INVESTMENT FUNDS (SMART FUND) (SFM 001-004) RULES

S.I. 99/2003
S.I. 92/2011

(SECTION 5)

[Commencement 29th December, 2003]

Citation.

1. These rules may be cited as the Investment Funds (SMART Fund) (SFM 001-004) Rules.

Interpretation.

2. In these Rules —

Ch. 369A.

"fund" means investment fund as defined under the Investment Funds Act;

"financial institution", means a financial institution defined in regulation 2 of the Investment Funds Regulations, 2003;

"SFM 001", means SMART Fund Model SFM 001 licensed under rule 3;

"SFM 002", means SMART Fund Model SFM 002 licensed under rule 4;

"SFM 003", means SMART Fund Model SFM 003 licensed under rule 5;

"SFM 004", means SMART Fund Model SFM 004 licensed under rule 6;

"term sheet", means the offering document of a SMART Fund that complies with the offering document requirements as provided in the schedule applicable to that particular SMART Fund Model.

Description of SFM 001.

3. (1) A licensor may license a fund as a SFM 001 if —

(a) the promoter of the fund is a financial institution; and

(b) an investor in the fund is a customer of the promoter and is a party to a Discretionary Management Agreement with the Promoter.

(2) The assets of the investors in the fund shall not be subject to fees both at the fund level and at the Discretionary Management Agreement level.

(3) Subject to paragraph (4), the Investment Funds Act and Regulations shall apply to a fund operating as a SFM 001.

(4) A SFM 001 in relation to the items set out in column 1 of the table appearing in Schedule 1, shall comply with the provisions prescribed in column 2 of that table.

Schedule 1.

Description of SFM 002.

4. (1) A licensor may license a fund as a SFM 002 if —

(a) the investment fund has not more than ten investors who hold equity interest in the fund;

(b) an investor of the fund is a person to whom a professional fund may be offered; and

(c) a majority of the investors who hold equity interests in the fund have the power to appoint and remove the operators of the fund.

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(2) Subject to paragraph (3) the Investment Funds Act and Regulations shall apply to a fund operating as a SFM 002.

(3) A SFM 002 in relation to the items set out in column 1 of the table appearing in Schedule 2, shall comply with the provisions prescribed in column 2 of that table.

Description of SFM 003.

5. (1) A licensor may license a fund as a SFM 003 if —

(a) the fund is operating as a mutual fund exempt pursuant to section 3(4) of the Mutual Funds Act, 1995 at the time of the repeal of that Act; and

(b) the fund has not more than fifteen investors holding equity interests in the fund, the majority of whom have the power to appoint or remove the operators of the fund.

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(2) Subject to paragraph (3), the Investment Funds Act and Regulations shall apply to a fund operating as a SFM 003.

(3) A SFM 003 in relation to the items set out in column 1 of the table appearing in Schedule 3, shall comply with the provisions prescribed in column 2 of that table.

Description of SFM 004.

6. (1) A licensor may license a fund as a SFM 004 if —

(a) the investment fund has not more than five investors who hold equity interests in the fund; and

(b) the fund operates as a legal entity. *S.I. 92/2011*

(2) Subject to paragraph (3), the Investment Funds Act and Regulations shall apply to a fund operating as a SFM 004. Ch. 369A.

(3) A SFM 004 in relation to the items set out in column 1 of the table appearing in Schedule 4, shall comply with the provisions prescribed in column 2 of that table. Schedule 4.

SCHEDULE 1		**(rule 3)**
OFFERING DOCUMENT/ TERM SHEET	A term sheet is not required. Where there is a term sheet it shall contain the following information:	
	i.	Name of Fund
	ii.	Date established
	iii.	Structure of the Fund
	iv.	Name and address of operators
	v.	Nature of Equity Interests
	vi.	Investment objective and policy
	vii.	Dealing policy
	viii.	Distribution policy
	ix.	Name and address of all parties related to the fund
	x.	A statement that the fund is not required to have its financial statements audited, but that annual unaudited financial statements and semi-annual performance reports of the fund shall be filed with the Commission.
	xi.	Fees and Expenses
	xii.	A statement that the assets of the investors in the fund shall not be subject to fees at both the fund level and the Discretionary Management Agreement Level.
	xiii.	Termination
	xiv.	A statement that "the fund is licensed as an SFM 001 pursuant to the Investment Funds Act (Ch. 369A.) operating as a fund whose —
	(a)	Promoter is a financial institution; and
	(b)	Investors are customers of the promoters and are parties to a Discretionary Management Agreement with the promoters.

SUBSCRIPTION AGREEMENT	The Subscription Agreement of the fund shall contain a statement by the promoter confirming that a Discretionary Management Agreement exists between the promoter and the Investor.	
FINANCIAL REPORTING REQUIREMENTS	(a)	The fund shall file with the Commission performance reports of the fund every six months summarizing:
	(i)	Subscriptions and redemptions to the fund;
	(ii)	NAV at the end of the relevant period;
	(iii)	Return earned at the end of period; and
	(iv)	The asset allocation of the fund.
	(b)	The unaudited financial statements of the fund shall be filed with the Commission annually;
ANNUAL CERTIFICATION	The Operators of the fund no later than January 31 of each year shall certify to the Commission that the fund is qualified to operate as a SFM 001.	

	SCHEDULE 2	**(rule 4)**
OFFERING DOCUMENT/ TERM SHEET	A SFM 002 shall have a term sheet containing the following information:	
	i.	Name of Fund
	ii.	Date established
	iii.	Structure of the Fund
	iv.	Name and address of operators
	v.	Nature of Equity Interests
	vi.	Investment objective and policy
	vii.	Dealing policy
	viii.	Distribution policy
	ix.	Name and address of all parties related to the fund
	x.	A statement that the financial statements of the fund shall be audited annually unless unanimously waived by the holders of the equity interests in the fund and that if there is such a waiver a performance report of the fund shall be filed with the Commission every six months for as long as the waiver is valid.
	xi.	Fees and Expenses
	xii.	Termination

	xiii.	A statement that "the fund is licensed as a SFM 002 pursuant to the Investment Funds Act (Ch. 369A) operating as a fund —	
		a.	which is limited to having no more than ten investors who hold equity interests in the fund;
		b.	whose investors are persons to whom a professional fund may be offered; and
		c.	where a majority of the investors who hold equity interests in the fund have the power to appoint and remove the operators of the fund."
SUBSCRIPTION AGREEMENT	The Subscription Agreement of the fund shall contain confirmation that the investor in the fund agrees with the regulatory requirements applicable to the SFM 002.		
CONSTITUTIVE DOCUMENTS	The Constitutive Documents shall provide for the majority of the holders of equity interests in the fund to have the power to appoint or remove the operators of the fund.		
FINANCIAL REPORTING REQUIREMENTS	(a)	The financial statements of the fund shall be audited unless all of the holders of the equity interests in the fund unanimously agree to waive the annual audit of the fund's financial statements;	
	(b)	Where the annual audit of the financial statements of the fund has been waived the fund shall file with the Commission within six months of the waiver, a performance report of the fund and shall file such a report every six months thereafter as long as the waiver exists;	
	(c)	The administrator of the fund shall make the NAV reports available to investors upon request.	
ANNUAL CERTIFICATION	The Operators of the fund no later than January 31 of each year shall certify to the Commission that the fund is qualified to operate as a SFM 002.		

	SCHEDULE 3	**(rule 5)**
OFFERING DOCUMENT/TERM SHEET	A SFM 003 fund shall have a term sheet containing the following information:	
	i.	Name of Fund
	ii.	Date established
	iii.	Structure of the Fund
	iv.	Name and address of operators
	v.	Nature of Equity Interests
	vi.	Investment objective and policy
	vii.	Dealing policy
	viii.	Distribution policy
	ix.	Name and address of all parties related to the fund
	x.	A statement that the financial statements of the fund shall be audited annually unless unanimously waived by the holders of equity interests in the fund and that if there is such a waiver a performance report of the fund shall be filed with the Commission every six months for as long as the waiver is valid.
	xi.	Fees and Expenses
	xii.	Termination
SUBSCRIPTION AGREEMENT	The Subscription Agreement of the fund shall contain confirmation that the investor in the fund agrees with the regulatory requirements applicable to the SFM 003.	
CONSTITUTIVE DOCUMENTS	The Constitutive Documents shall provide for the majority of the holders of equity interests in the fund to have the power to appoint or remove the operators of the fund.	
FINANCIAL REPORTING REQUIREMENTS	(a)	the financial statements of the fund shall be audited unless all of the holders of equity interests in the fund unanimously agree to waive the annual audit of the fund's financial statements;

	(b)	Where the annual audit of the financial statements of the fund has been waived the fund shall file with the Commission within six months of the waiver, a performance report of the fund and shall file such a report every six months thereafter as long as the waiver exists; and
	(c)	The administrator of the fund shall make the NAV reports available to investors upon request.
LICENSING REQUIREMENT	The administrator of the fund shall submit no later than thirty (30) days after the date of its license:	
	(i)	a certified copy of the register of the holders of equity interests in the fund; or
	(ii)	certification by Counsel and Attorney or the administrator of the fund that the fund has not more than fifteen individual holders of equity interests.
ANNUAL CERTIFICATION	The Operators of the fund no later than January 31 of each year shall certify to the Commission that the fund is qualified to operate as a SFM 003.	

SCHEDULE 4	**(rule 6)**

OFFERING DOCUMENT/TERM SHEET	A term sheet is not required. Where there is a term sheet it shall contain the following information:	
	i.	Name of Fund
	ii.	Date established
	iii.	Structure of the Fund
	iv.	Name and address of operators
	v.	Nature of Equity Interests
	vi.	Investment objective and policy
	vii.	Dealing policy
	viii.	Distribution policy
	ix.	Name and address of all parties related to the fund

	x.	A statement that the financial statements of the fund shall be audited annually unless unanimously waived by the holders of the equity interests in the fund and that if there is such a waiver a performance report of the fund shall be filed with the Commission every six months for as long as the waiver is valid.
	xi.	Fees and Expenses
	xii.	Termination
	xiii.	A statement that "the fund is licensed as a SFM 004 pursuant to the Investment Funds Act (Ch. 369A.) operating as a fund which can not have more than five holders of equity interests".
SUBSCRIPTION AGREEMENT	The Subscription Agreement of the fund shall contain confirmation that the investor in the fund agrees with the regulatory requirements applicable to the SFM 004.	
ADMINISTRATOR	The fund is not required to appoint an administrator. The operators may administer the fund, however the fund will not be treated as a self-administered fund. Where the fund does not appoint an administrator it shall be licensed by the Commission.	
FINANCIAL REPORTING REQUIREMENTS	(a)	The financial statements of the fund shall be audited unless all of the holders of equity interests in the fund unanimously agree to waive the annual audit of the funds' financial statements;
	(b)	Where the annual audit of the financial statements of the fund has been waived the fund shall file with the Commission within six months of the waiver, a performance report of the fund and shall file such a report every six months thereafter as long as the waiver exists; and
	(c)	The administrator of the fund shall make the NAV reports available to investors upon request.
ANNUAL CERTIFICATION	The Operators of the fund no later than January 31 of each year shall certify to the Commission that the fund is qualified to operate as a SFM 004.	