

THE LICENSEES (NOTIFICATION) RULES 1989

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GUERNSEY FINANCIAL SERVICES COMMISSION

THE LICENSEES (NOTIFICATION) RULES 1989

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

PART 1 INTRODUCTORY

1.01 Citation, commencement and application

- (1) These rules (including the schedule hereto) may be cited as the Licensees (Notification) Rules 1989 (the "Notification rules") and shall come into operation on 1 January 1990.
- (2) These Notification rules apply to all licensees but do not apply to a designated person to the extent that any obligation which would otherwise arise under these Notification rules has already been discharged by such designated person under The Collective Investment Schemes (Designated Persons) Rules 1988.

1.02 Interpretation

- (1) Unless the context otherwise requires, in these Notification rules expressions defined in the Law have the same meanings 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;

"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;

"associate" in relation to a body corporate means:-

- (a) any member of the group of which that body corporate forms part;
- (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 officer of that body corporate or of any associate;

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

"controller":-

- (a) in relation to a body corporate, means a 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 another body corporate of which it 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 body 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;

"director" in relation to a body corporate, means a person occupying in relation to it the position of a director (by whatever name called) and any person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of that body are accustomed to act;

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

"finance business" has the meaning given in the Financial Services Commission (Bailiwick of Guernsey) Law, 1987;

"holding company" has the meaning given in Section 20 of the Protection of Depositors (Bailiwick of Guernsey) Ordinance, 1971;

"manager" in relation to a person, means an employee who, under the immediate authority of the board of directors is responsible either alone or jointly with one or more other persons for the conduct of the licensee's business;

"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; and

"subsidiary" has the meaning given in Section 20 of the Protection of Depositors (Bailiwick of Guernsey) Ordinance, 1971.

- (2) The Interpretation (Guernsey) Law, 1948 applies to the interpretation of these Notification rules throughout the Bailiwick of Guernsey.
- (3) A reference in these Notification 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) References in these Notification rules to a numbered rule shall be construed as references to the rule bearing that number in these Notification rules.
- (5) References in any of these Notification rules to a numbered paragraph shall, unless the reference is to a paragraph of a specified rule, be construed as references to the paragraph bearing that number in the rule in which it appears.

PART 2 ANNUAL NOTIFICATIONS

2.01 General rule

A licensee must notify the Commission in writing at the times specified in rule 2.02 of any change in respect of the information contained in the licensee's application form, unless such information has already been supplied to the Commission by way of immediate notification under rule 3.01.

2.02 Timing

A licensee's first such notification must be submitted to the Commission within 12 months of the date on which the licence was issued, or, if the licence was issued before 1 March 1989, by 1 March 1990; and thereafter at intervals of not more than 12 months.

2.03 Annual report and accounts

A licensee must submit copies of its audited annual report and accounts to the Commission as soon as they have been audited and approved by its directors or appropriate managing body and in any case within three months after the licensee's accounting reference date.

PART 3 IMMEDIATE NOTIFICATIONS

3.01 General rule

Subject to rule 3.02, a licensee must notify the Commission of any event or circumstance specified in the schedule.

3.02 United Kingdom authorised person

Where a licensee is incorporated in the United Kingdom and is an authorised person for the purposes of the United Kingdom Financial Services Act 1986, the licensee is not required to notify the Commission of any event or circumstance specified in paragraph 10 of the schedule and satisfies paragraphs 8 and 9 of the schedule by lodging copies with the Commission of all documents filed under the Act in respect of any equivalent provisions.

3.03 Timing and contents

A notification pursuant to rule 3.01 shall be made within the time limit and shall contain the particulars specified in the schedule.

PART 4 COMPLAINTS

4.01 General rule

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

4.02 Notification to the Commission

A licensee must submit to the Commission, at the same time as it submits copies of its annual report and accounts pursuant to rule 2.03 of these Notification rules, a summary for the same corresponding period detailing:-

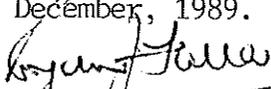
- (a) the number of significant complaints received during the year;
- (b) the number of significant complaints settled during that year; and
- (c) the number of significant complaints that have remained unsettled three months after receipt.

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.

4.03 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.

Made on 12th December, 1989.


Roydon J. Falla, Chairman -
Guernsey Financial Services Commission

SCHEDULE

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 an unincorporated 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 concerned 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 as required by any applicable rules issued by the Commission;

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

6 Change in notified information

A licensee shall give written notice to the Commission forthwith upon it becoming aware of the following matters in relation to any individual failing 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 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 in Guernsey:-
 - (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 a 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 or 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 the 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 the 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.