

**THE LICENSEES (FINANCIAL RESOURCES, NOTIFICATION,
CONDUCT OF BUSINESS AND COMPLIANCE) RULES 1998**

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GUERNSEY FINANCIAL SERVICES COMMISSION

THE LICENSEES (FINANCIAL RESOURCES, NOTIFICATION, CONDUCT OF BUSINESS AND COMPLIANCE) RULES 1998

The Guernsey Financial Services Commission (“the Commission”), in exercise of the powers conferred on it by sections 12, 14, 15 and 16 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (“the Law”) as amended hereby makes the following rules:-

PART 1 - INTRODUCTION

1.01 Citation, commencement and application

- (1) These rules may be cited as the Licensees (Financial Resources, Notification, Conduct of Business and Compliance) Rules 1998 (“the FNCC rules”) and shall come into operation on 27 July 1998.
- (2) The FNCC rules apply to all licensees unless specifically agreed otherwise by the Commission in accordance with paragraph (3), but do not apply to a designated person to the extent that any obligation which would otherwise arise under these FNCC rules has already been discharged by such designated person under The Collective Investment Schemes (Designated Person) Rules 1988.
- (3) The Commission may in its absolute discretion by notice in writing to a licensee exclude or modify the application of any provision of the FNCC rules if the Commission is satisfied that any such derogation will not be prejudicial to the interests of investors.

1.02 Interpretation

- (1) Unless the context otherwise requires, in the FNCC rules expressions defined in the Law have the same meaning as they have in the Law, and the following expressions have the meanings assigned to them:-

“**accounting reference date**” means the date to which a licensee’s accounts are prepared.

“**adjustments**” means:-

- (a) deductions for intangible fixed assets, debtors arising from sales to *associates*, any deficiencies where the liabilities of a *subsidiary* or liabilities of *associates* of a licensee exceed its assets, and any other assets specified in writing by the Commission; and
- (b) additions for creditors arising from purchases from *associates*, other liabilities and subordinated loans specifically permitted in both cases in writing by the Commission;

“**agent**”, in relation to a licensee, means any person (including an *employee*) who acts under the instruction of a licensee;

“**annual audited expenditure**” means either:-

- (a) an estimate of budgeted expenditure for the first 12 months which is submitted to the Commission in the case of a licensee which has not yet commenced its controlled investment business; or
- (b) the *annual gross revenue* less profit before appropriations of a licensee and in the case where a loss before appropriations occurs the amount of the loss shall be added to the annual gross revenue calculated on the basis of the audited annual financial statements;

“**annual gross revenue**” means the *total revenue* shown by the audited annual financial statements for the immediately preceding accounting period plus any dealing profit (or less any dealing loss) less a deduction to eliminate commissions and fees payable which are attributable directly to commissions and fees receivable which are included in annual gross revenue;

“**application form**” means the relevant application form prescribed by the Commission used by the applicant to apply for its licence, together with the relevant completed questionnaires and all information submitted therewith or thereafter in connection with the application;

“**approved bank**” means a person who is licensed under The Banking Supervision (Bailiwick of Guernsey) Law, 1994 or is registered under The Banking Business (Jersey) Law, 1991 or is authorised to carry on a banking or deposit-taking business under the United Kingdom Banking Act 1987 or under the law of any *Member State* or under the law of any other country or territory which may be listed in notices issued from time to time by the Commission;

“**associate**” in relation to a licensee means:-

- (a) an undertaking in the same *group* as that licensee;

- (b) any body corporate at least one-third of the issued equity share capital of which is beneficially owned by that body corporate or an *associate*;
- (c) any other person whose business or domestic relationship with the licensee or its *associate*, or with the partners, *directors*, *managers* or *employees* of the licensee, or its *associate*, places the person in a position to exercise significant influence over the licensee which might reasonably be expected to give rise to a conflict of interest in dealings with third parties;

“**audited annual financial statements**” has the meaning given in rule 2.04;

“**Category 2 controlled investment**” means any investment such as is identified and described in paragraph 2 of Schedule 1 of the Law;

“**chief executive**” means any person occupying the position of *chief executive* or managing *director* (whether solely or jointly) by whatever name called;

“**client**” or “**customer**” means any person with or for whom a licensee carries on, or intends to carry on, controlled investment business;

“**client money**” has the meaning given in rule 4.05(b);

“**client money bank account**” means an account at an *approved bank* in the name of a licensee which includes in its title an appropriate description to distinguish the money in the account from a licensee’s own money;

“**contingent liability transactions**” means a transaction under the terms of which the *customer* will or may be liable to make future payments (other than charges, and whether or not secured by margin) when the transaction falls to be completed or upon the earlier closing out of his position;

“**contract note**” has the meaning given in rule 4.04(g);

“**contracts for differences**” means an investment falling within paragraph 2(1)(h) of Schedule 1 to the Law;

“**controller**”:-

(a) in relation to a body corporate, means any person who, either alone or with any *associate* or *associates* is entitled to exercise, or control the exercise of, 15 per cent or more of the voting power at any general meeting of the body corporate or of another body corporate of which the body corporate is a *subsidiary*; and

(b) in relation to an unincorporated association means:-

- (i) any person in accordance with whose directions or instructions, either alone or with those of any associate or associates, the officers or members of the governing body of the association are accustomed to act (but disregarding advice given in a professional capacity), and
- (ii) any person who, either alone or with any associate or associates is entitled to exercise, or control the exercise of 15 per cent or more of the voting power at any general meeting of the association; and for the purposes of this definition “*associate*”, in relation to any person, means that person’s wife, husband or minor child or step-child, any body corporate of which that person is a director, any person who is an employee or partner of that person and, if that person is a body corporate, any subsidiary of that body corporate and any *employee* of any such *subsidiary*;

“**dealing profit or loss**” means gains or losses in respect of trading;

“**derivatives**” include options, futures and *contracts for differences*;

“**designated person**” means a designated manager or designated trustee or custodian as the case may be;

“**director**” in relation to a licensee, includes any person who occupies the position of director by whatever name called;

“**eligible custodian**” means:-

- (a) an *approved bank*;
- (b) a person who is licensed under the Law to carry on the restricted activity of custody; or
- (c) any person which the licensee is satisfied, both at the outset after making reasonable enquiries and thereafter after repeating those enquiries at reasonable intervals continues to be satisfied, is a fit and proper person to be such a custodian;

“**eligible nominee**” means:-

- (a) a person chosen by the *customer* who is not an *associate* of the licensee;

or

(b) a corporate nominee (which means a nominee which is a company) whose business is limited to the holding, and activities related to the holding, of investments, including an “*own nominee*”;

“**employee**” in relation to a person, means an individual who is employed in connection with a licensee’s controlled investment business in Guernsey whether under a contract of service or for services or otherwise;

“**expenditure-based requirement**” means a figure equal to 25% of the licensee’s *annual audited expenditure*;

“**finance business**” has the same meaning given in the Financial Services Commission (Bailiwick of Guernsey) Law, 1987;

“**futures**” means an investment falling within paragraph 2(1)(g) of Schedule 1 to the Law;

“**gross capital**” means *total assets less total liabilities after adjustments* of the licensee;

“**group**” in relation to a licensee means that licensee, any body corporate which is its *holding company* or *subsidiary*, and any other body corporate which is a *subsidiary* of that *holding company*;

“**holding company**” and “**subsidiary**” have the meanings given in Section 56(1) of the Banking Supervision (Bailiwick of Guernsey) Law, 1994;

“**investment services**” means activities undertaken in the course of carrying on controlled investment business;

“**manager**” in relation to a person, means an *employee* who, under the immediate authority of his employer, is responsible either alone or jointly with one or more other persons for the conduct of the licensee’s controlled investment business;

“**member State**” means, at any time, in addition to a State which is a member of the European Community, any other State which is within the European Economic Area;

“**option**” means an investment falling within paragraph 2(1)(f) of Schedule 1 to the Law;

“**own nominee**” in relation to a licensee, means a *corporate nominee* whose business is limited to the holding, and activities related to the holding, of investments which is either controlled by, or whose directors are accustomed

to act in accordance with the directions or instructions of, the licensee in relation to its business generally;

“**principal manager**” has the meaning given in rule 1.02(1) of The Collective Investment Schemes Rules 1988;

“**profit (or loss) before appropriations**” means the amount that falls to be disclosed as profit (or loss) on ordinary activities before taxation excluding the following items:-

- (a) all forms of profit share, bonus or appropriation applicable to directors and employees;
- (b) interest paid (if any);
- (c) exceptional items permitted under generally accepted accounting principles which are noted in the annual financial statements;

“**qualified auditor**” means a person who holds a current practising certificate issued by:-

- (a) (i) The Institute of Chartered Accountants in England and Wales; or
- (ii) The Institute of Chartered Accountants of Scotland; or
- (iii) The Institute of Chartered Accountants in Ireland; or
- (iv) The Association of Chartered Certified Accountants; or
- (b) a body outside the United Kingdom having equivalent professional standards for membership as the bodies specified in paragraph (a) above;

“**Recognised Investment Exchange**” (**RIE**) means any investment exchange which is recognised as such under the provisions of the Financial Services Act 1986 of the United Kingdom;

“**Recognised Professional Body**” (**RPB**) means a body which regulates the practice of a profession and references to the practice of a profession do not include references to carrying on a business consisting wholly or mainly of investment business;

“**Self-Regulating Organisation**” (**SRO**) means a body (whether a body corporate or an unincorporated association) which regulates the carrying on of investment business of any kind by enforcing rules which are binding on

persons carrying on business of that kind either because they are members of that body or because they are otherwise subject to its control;

“**significant complaint**” means a complaint alleging a breach of the Law, mala fides, malpractice or impropriety, or repetition or recurrence of a matter previously complained of (whether significant or otherwise) and a complaint shall not be treated as significant if it relates to minor mechanical or clerical error;

“**subsidiary**” (refer to the definition of holding company);

“**stock lending activity**” means any transaction undertaken by a licensee which results in the temporary disposal of a *customer*'s securities under a stock lending agreement, in return for pre-arranged collateral or cash;

“**total assets**” means the aggregate of assets of any type which shall include fixed assets, current assets (including debtors) and contingent assets (with the approval of the Commission);

“**total liabilities**” means the aggregate of liabilities of any type, which shall include creditors and provisions for liabilities and charges; and

“**total revenue**” means the aggregate of revenue of any type, which shall include commissions, investment management fees, advisory fees, interest and dividends.

- (2) The Interpretation (Guernsey) Law, 1948 applies to the interpretation of these rules throughout the Bailiwick of Guernsey.
- (3) A reference in these FNCC rules to:-
 - (a) an enactment is to that enactment as from time to time amended, repealed and replaced, extended or applied by or under any other enactment; and
 - (b) a document, written notice or written instructions shall be taken to be a reference to a document, notice or instructions given in any legible form provided that a printed copy of the document, notice or instructions can be made.
- (4) A guidance note appended to a rule or to a paragraph of a rule gives guidance as to the criteria which the Commission would apply in conjunction with that rule. It is not part of the rules.

GUIDANCE NOTE

The terms defined in rule 1.02 have been italicised throughout these rules for ease of reference.

PART 2 - FINANCIAL RESOURCES, NOTIFICATION AND RECORDS

2.01 Financial resources requirement (“FRR”)

A licensee must, at all times, maintain financial resources of not less than the appropriate FRR as follows:-

- (a) in the case of a licensee who is a designated person, the appropriate FRR set out in rule 4.02 of The Collective Investment Schemes (Designated Persons) Rules 1988;
- (b) in the case of a licensee not falling within (a) but which is licensed under The Banking Supervision (Bailiwick of Guernsey) Law 1994 or authorised or registered under The Insurance Business (Guernsey) Law 1986, as required by the Directors of Banking and Insurance respectively;
- (c) in the case of a licensee not falling within (a) or (b) but which is authorised under the UK Financial Services Act 1986, as required by the rules of its *SRO* or *RPB*;
- (d) in the case of a licensee not falling within (a) - (c) and with no physical presence (staff and premises) in the Bailiwick -
 - (i) if that licensee is a *principal manager* of a Class A authorised collective investment scheme, the FRR set out in rule 4.02(b) of The Collective Investment Schemes (Designated Persons) Rules 1988 or an irrevocable letter of credit in connection with its contingent liability under The Collective Investment Schemes (Compensation of Investors) Rules 1988;
 - (ii) in all other cases, *gross capital* and professional indemnity insurance cover which in the opinion of its directors is sufficient to meet its commitments and to withstand the risks to which its business is subject.
- (e) in all other cases, *gross capital* of £25,000 or *gross capital* equal to the *expenditure based requirement*, whichever is the greater and minimum professional indemnity insurance cover of £250,000, (or three times *annual*

gross revenue, whichever is greater), the excess of which must not exceed 20% of the total insured.

2.02 **Financial notification**

A licensee shall notify the Commission forthwith where the licensee has reason to believe that -

- (a) it is in breach of its FRR; such notice shall specify the steps which the licensee is taking or has taken to remedy the breach and shall be confirmed in writing;
- (b) the licensee's auditor intends to qualify the accounts;
- (c) the liabilities of a subsidiary of the licensee exceed the subsidiary's assets;
- (d) the liabilities of the parent company of the licensee exceeds the parent company's assets.

2.03 **Accounting records**

Every licensee shall maintain adequate accounting records to show and explain its transactions. Such records -

- (a) must be up to date and must disclose with reasonable accuracy the assets, liabilities, income and expenditure of the licensee at that time;
- (b) must enable the licensee to demonstrate its continuing compliance with its FRR.

2.04 **Audited annual financial statements**

- (1) Every licensee shall prepare annual financial statements and obtain an auditor's report thereon, which shall include a statement of financial resources certified by the auditor confirming that the appropriate FRR specified in Rule 2.01 is satisfied, unless the licensee falls under category 2.01(b) or (d)(ii) and except for the specified professional indemnity insurance cover required under Section 2.01(e).
- (2) Copies of the *audited annual financial statements* shall be submitted to the Commission by no later than four months after the *accounting reference date*.
- (3) Copies of management letters received from the licensee's external auditor shall be submitted forthwith to the Commission.
- (4) Where no such reports of the type referred to in (3) above have been received for a period in excess of one year, the licensee must, within four

months of its *accounting reference date*, provide the Commission with written details of the main conclusions of the annual review required under rule 5.01(1).

2.05 Client money records

- (1) A licensee shall maintain records sufficient to demonstrate compliance with rule 4.05(b).
- (2) A licensee shall at least once a month reconcile the balance on each *client money bank account* as recorded by the licensee with the balance on that account as set out on the statement issued by the *approved bank*.

2.06 Appointment of auditor

Every licensee must appoint a *qualified auditor* and shall upon the request of the Commission procure that the *qualified auditor* satisfies the Commission that he is so qualified.

2.07 Change of auditor

A licensee shall give the Commission written notice of a change of its *qualified auditor* forthwith, including a statement of the reasons for the change.

PART 3 - OTHER NOTIFICATION REQUIREMENTS

3.01 General rule

A licensee must notify the Commission forthwith of any event or circumstance specified in Schedule 1, and such notification shall contain the particulars described therein.

PART 4 - CONDUCT OF BUSINESS

4.01 Fitness and properness

Licensees must observe the Principles set out in Schedule 2, in carrying on their controlled investment business.

GUIDANCE NOTE

- (1) A licensee must recognise that the Commission has a continuing duty to

determine whether a licensee remains a fit and proper person to carry on controlled investment business. In doing so, the Commission shall take account of whether the licensee has observed the Principles in carrying on its controlled investment business.

- (2) The Principles are a statement of the standards expected of a licensee.
- (3) Breach of a Principle will be taken into account for the purposes of discipline and intervention.
- (4) The Principles are not exhaustive and conformity with them does not excuse a failure to observe other regulatory requirements.
- (5) The Commission may also take account of any other considerations as the Commission sees fit.

4.02 Responsibility of senior management

- (1) Every licensee, other than a licensee with no physical presence (staff and premises) in the Bailiwick, shall appoint a *chief executive* (the formal title of whom is at the discretion of the licensee) and appoint a replacement to fill this position as and when it becomes vacant.
- (2) A licensee's *chief executive* and its senior management shall act and shall take all reasonable steps to ensure that all *employees* of the licensee act so as to avoid serious damage to the licensee's reputation or to its financial position.

GUIDANCE NOTE

- (1) "Reasonable steps" at (2) above includes having in place adequate management controls and compliance procedures and a system for ensuring that such controls continue to be adequate and that employees are observing internal compliance procedures.
- (2) Should damage to the licensee's reputation or financial position occur, the Commission will look to the senior management to show that a failure of management controls did not cause or contribute to the said damage.

4.03 Customer relations

- (a) Customer agreements

Where a licensee provides *investment services* to a *customer*, whether on a discretionary basis or otherwise, it must do so under a written agreement signed both by the licensee and *customer* which sets out in adequate detail the basis and terms on which the services are provided and, if relevant, the extent of the discretion to be exercised by the licensee, unless the *customer* specifically requests in writing that he does not wish such a written agreement to be used.

(b) Suitability

A licensee must take reasonable steps to ensure that it does not in the course of its controlled investment business -

- (a) recommend an investment to a *customer*; or
- (b) effect or arrange a discretionary transaction with or for any *customer*,

unless the recommendation or transaction is suitable for him having regard to the facts disclosed by that *customer*, the terms of any agreement with that *customer*, and other relevant facts about the *customer* of which the licensee is, or reasonably should be, aware.

(c) Disclosure

- (1) A licensee which intends to carry on *stock lending activity* pursuant to Rule 4.05(a)(6) where it will borrow a *customer's* stock for its own account or lend a *customer's* stock to an *associate* must disclose its or its *associate's* interest to the *customer*, either generally or in respect of each transaction.
- (2) Before a licensee provides *investment services* to a *customer*, it must disclose to him in writing the basis or amount of its charges for the provision of those services.
- (3) A licensee must not recommend a transaction to a *customer* or act as a discretionary manager for him unless it has taken reasonable steps to make him aware of the risks involved.

(d) Inducements

A licensee must take reasonable steps to ensure that neither it nor any of its *agents* -

- (a) offers or gives; or

(b) solicits or accepts,

any gift or other direct or indirect benefit which is likely significantly to conflict with any duties of the recipient (or the recipient's employer) owed to a *customer* in connection with controlled investment business.

(e) Periodic information

A licensee which manages controlled investments for a *customer* must send a valuation report at intervals which are not less frequent than -

(a) six monthly in respect of securities or securities-related cash balances; and

(b) monthly in respect of *derivatives* or *derivatives*-related cash balances

unless the *customer* advises the licensee in writing that he wishes them less frequently (although the *customer* must be sent a valuation report on at least an annual basis). If the customer advises the licensee in writing that he does not wish to receive a valuation report at all, the licensee must prepare one in accordance with the rules and keep it with the client's records.

(f) Complaints

(1) General rule

Every licensee must have in operation, and ensure compliance with, a written procedure for the effective consideration and proper handling of *significant complaints* relating to the licensee's controlled investment business.

(2) Notification to the Commission

A licensee must submit to the Commission, at the same time as it submits copies of its *audited annual financial statements* pursuant to rule 2.04, a summary for the same corresponding period detailing:-

(a) the number of *significant complaints* received during the year;

(b) the number of *significant complaints* settled during that year; and

(c) the number of *significant complaints* that have remained unsettled three months after receipt.

For the purposes of this rule, where a licensee has given a substantive response in relation to a complaint, unless and until the licensee has received an indication from the complainant that the response is unsatisfactory, the licensee shall be entitled to treat the complaint as settled and resolved after the expiry of four weeks from the date of its response.

(3) Unsettled complaints

If a *significant complaint* remains unsettled for longer than three months, the licensee shall immediately inform the Commission and shall also advise the complainant that he may inform the Commission directly of his complaint.

4.04 **Dealing, managing and advising**

(a) *Customer order priority*

A licensee must deal with *customer* and own account orders fairly and in due turn.

(b) Timely execution

(1) Once a licensee has agreed with a *customer* or decided in its discretion to effect or arrange a *customer* order, it must effect or arrange the execution of the order as soon as reasonably practicable in the circumstances.

(2) But (1) above does not preclude a licensee from postponing execution of an order where it believes on reasonable grounds that this is in the best interests of the *customer*.

(c) Best execution

(1) Where a licensee deals with or for a *customer*, it must provide best execution, unless the *customer* has waived this requirement.

(2) A licensee may rely on another person who executes the transaction to provide best execution, but only if it believes on reasonable grounds that he will do so.

(3) For the purposes of (1) and (2) above, a licensee provides best execution if -

(a) it takes reasonable care to ascertain the price which is the best available for the *customer* in the relevant market at the time for transactions of the kind and size concerned; and

- (b) unless the circumstances require it to do otherwise in the interests of the *customer*, it deals at a price which is not less advantageous to him,

and in applying best execution, a licensee should leave out of account any charges disclosed to the *customer* which it or its *agent* would make.

(d) Timely and fair allocation

- (1) A licensee must ensure that a transaction it executes is promptly allocated.
- (2) Where a licensee has aggregated an order for a *customer* transaction with an order for an own account transaction, or with another order for a *customer* transaction, then in the subsequent allocation -
 - (a) it must not give unfair preference to itself or to any of those for whom it dealt; and
 - (b) if all cannot be satisfied, it must give priority to satisfying orders for *customer* transactions unless it believes on reasonable grounds that, without its own participation, it would not have been able to effect those orders either on such favourable terms or at all.

(e) Churning and switching

- (1) A licensee must not -
 - (a) make a recommendation to a *customer* to deal; or
 - (b) deal or arrange a deal in the exercise of discretion for any *customer*,if the dealing would reasonably be regarded as too frequent in the circumstances.
- (2) A licensee must not -
 - (a) make a recommendation to a *customer* to switch within a collective investment scheme or between collective investment schemes; or
 - (b) effect such a switch in the exercise of discretion for a *customer*,

unless it believes on reasonable grounds that the switch is justified from the *customer's* viewpoint.

(f) Dealing ahead of published research or analysis

(1) Where a licensee or its associate intends to publish to *customers* a written recommendation, or a piece of research or analysis, it must not knowingly effect an own account transaction in the investment concerned or any related investment until the *customers* for whom the publication was principally intended have had (or are likely to have had) a reasonable opportunity to react to it.

(2) A licensee may effect an own account transaction if:-

(a) the publication could not reasonably be expected to materially affect the price of the investment concerned or any related investment;

(b) the licensee is a market maker in the investment concerned or in a related investment and the transaction is effected by it in good faith in the normal course of market making;

(c) the licensee deals in order to fulfil an unsolicited *customer's* order;

(d) the licensee believes on reasonable grounds that it needs to deal to fulfil *customers'* orders which are likely to result from publication, and that its doing so will not cause the price of the investment which is the subject of the written recommendation, or piece of research or analysis, to move against *customers'* interests by a material amount; or

(e) the licensee or its *associates* discloses in the publication that it or its associate has effected or may effect an own account transaction in the investment concerned or any related investment.

(g) *Contract notes*

(1) A licensee which effects a sale or purchase of a *Category 2 controlled investment* with or for a *customer* must ensure that the *customer* is sent a contract note containing the essential details of the transaction as soon as practicable except where the *customer* specifically requests otherwise.

(2) Contents of *contract notes*

Contract notes shall contain:-

- (a) the name and address of the licensee; and
 - (b) the *customer's* name or other designation and account number; and
 - (c) the dealing day in respect of the transaction; and
 - (d) the name of the controlled investment and the size of the transaction; and
 - (e) whether the transaction is a sale or purchase and the price of that sale or purchase as the case may be; and
 - (f) the total consideration payable at the settlement date and the amount thereof; and
 - (g) the amount and type of any charges; and
 - (h) whether any commission is payable in connection with the transaction; and
 - (i) the settlement date; and
 - (j) any other relevant matters in relation to the transaction.
- (3) In the event that a customer for whom a licensee has effected a sale or purchase of a *Category 2 controlled investment* requests the time of pricing in respect of a transaction, this must be promptly provided by the licensee.

4.05 **Safekeeping of *customer assets***

(a) Safeguarding *customer investments*

A licensee which has custody of a *customer's Category 2 controlled investments* must -

- (1) keep safe, or arrange for the safekeeping by an *eligible custodian* of, any documents of title relating to them;

- (2) ensure that registrable investments which it buys or holds for a *customer* in the course of controlled investment business are properly registered in the *customer's* name, or with the consent of the *customer*, in the name of an *eligible custodian or eligible nominee* with the addition, if deemed appropriate, of an account designation, name or number which is unique to that *customer*;
- (3) where title to investments is recorded electronically, ensure that *customer* entitlements are separately identifiable from those in the beneficial ownership of the licensee in the records of the person maintaining records of entitlement, and for the purposes of this rule it shall be sufficient if deemed appropriate by the licensee, for a *customer's* entitlements to be identified by an account designation name or number which is unique to that customer;
- (4) not use a *customer's* investments for its own account unless it has obtained that *customer's* prior written consent;
- (5) where the licensee registers *customers'* investments in the name of an *own nominee*, accept responsibility for the acts or omissions of that nominee;
- (6) not lend, or arrange the lending of, *customers'* investments to a third party unless:
 - (a) the *customer* to whom the investment belongs has consented, and the loan is subject to appropriate terms and conditions;
 - (b) where *customers'* investments belonging to more than one *customer* are registered in the same name, each *customer* whose investments are so registered has consented to the lending of *customer* investments registered in that name;
 - (c) adequate collateral is obtained and maintained for the duration of the loan, in accordance with any instructions given by the *customer*; and
 - (d) the licensee arranges for all income, inclusive of manufactured dividends, fees or commissions, earned thereby (other than any fees payable to the licensee for arranging the loan) either to be paid to the *customer* direct or to be received by the licensee on his account and treated as *client money* unless instructed otherwise by the *customer*.

(b) *Client money*

- (1) *Client money* is money of any currency which, in the course of carrying on controlled investment business, a licensee holds for, receives from, or owes to, a *client*.
- (2) For the purposes of sub-paragraph (1) -
 - (a) a licensee or his *agent* holds or receives money where either that money is not immediately due and payable on demand to the licensee for its own account or, although so due and payable, is held or received in respect of any obligation of the licensee which has not yet been performed; and
 - (b) a licensee or his *agent* owes money where it is due and payable to a *client*.
- (3) A licensee must hold *client money* separate from the licensee's own money and, to this end, must open one or more *client money bank accounts*.
- (4) All money which is *client money* and which is received by the licensee and all money payable by the licensee which becomes *client money* shall be held in a *client* account with an *approved bank*.
- (5) When a licensee opens a *client money bank account*, it must give written notice to the *approved bank* requiring that bank to acknowledge in writing -
 - (a) that all money standing to the credit of the account is held by the licensee as trustee and that the bank is not entitled to combine the account with any other account or to exercise any right of set-off or counter-claim against money in that account in respect of any sum owed to it on any other account of the licensee;
 - (b) that interest earned on the account will be credited to the account or to an account of the same type;
 - (c) that the title of the account sufficiently distinguishes the account from any other account containing money that belongs to the licensee, and is in the form requested by the licensee.
- (6) Sub-paragraphs (3) - (5) above do not apply to money held by a licensee which is also licensed under the Banking Supervision (Bailiwick of Guernsey) Law 1994 on behalf of a *customer* in an account with itself.

- (7) *Client money* held or received by a licensee shall be paid either into a *client* account as soon as possible (and, in any event, no later than the next business day) or to the *client* concerned in accordance with paragraph (8) below. Money held or received by a licensee in the form of a cheque, draft or electronic transfer drawn in favour of the licensee which includes *client* money shall be paid into a *client* account unless it represents money payable to one *client* only in which case it may be endorsed over or paid to the client concerned or as the client shall so direct.
- (8) Money ceases to be *client money* if it is paid:-
- (i) to the *customer*;
 - (ii) to a third party on the instructions of the *customer*;
 - (iii) into a bank account in the name of the *customer* (not being an account which is also in the name of the licensee); or
 - (iv) to the licensee itself, where it is due and payable to the licensee.

Where a licensee draws a cheque or other payable order under (i) above, the money does not cease to be *client money* until the cheque or order is despatched.

- (9) Where a licensee makes a payment to a *customer*, or to a third party on the instructions of the *customer*, from an account other than a *client money bank account*, the sum of money in the *client money bank account* equivalent to the amount of that payment will not become due and payable to the licensee until the *customer* or other party has received that payment in cleared funds.

PART 5 - COMPLIANCE ARRANGEMENTS

5.01 General

- (1) A licensee must undertake annually a review of its controlled investment business to enable it to determine the effectiveness of its compliance and monitoring procedures.
- (2) A licensee must ensure that compliance procedures in respect of its controlled investment business are set out in writing and that a copy of these written procedures is kept at the offices of the licensee.

- (3) A licensee should establish and maintain systems to ensure that its employees are suitable, adequately trained and properly supervised, and these systems should include arrangements -
- (a) to cover recruitment procedures, including the vetting of applicants for employment and the taking-up of references.
 - (b) to review its written compliance procedures at least annually, and to ensure that its employees are at all times aware of the current procedures;
 - (c) to ensure that its employees do not procure, endeavour to procure or advise anyone to enter into a transaction if that employee or is not competent to advise on that transaction or to assess its suitability for investors.

GUIDANCE NOTE

The Commission requires licensees to provide adequate training for their staff in accordance with Principle 9 and will issue guidance where appropriate on the matter of qualifications. The present intention is not to impose by regulation a requirement that employees are trained or qualified to a particular minimum standard given the diversity of functions, variety of potentially suitable internationally recognised qualifications, and other relevant factors which should be taken into account, such as varying levels of experience of staff and licensees' in-house training provisions.

The Commission wishes to place more emphasis on the licensee's system of supervision and administrative controls to ensure that employees do not act beyond their competence, and the rules reflect this approach.

- (4) A licensee must take reasonable steps, including the establishment and maintenance of procedures, to ensure that its officers and employees act in conformity with-
- (a) their own and their employer's relevant responsibilities under the Law and the rules made thereunder;
 - (b) where relevant, the requirements of the statutory restrictions on insider dealing and money laundering;
 - (c) appropriate arrangements on propriety in personal dealings;

- (d) guidelines issued by the Commission from time to time relevant to the carrying on of controlled investment business;
 - (e) requirements of any *Self-Regulatory Organisation, Recognised Professional Body* or *Recognised Investment Exchange* of which the licensee is a member.
- (5) A licensee must appoint a compliance officer in Guernsey to be responsible for compliance and must appoint a replacement to fill this position if it becomes vacant.

5.02 Record keeping

- (1) A licensee must take reasonable steps, including the establishment and maintenance of systems and procedures, to ensure that sufficient information is recorded about its controlled investment business and compliance with the FNCC rules. Such records should be retained for a period of at least three years.
- (2) All records retained by a licensee in accordance with (1) above may be recorded in any form, but must be capable of prompt reproduction in hard printed form in English.
- (3) A licensee which is the custodian of *customer Category 2 controlled investments*, or which appoints another person to be the custodian of *customer investments*, must perform a reconciliation in accordance with (4) below as often as is necessary to ensure the accuracy of its records relating to *customers' investment entitlements*.
- (4) Reconciliations are to be performed as follows:
 - (a) Where *customer investments* are physically held by a licensee, a count must be carried out at least every six months and be reconciled with its record of the *customer investments*.
 - (b) Where *customer investments* are not physically held by a licensee, the licensee's record of *customers' investment entitlements* must be reconciled, at least every three months, with statements obtained from the eligible custodian or other holder.

5.03 Access and inspections

A licensee shall co-operate to the fullest possible degree with any inspection carried out by the Commission in respect of the conduct of its controlled investment business.

GUIDANCE NOTE

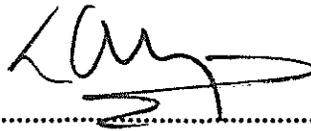
It is not the Commission's intention to make "routine" compliance visits to licensees carrying on restricted activities in connection with *Category 2 controlled investments*. However, compliance visits will be made if the Commission deems it appropriate (e.g. if there are frequent *customer* complaints or concerns arise about the continuing fitness and properness of a licensee). If the licensee concerned is also licensed under The Banking Supervision (Bailiwick of Guernsey) Law, 1994 or authorised or registered under The Insurance Business (Guernsey) Law, 1986, arrangements for the visit will be discussed in co-ordination with the Directors of Banking and Insurance respectively.

PART 6 - REVOCATION

6.01 Revocation

The Licensees (Notification) Rules 1989 are hereby revoked.

MADE ON 7 JULY 1998



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L C MORGAN, CHAIRMAN
GUERNSEY FINANCIAL SERVICES COMMISSION

IMMEDIATE NOTIFICATIONS**1 Names and addresses**

A licensee shall give written notice forthwith to the Commission of:-

- (a) a change in the registered or equivalent name of the licensee;
- (b) a change in any business name under which the licensee carries on controlled investment business in Guernsey;
- (c) a change in the address of the head office or principal place of business of the licensee;
- (d) a change in the address of the registered office of the licensee; and
- (e) a change in the address for the service of notices or documents furnished pursuant to Section 3(1)(e) of the Law.

2 *Controllers*

- (1) A licensee shall give written notice forthwith to the Commission where any person becomes or ceases to be a *controller* of the licensee. The notice shall include the following information, so far as known, in relation to any person who becomes the *controller* of the licensee:-
 - (a) the *controller's* name;
 - (b) the *controller's* principal business;
 - (c) the names of the *controller's* directors, partners and managers, if any;
 - (d) the address of the *controller's* registered or head office (in the case of a body corporate), principal place of business (in the case of a partnership or incorporated association) or his usual residential address (in the case of an individual); and
 - (e) the percentage of voting power which the *controller* can exercise or control the exercise of at any general meeting of the licensee.
- (2) Any change in information relating to *controllers* submitted to the Commission at the time of the licensee's application, or subsequently, must likewise be notified forthwith to the Commission.

3 *Directors and managers*

(1) A licensee shall give written notice forthwith to the Commission of the fact that and the date on which any person has:-

- (a) become, or
- (b) ceased to be

a *director*, or a *manager* who is connected with the licensee's controlled investment business in Guernsey, including in the case of (b) a statement of the reasons for the change.

(2) Where a notice under 3(1)(a) relates to a *director*, the notice shall specify whether the *director* is executive or non-executive.

4 *Chief executive*

A licensee shall give written notice forthwith to the Commission of the fact that any person has

- (a) become, or
- (b) ceased to be

the *chief executive* in Guernsey of the licensee, including in the case of (b) a statement of the reason for the change.

5 **Other officers**

(1) A licensee shall give written notice forthwith to the Commission of the fact, and the date on which, any person has

- (a) become, or
- (b) ceased to be
 - (i) the secretary of the licensee, in the case of a Bailiwick company;
 - (ii) the person responsible for compliance in Guernsey;

(2) In the case of (b) above, the notice shall include a statement of the reasons for the change.

6 Information regarding key *employees*

A licensee shall give written notice to the Commission forthwith upon it becoming aware of the following matters in relation to any individual falling within paragraph 3(1), 4 or 5(1) of this Schedule:-

- (a) a change of name;
- (b) a conviction of any offence involving fraud or other dishonesty;
- (c) a conviction of any offence under any legislation relating to finance business;
- (d) the initiation of saisie, desastre, bankruptcy, winding-up, sequestration or similar proceedings;
- (e) the refusal of any application for, or revocation or suspension of, any licence, authorisation or registration under any legislation relating to finance business;
- (f) the imposition of disciplinary measures or sanctions by a regulatory authority or professional body in relation to the individual's professional or business activities; and
- (g) the making of an order by a court disqualifying that individual from serving as director of a company or from being concerned with the management of a company.

7 Information regarding all *employees*

(1) A licensee shall give written notice to the Commission forthwith upon it becoming aware of the occurrence of the following in relation to any of its *employees*:-

- (a) a conviction of any offence involving fraud or other dishonesty;
- (b) a conviction of any offence under legislation relating to *finance business*; and
- (c) the institution of saisie, desastre, bankruptcy, sequestration or similar proceedings.

(2) A licensee shall give written notice forthwith to the Commission of the summary dismissal of any *employee* in Guernsey and the reasons for this dismissal.

8 General

A licensee shall give written notice forthwith to the Commission of the occurrence of any of the following:-

- (a) the presentation of a petition for the winding-up (other than a petition for a voluntary winding-up for the purposes of reconstruction or amalgamation) of the licensee or of a company which is a *subsidiary* or *holding company* of the licensee;
- (b) the appointment of a receiver, administrator, administrative receiver or trustee of the licensee;
- (c) the making of a composition or arrangement with creditors of the licensee;
- (d) the granting, withdrawal, or refusal of an application for, or revocation of, any licence, authorisation or registration to carry on *finance business* under any legislation relating to *finance business* whether in Guernsey or elsewhere;
- (e) the appointment of inspectors by a statutory or other regulatory authority to investigate the affairs of the licensee;
- (f) the imposition of disciplinary measures or sanctions on the licensee in relation to its *finance business* by any regulatory authority;
- (g) the bringing against any licensee of any material legal action or proceedings, or any arbitration to which the licensee is a party, relating to *finance business*; and
- (h) the conviction of the licensee of any offence under legislation relating to *finance business*, companies or bankruptcy or of any offence involving fraud or dishonesty.

9 *Holding company*

A licensee shall give written notice forthwith to the Commission if it becomes or ceases to be a *subsidiary* of another company. The notice shall specify the following information if this has not already been notified:-

- (a) the *holding company's* name;
- (b) its principal business;
- (c) the name of its *directors*; and

(d) the address of its registered office.

10 *Subsidiaries*

A licensee shall give written notice forthwith to the Commission of the formation, acquisition, disposal or dissolution of a *subsidiary*.

The notice shall specify the following:-

- (a) the *subsidiary's* name; and
- (b) its principal business, if any.

11 *Proposed change in restricted activity*

A licensee shall give written notice forthwith to the Commission of:-

- (a) any proposals (without prejudice to requirement of the Law) to conduct a restricted activity which is not already covered under the terms of the licence issued by the Commission; and
- (b) any date on which a licensee proposes to cease the conduct of a restricted activity.

THE PRINCIPLES**1. Integrity**

A licensee should observe high standards of integrity and fair dealing in the conduct of its business.

2. Skill, Care and Diligence

A licensee should act with due skill, care and diligence towards its customers and counterparties.

3. Conflicts of Interest

A licensee should either avoid any conflict of interest arising or, where a conflict arises, should ensure fair treatment to all its customers by disclosure, internal rules of confidentiality, declining to act, or otherwise. A licensee should not unfairly place its interests above those of its customers and, where a properly informed customer would reasonably expect that the firm would place his interests above its own, the firm should live up to that expectation.

4. Information about Customers

A licensee should seek from customers it advises or for whom it exercises discretion any information about their circumstances and investment objectives which might reasonably be expected to be relevant in enabling it to fulfil its responsibilities to them.

5. Information for Customers

A licensee should take reasonable steps to give a customer it advises, in a comprehensible and timely way, any information needed to enable him to make a balanced and informed decision. A licensee should similarly be ready to provide a customer with a full and fair account of the fulfilment of its responsibilities to him.

6. Customer Assets

Where a licensee has control of or is otherwise responsible for assets belonging to a customer which it is required to safeguard, it should arrange proper protection for them, by way of segregation and identification of those assets or otherwise, in accordance with the responsibility it has accepted.

7. **Market Practice**

A licensee should observe high standards of market conduct, and should also comply with any code of standard as in force from time to time and issued or approved by the Commission.

8. **Financial Resources**

A licensee should ensure that it maintains adequate financial resources to meet its investment business commitments and to withstand the risks to which its business is subject.

9. **Internal Organisation**

A licensee should organise and control its internal affairs in a responsible manner, keeping proper records, and where the firm employs staff or is responsible for the conduct of investment business by others, should have adequate arrangements to ensure that they are suitable, adequately trained and properly supervised and that it has well-defined compliance procedures.

10. **Relations with Guernsey Financial Services Commission**

A licensee should deal with the Commission in an open and co-operative manner and keep the regulator promptly informed of anything concerning the firm which might reasonably be expected to be disclosed to it.