, custodians, operators of investment exchanges and market makers. In addition, to the extent that the functionaries of closed-ended funds carry on “investment business”, such functionaries are now regulated by and require a licence under the SIBA.

“Investment business” is broadly defined to include, subject to exceptions, dealing in or arranging deals in or managing “investments”, providing investment advice, providing custodial or administration services with respect to investments or operating an investment exchange.

“Investments” is defined to include shares, interests in a partnership or fund, debentures, bonds, other debt instruments and derivatives and other interests relating to such investments.

Persons already carrying on investment business at the commencement date of the SIBA are required to obtain a licence from the FSC within six months of the commencement date. If a person was not already carrying on investment business prior to the commencement date of the SIBA, a license is required to carry on investment business with effect from the date of the commencement of the SIBA.

Licensees are required to comply on an ongoing basis with a number of requirements under the SIBA and the Regulatory Code 2009, including requirements relating to capital resources, the appointment and removal of directors, changes to ownership structures, insurance, corporate governance, segregation of client assets, advertising and such other requirements to be included in a dedicated part of the Regulatory Code 2009.

Part II — Public Issues of Securities

Part II of the SIBA regulates offers of “securities” to the public, meaning, with exceptions, offers of securities to “any person” in the British Virgin Islands, but does not include securities issued by mutual funds or offers to “qualified investors”. Public offers coming within Part II of the SIBA must be based on a prospectus registered with the FSC and must comply with such requirements as may be prescribed by the FSC in the “Public Issuers Code” (which is expected to be published shortly).

Part III — Mutual Funds

Under Part III of the SIBA and the MFR, the regime applicable to mutual funds is not expected to change radically. The previous regime under the MFA continues, with a two-tier regulatory scheme of private and non-private funds, with lighter regulation applicable to private and professional funds and heavier scrutiny on public funds. However, there are now formal legislative requirements for, amongst other matters, private and professional funds to appoint an auditor, to maintain audited accounts, to have a minimum of two directors and for details of the directors and auditor to be included in such funds’ applications for recognition to the FSC.

Part IV — Authorised Representatives, Financial Statements and Audit

Part IV of the SIBA introduces a requirement for all licensees and mutual funds to have at all times an authorised representative unless exempted by having a significant management presence in the British Virgin Islands, as specified in the Regulatory Code 2009. Local service

providers (including our corporate services affiliate Appleby Corporate Services (BVI) Limited) will need to apply to the FSC to be approved as an authorised representative.

The functions of an authorised representative are to act as the main intermediary between the licensee or mutual fund and the FSC, to accept service of notices and other documents on behalf of the licensee or mutual fund, to keep in the authorised representative’s office in the British Virgin Islands such records, or copies of such records, as may be prescribed, to make all submissions to the FSC and to pay all relevant fees on the licensee’s or mutual fund’s behalf.

Part IV of the SIBA also contains a requirement for all licensees and public funds to prepare annual audited financial statements which must be submitted to the FSC. The same requirement, for private and professional funds, is contained in Part 1 of the MFR.

PART V — Market Abuse

Part V of the SIBA introduces criminal offences for persons engaging in insider dealing, misleading statements and market manipulation. A definition for each offence is included in the SIBA.

An individual who commits any of the offences of insider dealing, misleading statements or market manipulation is liable to a fine or possible imprisonment.

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