

POLICY GUIDELINE 11.1 - MUTUAL FUNDS - DISTRIBUTION OF SECURITIES OF FOREIGN MUTUAL FUNDS IN TRINIDAD AND TOBAGO

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PART 1 - PURPOSE AND BACKGROUND

This policy guideline applies to the distribution in Trinidad and Tobago of securities of foreign mutual funds which are issued abroad. It is intended to facilitate increased opportunity for Trinidad and Tobago market actors to participate in the distribution of securities of foreign mutual funds and provide increased opportunity for investment by Trinidad and Tobago investors in the securities of these foreign mutual funds while maintaining an appropriate level of investor protection.

This policy guideline preserves the requirements applicable to the exercise of discretion under the securities legislation of Trinidad and Tobago to grant or refuse a receipt for a prospectus. In addition the Trinidad and Tobago Securities & Exchange Commission (“the SEC”) must be satisfied with the continuous disclosure regime which the foreign mutual fund proposes to use.

This policy guideline does not change the liability provisions of the securities legislation of Trinidad and Tobago and securities requirements or the discretionary authority of the SEC including the authority to refuse to issue a receipt for a prospectus. The SEC will continue to exercise its public interest jurisdiction in specific cases where it determines that it is necessary to do so to preserve the integrity of the Trinidad and Tobago capital market.

A basic premise of this policy guideline is that the prospectus used in Trinidad and Tobago is receipted as a prospectus and therefore must comply with the requirement of full, true and plain disclosure of all material facts. The relevant liability provisions of the securities legislation of Trinidad and Tobago will apply as well as the general laws of Trinidad and Tobago.

PART 2 - APPLICATION:

This policy statement applies to the distribution in Trinidad and Tobago of securities of foreign mutual funds which are issued abroad.

PART 3 - INTERPRETATION

In this policy guideline, unless otherwise provided for herein, words shall have the meaning assigned thereto in the Securities Industry Act, 1995:-

“acceptable accounting guidelines” means:-

- (i) an independent audit of annual financial statements,
- (ii) periodic financial reporting on a timely basis,

- (iii) narrative financial disclosure that includes a discussion of results of operations, financial condition and prospects for the future, and
 - (iv) the basis of reporting is subject to a well established accounting and auditing standard setting regime.
- “disclosure documents” means all documents required to be filed under the applicable securities legislation of the foreign mutual fund’s home jurisdiction, including those documents required to be filed on a continuous basis.
- “distributes” shall be interpreted in accordance with the interpretation of “distribution” herein defined.
- “distribution” means in relation to any security of a foreign mutual fund any offer, advertisement or other form of solicitation.
- “foreign mutual fund” means a mutual fund that is not organised or incorporated under the laws of Trinidad and Tobago and is not engaged in issuing its securities in Trinidad and Tobago.
- “home jurisdiction” means the country in which the foreign mutual fund is organised or incorporated and in which it files disclosure documents in accordance with the applicable securities legislation of that country.
- “securities legislation of Trinidad and Tobago” from time to time, includes the Securities Industry Act, 1995 as amended from time to time, applicable provisions of the Companies Act, 1995 as amended from time to time and any other legislation connected with or applicable to the regulation of securities in Trinidad and Tobago.
- “senior officer” means a member of the board of directors or any executive officer authorised by the foreign mutual fund’s constituting documents to sign legally binding documents on behalf of the foreign mutual fund.

PART 4 - ELIGIBILITY CRITERIA

4.1 A foreign mutual fund may participate under this policy guideline if in the exercise of its functions under the Securities Industry Act, 1995 as amended from time to time including its public interest discretionary functions the SEC is of the view that the foreign mutual fund conforms with the following criteria:

- (1) It is generally reputable;
- (2) Its home jurisdiction has a recognised securities regulatory body with which it is:-
 - (i) registered,
 - (ii) under the obligation to file disclosure documents, and
 - (iii) required to comply with financial reporting requirements which satisfy acceptable accounting guidelines;
- (3) That all documents required for dissemination, filing or use in Trinidad and Tobago under this policy guideline are in English; and
- (4) That it appoints an agent (“the Agent”) who:-
 - (i) is a market actor as defined in the Securities Industry Act, 1995, and
 - (ii) shall represent the foreign mutual fund in the matters hereinafter specified.

For the avoidance of doubt the Agent may also be appointed the Agent for Service of Process as provided under Part 5, sub-paragraph 5.3(2) hereof. |

4.2 Appendix “A” sets forth a table of the filing requirements in respect of the clearance of a prospectus under this policy guideline.

PART 5 - PROSPECTUS AND OTHER SUPPORTING DOCUMENTATION

5.1 Prospectus Document

- (1) In order to distribute securities of a foreign mutual fund in Trinidad and Tobago which are issued abroad, the foreign mutual fund shall file with the SEC the prospectus for which a receipt or its equivalent was issued to the foreign mutual fund under the applicable securities legislation in the home jurisdiction together with a copy of the said receipt or its equivalent and shall comply with the other requirements of this policy guideline.
- (2) Each prospectus used for a distribution under this policy guideline shall have the following printed on the outside front cover:

“The Trinidad and Tobago Securities and Exchange Commission has not in any way evaluated the merits of the securities offered hereunder and any representation to the contrary is an offence.”

- (3) The prospectus filed with the SEC in accordance with sub-paragraph 5.1(1) shall contain the additional information, addendum and certificates required by this policy guideline, shall provide full, true and plain disclosure of all material facts relating to the securities proposed to be distributed, and shall contain no untrue statement of a material fact or omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made.

5.2 Addendum to Prospectus

- (1) There shall be printed as an addendum to each prospectus filed with the SEC the following statements:-
 - (i) “this distribution is being made by a foreign mutual fund pursuant to disclosure documents prepared in accordance with foreign securities laws. Purchasers should be aware that these requirements may differ from those of Trinidad and Tobago.
 - (ii) “[All of] [Certain of] of the directors and officers of the foreign mutual fund, and [all of] [certain of] the experts named in this prospectus reside outside of Trinidad and Tobago. [Substantially] all of the assets of these persons and of the foreign mutual fund may be located outside of Trinidad and Tobago. The foreign mutual fund has appointed (name and address of Agent for Service) as its agent for Service of Process in Trinidad and Tobago. It may not be possible for investors to effect service of process within Trinidad and Tobago upon the directors and officers referred to above. It may also not be possible to enforce against the foreign mutual fund, its directors and officers, named in this prospectus judgments obtained in Trinidad and Tobago.
 - (iii) “Purchasers should be aware that the expert(s) responsible for any expertise statement, report or opinion in the prospectus [has] [have] not submitted to the jurisdiction of Trinidad and Tobago and therefore it may not be possible for an investor to take legal proceedings against the expert(s) in Trinidad and Tobago”.

(iv) “the foreign mutual fund is incorporated or organised under the laws of a foreign jurisdiction and the rights and remedies available under Trinidad and Tobago law may not be available”.

(2) Each prospectus used for a distribution under this policy guideline shall contain the following certificate by the foreign mutual fund:

“The foregoing together with the documents incorporated herein by reference, constitutes full, true and plain disclosure of all material facts relating to the securities being distributed by this prospectus.”

5.3 Supporting documents to be filed with the Prospectus

(1) *Certificate regarding use of the prospectus in Trinidad and Tobago*

A certificate of the foreign mutual fund in the applicable form set forth in Appendix “B” confirming that the prospectus for which a receipt or its equivalent was issued in the home jurisdiction may be legally used and will be used for the distribution in Trinidad and Tobago of securities of the foreign mutual fund shall be filed with the SEC at the time of filing the prospectus.

(2) *Submission to jurisdiction and Appointment of Agent for Service of Process*

(i) A foreign mutual fund shall duly execute a Submission to Jurisdiction and Appointment of Agent for Service of Process in the applicable form set forth in Appendix “C” and the Agent for Service of Process so appointed shall duly confirm his appointment therein and such form shall be filed with the SEC together with the prospectus.

(ii) Upon the determination of the agency as evidenced by compliance with sub-paragraph 5.3 (2)(i) above for whatever cause the foreign mutual fund shall immediately notify the SEC in writing and appoint a new Agent for Service of Process and shall duly execute and file with the SEC a fresh Submission to Jurisdiction and Appointment of Agent for Service of Process in the applicable form set forth in Appendix “C”, and the Agent for Service of Process so appointed shall duly confirm his appointment therein.

(3) ***Appointment of Agent by a foreign mutual fund for the purpose of the distribution of securities of the foreign mutual fund in Trinidad and Tobago.***

- (i) The foreign mutual fund shall duly execute a document in a form that is acceptable to the SEC which is legally binding in the jurisdiction of Trinidad and Tobago appointing and authorising the Agent to distribute securities of the foreign mutual fund in Trinidad and Tobago and such document together with the applicable form set forth in Appendix “D” duly completed and signed by a senior officer of the foreign mutual fund and the Agent shall be filed with the SEC at the time of filing the prospectus and the Agent so appointed may disseminate and file all documents required under this policy guideline on behalf of the foreign mutual fund.
- (ii) Upon the determination of the agency mentioned in sub-paragraph 5.3(3)(i) above for whatever cause the foreign mutual fund shall immediately notify the SEC in writing and appoint a new Agent in place of the former Agent and shall within [21] days duly execute and file with the SEC a document in the applicable form set forth in Appendix “D” as is mentioned in sub-paragraph 5.3(3)(i) above.

A senior officer shall sign the certificate described at sub-paragraph 5.3(1), the form described at sub-paragraph 5.3(2) and the document described at sub-paragraph 5.3(3) above on behalf of the foreign mutual fund. Except where this policy guideline specifically requires a document to be signed by a senior officer of the foreign mutual fund the agent may sign documents on behalf of the foreign mutual fund.

5.4 *Amendments and incorporation by reference*

The provisions of the laws of the home jurisdiction of the foreign mutual fund that prescribe the circumstances under which a prospectus is required to be amended shall apply to distributions made under this policy guideline. Prospectuses filed under this policy guideline shall be amended in accordance with securities laws in the home jurisdiction, but shall contain the addendum and certificates, where applicable, required by this policy guideline.

Where the prospectus is amended in a manner that modifies the prospectus filed in Trinidad and Tobago, a copy of the documents containing the modification shall be filed with the SEC as nearly as practicable contemporaneously with the filing of the final form of amendment with the appropriate foreign authority of the home jurisdiction.

Except as otherwise provided in this policy guideline, documents shall be and shall be disclosed as being incorporated by reference into each prospectus filed under this policy guideline in accordance with the securities laws of the home jurisdiction.

5.5 Delivery Requirements

Prospectuses and amendments thereto filed under this policy guideline shall be delivered to purchasers in accordance with the securities legislation of Trinidad and Tobago.

Documents that are incorporated by reference into a prospectus filed under this policy guideline are not required to be delivered to purchasers unless they are required to be delivered under the securities laws of the home jurisdiction. These documents, in addition to being filed with the SEC as required by this policy guideline, shall be provided by the foreign mutual fund without charge to any person or company on request to the Agent of the foreign mutual fund in Trinidad and Tobago. The foreign mutual fund shall maintain copies of these documents with the Agent in Trinidad and Tobago.

PART 6 - ONGOING REPORTING OBLIGATIONS

6.1 General

- (1) The SEC must be satisfied that the continuous disclosure regime with which the foreign mutual fund will be complying will be sufficient for the purposes of this policy guideline.

A foreign mutual fund subject to this policy guideline is required by itself or through the Agent to file with the SEC three copies each of those continuous disclosure documents that were filed in its home jurisdiction. Copies shall be disseminated to Trinidad and Tobago investors only if the documents have been disseminated to investors in the home jurisdiction and in the same manner as the documents were disseminated i.e. mailing, publication in newspapers etc. Any publication shall be made in a daily newspaper of general circulation in Trinidad and Tobago in which financial matters are generally reported.

- (2) A foreign mutual fund subject to this policy guideline shall file a Certificate of Compliance in the applicable form set forth in Appendix "E" signed on its behalf by a senior officer indicating that the foreign mutual fund is in compliance with the continuous disclosure regime of its home jurisdiction which shall be filed together with the prospectus in the first instance and

thereafter annually as soon as practicable and in any event within 21 days of the anniversary date of such filing.

6.2 Continuous financial reporting

A foreign mutual fund subject to this policy guideline shall file with the SEC those financial statements which it files in its home jurisdiction.

6.3 Material change reports

A foreign mutual fund subject to this policy guideline is required to issue and file press releases and material change reports in Trinidad and Tobago if there is a requirement to issue and file either or both of them, in the home jurisdiction.

6.4 Timing

All filings required under this part shall be made as nearly as practicable contemporaneously with and in any event within 21 days of the earliest filing in the home jurisdiction.

6.5 Delivery requirements

Financial statements and other continuous disclosure documents delivered to investors in the home jurisdiction shall also be delivered to Trinidad and Tobago investors and shall be in English. Copies shall be disseminated to Trinidad and Tobago investors in the same manner as the documents were disseminated to investors in the home jurisdiction i.e. mailing, publication in newspapers etc. Any publication shall be made in a daily newspaper of general circulation in Trinidad and Tobago in which financial matters are generally reported. The form and timing of delivery to investors shall be as required by the home jurisdiction.

All required filings and other forms of dissemination of information shall be made as soon as practicable and in any event within 21 days after the earliest filing, dissemination or publication in the home jurisdiction.

PART 7 - RECEIPT PROCEDURE

The receipt for a prospectus filed under this policy guideline will be issued when the prospectus and all documentation required herein have been filed with the SEC, provided however that the SEC reserves the right to refuse to issue a receipt for a prospectus in accordance with the securities legislation of Trinidad and Tobago including where it considers that it would be prejudicial to the public interest to do so.

PART 8 - EFFECTIVE DATE

The effective date of this policy guideline is the 2nd day of March, 1998.

APPENDIX "A"

(Paragraph 4.2)

TABLE OF FILING REQUIREMENTS IN RESPECT OF THE CLEARANCE OF A PROSPECTUS UNDER THIS POLICY GUIDELINE

FILING REQUIREMENTS	NO. OF COPIES
1. Prospectus filed in home jurisdiction (5.1(1)) with disclaimer statement to be printed on the outside front cover of prospectus (5.1(2))	3
2. Receipt or its equivalent for which prospectus filed in home jurisdiction (5.1(1))	3
3. Addendum to Prospectus (5.2(1))	3
4. Certificate by foreign mutual fund to be included in prospectus declaring full, true and plain disclosure (5.2(2))	3
5. Certificate regarding use of the prospectus in Trinidad and Tobago (5.3(1))	3
6. Submission to Jurisdiction and Appointment of Agent for Service of Process form (5.3(2)(i))	3
7. Fresh Submission to Jurisdiction and Appointment of Agent for Service of Process form, if required (5.3(2)(ii))	3
8. Appointment of Agent by a foreign mutual fund for the purpose of the distribution of securities of the foreign mutual fund in Trinidad and Tobago form (5.3(3)(i))	3
9. Fresh Appointment of Agent by a foreign mutual fund for the purpose of the distribution of securities of the foreign mutual fund in Trinidad and Tobago form, if required (5.3(3)(ii))	3
10. Documents amending prospectus and incorporated by reference, if required (5.4)	3
11. Foreign mutual fund or Agent to file continuous disclosure documents filed in home jurisdiction (6.1(1))	3
12. Certificate of Compliance (6.1(2))	3
13. Financial statements filed in home jurisdiction (6.2)	3

14.	Material change reports and press releases filed in home jurisdiction, if required (6.3)	3
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APPENDIX "B"

(Sub-paragraph 5.3(1))

**CERTIFICATE REGARDING USE OF THE PROSPECTUS
IN TRINIDAD AND TOBAGO**

Re:[Here state name of foreign mutual fund]

[Name of foreign mutual fund] hereby certifies that the prospectus hereto attached may be legally used and will be used for the distribution in Trinidad and Tobago of securities of *[Name of foreign mutual fund]*

Dated: _____

Signed: _____
[Name of Senior Officer]

Duly authorised representative of:

[Name of foreign mutual fund]

Signed: _____
[Name of Agent]

APPENDIX “C”

(Sub-paragraph 5.3(2))

**FORM OF SUBMISSION TO JURISDICTION AND APPOINTMENT OF
AGENT FOR SERVICE OF PROCESS FOR
FOREIGN MUTUAL FUND**

1. Name of foreign mutual fund:

2. Jurisdiction of incorporation of foreign mutual fund:

3. Address of principal place of business of foreign mutual fund:

4. Description of Securities (the “Securities”):

5. Date of Prospectus (the “Prospectus”) pursuant to which the Securities are offered:

6. Name of agent for service (the “Agent For Service”) _____

7. Address for service of process on Agent For Service in Trinidad and Tobago:

8. The foreign mutual fund designates and appoints the Agent For Service at the address of the agent stated above as its agent upon whom may be served any notice, writ, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (the “Proceeding”) arising out of or relating to or concerning the distribution of the securities made or

purported to be made pursuant to the Prospectus, and irrevocably waives any right to raise as a defence in any such Proceeding any alleged lack of jurisdiction to bring such Proceeding.

9. The foreign mutual fund irrevocably and unconditionally submits to the non-exclusive jurisdiction of Trinidad and Tobago in any proceeding arising out of or related to or concerning the distribution of the Securities made or purported to be made pursuant to the Prospectus.
10. This Submission to Jurisdiction and Appointment of Agent for Service of Process shall be governed by and construed in accordance with the laws of Trinidad and Tobago.

Dated: _____
_____ : Foreign Mutual Fund

By: _____
[Name and Title]

The undersigned accepts the appointment as Agent For Service of process of _____ [Foreign Mutual Fund] pursuant to the terms and conditions of the foregoing Appointment of Agent For Service of Process.

Dated: _____
_____ : Agent

By: _____
[Name and Title]

APPENDIX "D"

(Sub-paragraph 5.3(3))

**CERTIFICATE REGARDING APPOINTMENT
OF AGENT TO DISTRIBUTE SECURITIES IN TRINIDAD AND TOBAGO**

Re:[Here state name of foreign mutual fund]

[Name of Foreign Mutual Fund] hereby certifies that it has appointed *[here state name of Agent]* to act on its behalf for the distribution in Trinidad and Tobago of securities of *[Name of Foreign Mutual Fund]*

Dated: _____

Signed: _____
[Name of Senior Officer]

Duly authorised representative of:

[Name of foreign mutual fund]

Signed: _____
[Name of Agent]

APPENDIX “E”

(Sub-paragraph 6.1(2))

CERTIFICATE OF COMPLIANCE

Re: [Here state name of foreign mutual fund].

[Name of foreign mutual fund] hereby certifies that it has complied fully with the disclosure requirements of the applicable securities legislation in the home jurisdiction of the foreign mutual fund.

Dated: _____

Signed: _____
[Name of Senior Officer]

Duly authorised representative of:

[Name of Foreign Mutual Fund]

Dated: _____

Signed: _____
[Name of Agent]