



**Regulations for Use of the Certification Trade Mark 1845132 in the name of
Tobacco Free Portfolios Limited**

1. Definitions

In these Regulations, the following have their respective definitions:

- (i) 'Application Form' means a documented form (in electronic or hard copy format) prescribed from time to time by Tobacco Free Portfolios listing the information and associated documentation that must be completed by the Participating Organisation when applying for Certification under these Regulations;
- (ii) 'Certification Mark' means the trade mark described in Australian Trade Mark 1845132, a copy of which is annexed in Annex 1 to these Regulations;
- (iii) 'Participating Organisation' means an entity that is responsible for the investment and management of funds provided to the entity by third parties and includes, without limitation, financial institutions, superannuation funds and other fund managers;
- (iv) 'Regulations' means these regulations, including any annexures;
- (v) 'Tobacco Free Portfolios' means Tobacco Free Portfolios Limited c/- Level 12, 469 La Trobe Street, Melbourne, VIC 3000, Australia
- (vi) 'Verified Tobacco-Free' has the meaning given to that term in section 4 of these Regulations;

2. Identification of the Applicant

The Certification Trade Mark is owned by Tobacco Free Portfolios.

3. About Tobacco Free Portfolios

Tobacco Free Portfolios is a public company incorporated in Australia, limited by guarantee, and is a charitable organisation registered with the Australian Charities and Not-for-profits Commission.

Tobacco Free Portfolios offers to Participating Organisations a tangible Certification that their funds are tobacco-free in accordance with the Verified Tobacco-Free definition provided in section 4.

As described in further detail in these Regulations, if a Participating Organisation wishes to establish to the public that the funds it manages are tobacco-free, the Participating Organisation must apply to Tobacco Free Portfolios and demonstrate that the relevant funds it manages do not include investments in such companies in accordance with the Verified Tobacco-Free definition.

If Tobacco Free Portfolios confirms that the Participating Organisation's investment portfolio is tobacco-free, then Tobacco Free Portfolios will confer on the Participating Organisation the right to use the Certification Mark.

4. Tobacco-Free

For the purpose of these Regulations, 'Verified **Tobacco-Free**' refers only to:

'The exclusion from investment portfolios, all securities issued by businesses involved in the manufacture and/or production of tobacco products, including subsidiaries and joint ventures. This does not include tobacco growers and/or businesses that transport or retail tobacco products.

For clarification, the reason for the focus on the manufacture and/or production of tobacco products is that there is the potential for engagement to reach better practices with other components of the supply chain, whereas engagement with tobacco manufacturers and producers is futile. Whilst engagement is an effective and important tool for investors in many circumstances, it is clear that in relation to tobacco manufacturers and producers there should be an exception. The following should be noted, "*Engagement with the tobacco industry is contrary to the United Nations' systems, objectives, fundamental principles and values,*" Dr Vera Da Costa e Silva, Head of Secretariat of UN Tobacco Control Treaty, July 2017.

Tobacco Free Portfolios maintains a list of companies and other businesses that must be excluded from portfolios to meet the criteria for 'Verified Tobacco-Free'. From time to time, those Participating Organisations that have been certified by Tobacco Free Portfolios will be advised of any changes to the list resulting from changed business structures or activities. If the list changes, participants will be given a reasonable time to adjust portfolios.

In acknowledgment of the complexity of financial markets and the sometimes-limited availability of tobacco-free financial products, any residual tobacco holdings held by a Participating Organisation must be less than 0.1% of total investments managed by the Participating Organisation, with an intention to becoming completely tobacco-free as financial products become available and are considered suitable by the Participating Organisation.

5. Approved Certifier

Tobacco Free Portfolios is the only approved certifier of Participating Organisations seeking Certification under these Regulations.

The responsibilities of Tobacco Free Portfolios are to:

- carry out and manage Certification activities (including evaluation and audit activities, making decisions regarding whether to certify an applying Participating Organisation and issuing certificates) in accordance with the requirements for Certification set out in these Regulations;
- identifying, analysing and managing any conflicts of interest arising from its activities and relationships, or the activities and relationships of other parties that may impact on its impartiality and objectivity of Certification;
- maintaining finances, reserves and insurances to ensure ongoing delivery of Certification activities and to cover liabilities from its continuing obligations;
- ensuring the competency of the auditors engaged to undertake audits of Participating Organisations, and other personnel;
- managing information and communications, undertaking notice and maintaining confidentiality in accordance with these Regulations;
- maintaining, in a timely and accurate manner, all relevant information relating to the Certification Mark using the English language.

Tobacco Free Portfolios will rely on the statutory declaration and accompanying evidence submitted by a Participating Organisation seeking Certification, together with the report generated by the auditor engaged by Tobacco Free Portfolios.

The auditor which Tobacco Free Portfolios appoints will be experienced in the assessment of financial products and investment funds, including the assessment of the investments underlying the products and funds.

The verification process for all Verified Tobacco-Free certification stamps includes:

- A signed declaration by an authorised representative of the participating financial institution;
- Confirmation by an external auditor as appointed by Tobacco Free Portfolios; and
- Participation in a formal audit on a rolling 3-year basis.

Tobacco Free Portfolios is working with Ernst & Young ('EY') to provide independent verification services of applicants' tobacco-free commitments, portfolios, and products. As a chartered firm, EY has extensive experience providing financial and non-financial assurance services. Their purpose of 'Building a Better Working World' aligns with Tobacco Free Portfolios' objective of encouraging tobacco-free finance as we seek to reduce tobacco use and improve health outcomes around the world.

EY will work with Tobacco Free Portfolios to verify each applicants' tobacco-free status on application to the 'Verified Tobacco-Free' program. Following this initial verification, each product and portfolio will be independently verified as meeting the criteria and definitions for the relevant 'Verified Tobacco-Free' certification stamp, over a rolling three-year period.

EY's process will help provide a high degree of confidence amongst stakeholders that displaying a 'Verified Tobacco-Free' certification stamp comes with an appropriate level of scrutiny.

6. About the Verified Tobacco-Free Categories

In general, and subject to the following, the Certification Mark will be used to denote that a Participating Organisation is Verified Tobacco-Free.

Tobacco Free Portfolios conceived the Verified Tobacco-Free initiative in 2017 as a means of enabling Participating Organisations to demonstrate to current and prospective customers that the funds under management do not include or involve investment in companies involved in the manufacture and/or production of tobacco products in accordance with the definition in section 4.

There are three Verified Tobacco-Free categories as follows:

- Verified Tobacco-Free;
- Verified Tobacco-Free Product; and
- Verified Tobacco-Free Commitment (considered to be in transition to Verified Tobacco-Free).

A Participating Organisation certified by Tobacco Free Portfolios to use the Certification Mark will be entitled to depict the Certification Mark in a particular colour to indicate the Category to which the Participating Organisation has been certified by Tobacco Free Portfolios. These colours are as follows:

- For a Participating Organisation certified as Verified Tobacco-Free, the Certification Mark will be depicted in Dark Green (PANTONE P 162-16 U);
- For a Participating Organisation certified as Verified Tobacco-Free Product, the Certification Mark will be depicted in Medium Green (PANTONE P 159-5 U); and
- For a Participating Organisation certified as Verified Tobacco-Free Commitment, the Certification Mark will be depicted in Light Green (PANTONE P157-11U).

The right to use the Certification Mark is conferred on those Participating Organisations that comply with the criteria for Certification set out in section 9 of these Rules.

The key objective underpinning the use of the Certification Mark is to demonstrate that the Participating Organisation using the Certification Mark either never had investment in companies involved in the manufacture and/or production of tobacco products, has divested investments in companies involved in the manufacture and/or production of tobacco products, has in certain nominated funds or financial products divested investments in companies involved in the manufacture and/or production of tobacco products, or has demonstrated a clear and unequivocal commitment to divesting such investments within a specific time period in accordance with the Verified Tobacco-Free definition.

This results from Tobacco Free Portfolios having assessed and confirmed (through an independent verification process) that the relevant Participating Organisation has divested its investments either

completely or in certain nominated funds or financial product/s.

7. Users authorised to use the Certification Mark

Use of the Certification Mark is strictly limited to those Participating Organisations who have satisfied the criteria for use of the Certification Mark set out at section 9 of these Regulations.

All such authorised users must comply with the regulations governing the use of the Certification Mark, as set out in further detail in section 11 of these Regulations.

8. Application process

When making an application to be certified, the Participating Organisation must complete and submit to Tobacco Free Portfolios an Application Form.

The Application Form requires the Participating Organisation to specify:

- (i) the details of the legal entity of the Participating Organisation to be certified, including the legally registered name and contact details;
- (ii) a formal authorised representative, including their contact details (such as an email address and telephone number during business hours);
- (iii) the scope of Certification to be sought.

The Verification includes a Declaration to be agreed upon by the Participating Organisation committing it to:

- (i) continuously and consistently demonstrate the fulfilment of the requirements for Certification;
- (ii) pay all fees required by Tobacco Free Portfolios in accordance with these Regulations; and
- (iii) indemnify Tobacco Free Portfolios and its directors, officers and employees from and against any loss or damage incurred or sustained by the Participating Organisation in the course of undertaking the necessary Certification activities in relation to the Participating Organisation making the application.

9. Criteria for Certification

In order to obtain Certification under these Regulations, a Participating Organisation must complete the verification process set out in this section 9 of the Regulations.

Verified Tobacco-Free

Where a Participating Organisation wishes to be certified as Verified Tobacco-Free, then the Participating Organisation must complete the following steps:

- an authorised officer of the Participating Organisation is to submit to Tobacco Free Portfolios a sworn statutory declaration that declares that the Participating Organisation does not hold any investments in any company involved in the manufacture and/or production of tobacco products in accordance with the Verified Tobacco-Free definition detailed in section 4. It should be noted that certification will also involve assessment of any indirect exposure that an institution/fund has to tobacco

- manufacturers and/or producers;
- the Participating Organisation must permit an external auditor engaged by Tobacco Free Portfolios to assess and to audit the products and funds managed by the Participating Organisation to confirm that the Participating Organisation operates funds that meet the Verified Tobacco-Free definition detailed in section 4; and
 - the auditor engaged by Tobacco Free Portfolios must confirm, in writing, to Tobacco Free Portfolios that the funds managed by the Participating Organisation meet the Verified Tobacco-Free definition detailed in section 4.

Verified Tobacco-Free Product

Where a Participating Organisation wishes to have a product certified as Verified Tobacco-Free Product, then the Participating Organisation must complete the following steps:

- an authorised officer of the Participating Organisation is to submit to Tobacco Free Portfolios a sworn statutory declaration that declares that, for the specific product(s) offered and managed by the Participating Organisation, the Participating Organisation does not hold any investments in any company involved in the manufacture and/or production of tobacco products and is tobacco-free in accordance with the definition detailed in section 4. It should be noted that certification will also involve assessment of any indirect exposure that an institution/fund has to tobacco manufacturers and/or producers;
- the Participating Organisation must permit an external auditor engaged by Tobacco-Free Portfolios to assess and to audit the product(s) nominated by the Participating Organisation for Certification to confirm that the nominated product(s) is/are Tobacco-Free; and
- the auditor engaged by Tobacco Free Portfolios must confirm, in writing, to Tobacco Free Portfolios that the product(s) nominated by the Participating Organisation is/are Tobacco-Free.

Verified Tobacco-Free Commitment

Where a Participating Organisation wishes to be certified as Verified Tobacco-Free Commitment, the Participating Organisation must complete the following steps:

- an authorised officer of the Participating Organisation is to submit to Tobacco Free Portfolios a written commitment that demonstrates that the Participating Organisation is committed to achieving a Verified Tobacco-Free portfolio within 24 months from the date of the written commitment. It should be noted that the commitment must also extend to indirect exposure that an institution/fund has to tobacco manufacturers and/or producers;
- as part of the commitment, the Participating Organisation submits to Tobacco-Free Portfolios a reasonable plan for the Participating Organisation to become Tobacco-Free within 24 months from

- the date of the written commitment; and
- the Participating Organisation commits to regularly update Tobacco-Free Portfolios on the Participating Organisation's progress towards becoming Tobacco-Free within 24 months from the date of the written commitment.

10. Application review and confirmation

Tobacco Free Portfolios shall review the submitted application and any associated documentation (including the statutory declaration made on behalf of the Participating Organisation) to confirm that:

- the application and associated documents are complete;
- the Certification being sought is covered under the scope of these Regulations;
- any associated fees have been paid; and
- where appropriate, confirmation that the Participating Organisation is prepared to undergo an audit conducted on behalf of Tobacco Free Portfolios by an external auditor appointed by Tobacco Free Portfolios.

Upon confirmation of the foregoing, Tobacco Free Portfolios will engage an external auditor and arrange with the Participating Organisation for the audit to be conducted.

Upon completion of the audit, Tobacco Free Portfolios will assess whether the Participating Organisation making the application has complied with the relevant criterion for Certification and determine whether or not to certify the Participating Organisation in accordance with the provisions of these Regulations. If the Participating Organisation is so certified, then it becomes an 'authorised user' for the purpose of these Regulations.

11. Trade Mark Use

- (i) Authorised users must always use the associated wording (Verified Tobacco-Free, Verified Tobacco-Free Product or Verified Tobacco-Free Commitment) when displaying the Certification Mark.
- (ii) Authorised users of the Certification Mark must use the Certification Mark only in connection with the goods and services specified by Tobacco Free Portfolios in its application to register the Certification Mark.
- (iii) Authorised users may not omit part of, or make any additions or alterations to, the Certification Mark and may only use the Certification Mark in the colour specific to the Certification under these Regulations.
- (iv) Authorised users must not use the Certification Mark in a manner which is misleading or deceptive, or which is likely to mislead or deceive, or which would lessen the value of the

Certification Mark, challenge the validity of the Certification Mark, or cause other harm to the Certification Mark or to the reputation and goodwill of Tobacco Free Portfolios.

- (v) Authorised users must not sub-license, assign or in any other way transfer or deal with the rights to use the Certification Mark.
- (vi) Authorised users must market, advertise, and provide the products and services under the Certification Mark in compliance with all applicable laws, codes of practice, standards and regulations in Australia.
- (vii) Authorised users must pay the fees applicable to their licence to use the Certification Mark, as set out in section 13 of these Regulations.
- (viii) It is a condition of use that the Certification Mark shall not be used without indicating that it is a Certification Mark. Consequently, where the Certification Mark is used by a Participating Organisation to promote or to inform the public about tobacco-free portfolios, each such use shall indicate that the mark used by the Participating Organisation is a Certification Mark.
- (ix) In order that Tobacco Free Portfolios may be able to ensure adequate supervision of the use of the Certification Mark, the authorised user must consent to undergo regular external verification of the status of the funds and products offered by the authorised user.

12. Supervision of use of the Certification Mark

As the certifying body, Tobacco Free Portfolios sets and controls the criteria for Verified Tobacco-Free, Verified Tobacco-Free Product and Verified Tobacco-Free Commitment and the regulations for use of the Certification Mark and has the ultimate jurisdiction to determine the supervision required of authorised users of the Certification Mark and whether those requirements have been met.

Tobacco Free Portfolios will work closely with the external auditors to ensure that the program is appropriately managed and to ensure that those authorised users continue to comply with their obligations under these Regulations in relation to the Certification and their use of the Certification Mark.

Tobacco Free Portfolios is the sole owner of all rights (including intellectual property rights) in and to the Certification Mark and has ultimate responsibility for addressing any actual or alleged infringements of the Certification Mark or acts or alleged acts of misleading and deceptive conduct and passing off.

Tobacco Free Portfolios reserves the right to take such action as it deems appropriate or necessary with respect to any unauthorised use of the Certification Mark. This includes if an authorised user engages in alleged unauthorised use of the Certification Mark, or it is determined that an authorised user no longer meets the criteria set out in these Regulations that must be met in order for the authorised user to continue using the Certification Mark.

13. Fees

Each Participating Organisation seeking Certification and authorisation to use the Certification Trade Mark must pay to Tobacco Free Portfolios the fee determined in accordance with the fee schedule. The Fee Schedule for 2019 is annexed to these Regulations.

Each authorised user must pay to Tobacco Free Portfolios an annual licence fee that is also calculated in accordance with the fee schedule annexed to these Regulations.

Any fees paid by the Participating Organisation to Tobacco Free Portfolios are non-refundable.

Notwithstanding any other provision in these Regulations, no Certification (or right to use the Certification Mark) will be granted unless and until the Participating Organisation has fully paid all fees that are due and owing under these Regulations.

14. Issue and Renewal

Each authorised user is authorised to use the Certification Mark on an annual basis.

After verification and receipt of payment the Certification Mark in the colour appropriate to the Certification issued to the authorised user will be issued in two electronic formats with supporting guidelines.

Tobacco Free Portfolios will contact the authorised user at least 1 month prior to expiration of the current licence to seek ongoing confirmation of the Requirements, which may include verification that the authorised user continues to conform with the criteria for Certification (such verification may be conducted by Tobacco Free Portfolios or by an independent auditor engaged by Tobacco Free Portfolios).

15. Change in Status

Authorised users are obliged to advise Tobacco Free Portfolios if they no longer meet the Verified Tobacco-Free definition. The licence issued to the authorised user for use of the Certification Mark will be revoked, and refunds will not be issued in the case of an intentional status change.

If a fund or product has inadvertently (without intent) found they no longer meet the Verified Tobacco-Free definition they must advise Tobacco Free Portfolios. Their status will be adjusted to 'Committed' until the tobacco-free position is restored.

Tobacco Free Portfolios reserves the right to conduct random audits of authorised users to test that their products and funds for which they are authorised to use the Certification Mark continue to comply with the criteria for Certification set out in section **Error! Reference source not found.** of these Regulations.

16. Limits

Verified Tobacco-Free is not designed for the purpose of providing personal financial product or investment advice. Verified Tobacco-Free is designed to provide information solely on the tobacco-free status of a participating organisation.

The Tobacco-Free status is not a recommendation to invest in any investment products or fund. It does not take into account particular investment objectives; financial situation or investment needs all of which should be considered prior to making an investment decision. Professional financial advice should be sought before making any investment decision.

17. Resolving Disputes

In the event a Participating Organisation has a dispute as to whether it qualifies to use the Certification Trade Mark or if there is a dispute between the parties concerning these Rules (“**Dispute**”), the Participating Organisation must at first instance raise the Dispute in writing with Tobacco Free Portfolios. The notice must identify the subject of the Dispute and the grounds on which the Participating Organisation raises the Dispute, including evidence in support of its Dispute (**‘Notice of Dispute’**).

Within 14 days after the date of the Participating Organisation’s service on Tobacco-Free Portfolios of the Notice of Dispute, the parties must convene at least one meeting (**‘Conference’**) to seek to resolve the Dispute or to agree on a method for doing so.

The parties must attempt in good faith to resolve the Dispute expeditiously. At each Conference:

- (i) each party will be represented by a person having authority to agree to any resolution of the Dispute;
- (ii) the matters are confidential and statements made by the parties and their representatives and discussions between the participants to the Conference before, after or during each Conference, cannot be used in any legal proceedings;
- (iii) all communications and negotiations between the parties arising out of and in connection with this Section 17 will, to the fullest extent possible, be treated as “without prejudice” negotiations for the purpose of applicable rules of evidence;
- (iv) if the Dispute is settled, the Participating Organisation and Tobacco Free Portfolios must sign the terms of agreement and those terms will be binding on the parties;
- (v) if the Dispute is not resolved within 30 days of the date of service of the Notice of Dispute, or any other period agreed to in writing by the parties, then the parties will endeavour to resolve the Dispute by mediation, in accordance with Section 18 of these Regulations.

18. Mediation

If the Dispute is not resolved within 30 days of the date of service of the Notice of Dispute, or any other period agreed to by the parties in writing, then the parties must jointly request appointment of a mediator. If the parties fail to agree on the appointment, either party may apply to the President of the Law Institute of Victoria for the appointment of a mediator by the President or the President’s nominee (**‘President’**).

The parties must jointly appoint or the President must appoint (as the case may be) a mediator on the following terms:

- (i) the parties must comply with the mediator’s instructions;
- (ii) the mediator is not bound by the rules of natural justice and may discuss the Dispute with a party

- in the absence of the other party;
- (iii) the mediation is confidential and statements made by the mediator or the parties and discussions between the participants to the mediation before, during and after the mediation, cannot be used in any legal proceedings;
 - (iv) the parties release the mediator from any claim relating to the mediation of the Dispute;
 - (v) the mediator will fix the charges for the mediation which must be paid equally by the parties;
 - (vi) if the Dispute is not resolved within 14 days of the appointment of the mediator, or any other period agreed to by the parties in writing, the mediation ceases and the parties may take such action as permitted by law and to commence legal proceedings in relation to the Dispute;
 - (vii) if the Dispute is settled, the parties must prepare and sign terms of agreement, which are binding on the parties; and
 - (viii) a party may, at its own expense, be legally represented at the mediation.

FEE SCHEDULE

SUPERANNUATION AND HEALTH FUNDS

FUM	Verified Tobacco-Free	Verified Tobacco-Free Commitment
<\$1bn	\$2,000 p.a.	\$2,000
\$1-5bn	\$5,000 p.a.	\$5,000
>\$5+bn	\$10,000 p.a.	\$10,000

FUND MANAGERS

Funds Under Management	Verified Tobacco-Free	Verified Tobacco-Free Product (1 st Product)	Verified Tobacco-Free Product (Additional Products)	Verified Tobacco-Free Commitment
<\$1bn	\$2,000 p.a.	\$2,000 p.a.	\$2,000 per product per annum with scale discount of 10% for 5-10 and 20% for 10+ products	\$2,000
\$1-5bn	\$5,000 p.a.	\$5,000 p.a.		\$5,000
\$5-50bn	\$10,000 p.a.	\$10,000 p.a.		\$10,000
\$50-100bn	\$15,000 p.a.	\$15,000 p.a.		\$15,000
\$100-500bn	\$20,000 p.a.	\$20,000 p.a.		\$20,000
\$500bn-\$1tr	\$35,000 p.a.	\$35,000 p.a.		\$35,000
>\$1tr	\$50,000 p.a.	\$50,000 p.a.		\$50,000

Please note:

- All amounts are **AUD and ex/GST**;
- The fee is charged on an **annual basis**;
- An **audit fee of 10%** is in addition to the above amounts; and
- FUM/FUA is calculated according to global funds managed or administered from Australia.

ANNEXURE

Australian trade mark 1845132

