



THE LICENSEES
(CONDUCT OF BUSINESS) RULES 2009

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*Approved and authorized
in behalf of The Guernsey Financial
Services Commission
19th November 2009*  *Chairman*

The Licensees (Conduct of Business) Rules 2009

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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.

THE LICENSEES (CONDUCT OF BUSINESS) RULES 2009

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, as amended (“*the Law*”) hereby makes the following rules:-

1. Introduction

1.1. Citation, commencement and application

- 1.1.1. These rules may be cited as the Licensees (Conduct of Business) Rules 2009 (“*the Licensees Rules*”) and shall come into operation on 1 January 2010.
- 1.1.2. *The Licensees Rules* apply to all *licensees* unless specifically agreed otherwise by *the Commission* in accordance with Rule 1.1.3.
- 1.1.3. *The Commission* may in its absolute discretion by notice in writing to a *licensee* exclude or modify the application of any provision of *the Licensees Rules* if *the Commission* is satisfied that any such derogation will not be prejudicial to the interests of investors.

1.2. Interpretation

- 1.2.1. Unless the context otherwise requires, in *the Licensees 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;

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

“application form” means the relevant application form prescribed by *the Commission* for the authorisation or registration of *collective investment schemes* together with 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 as amended or is registered under the Banking Business (Jersey) Law, 1991, or authorised to undertake Class 1 Deposit-taking Business under the Isle of Man Financial Services Act 2008 or is authorised and regulated to carry on a banking or deposit-taking business under the Financial Services and Markets Act 2000 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-fifth of the issued equity share capital of which is beneficially owned by that *licensee* 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 financial statements” has the meaning given in Rule 4.2.1;

“board” has the meaning given to it by section 133 of the Companies (Guernsey) Law, 2008, as amended or, in the case of an unincorporated entity, the committee or managing board of a partnership or other similar governing body;

“business day” means any day excluding public holidays and weekends;

“Capital Adequacy Rules” means the Licensees (Capital Adequacy) Rules 2010;

“Category 1 controlled investment” means a *collective investment scheme* as is identified and described in paragraph 1 of Schedule 1 to *the Law*;

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

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

“Class A Rules” means the Authorised Collective Investment Schemes (Class A) Rules 2008;

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

“client account” means an account with an *approved bank* which:-

- (a) is in the name of the *manager*; and

- (b) includes in its title the description, “client account” or such description in an official language of the country in which the bank account is held.

“client money” has the meaning given in Rule 9.2;

“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;

“collective investment scheme” means any arrangement such as is identified and described in paragraph 1 of Schedule 1 to *the Law*;

“the Commission” means the Guernsey Financial Services Commission;

“Compliance Officer” has the meaning given at Rule 3.2.1;

“compliance return” has the meaning given at Rule 3.4.1 and Schedule 2 to *the Licensees Rules*;

“contract note” in respect of a transaction relating to a *controlled investment*, has the meaning given in Rule 10.1.1, and contains and meets the requirements of Rule 10.2;

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

“controlled investment” has the meaning given under Schedule 1 of *the Law*;

“controlled investment business” has the meaning given in section 1(3) of *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 entity means:
- (i) any person (legal or natural) 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 entity are accustomed to act (but disregarding advice given in a professional capacity), and

(ii) any person (legal or natural) who, either alone or with any related person or related persons is entitled to exercise, or control the exercise of, 15 per cent or more of the voting power at any general meeting of the entity; and for the purposes of this definition “related person”, 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*;

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

“designated custodian” see *designated trustee*

“designated manager”, in relation to a *collective investment scheme*, means the person designated as such by *the Commission* for the purposes of *the Law* (as designated in *the Commission’s* authorisation of the scheme under section 8 of *the Law*, or *the Commission’s* declaration of registration of the scheme under section 8 of *the Law*);

“designated trustee” or “designated custodian”, in relation to a *collective investment scheme*, means the person designated as such by *the Commission* for the purposes of *the Law* (as designated in *the Commission’s* authorisation of the scheme under section 8 of *the Law*, or *the Commission’s* declaration of registration of the scheme under section 8 of *the Law*);

“director” means, in respect of a company, any person appearing on the register of *directors* of such company, in respect of a limited partnership, any person appearing on the register of *directors* of the general partner of such limited partnership and in respect of any other incorporated bodies, any person responsible for the management of the incorporated body;

“discretionary manager” means a *licensee* which, via an agreement with the *client*, manages and controls the *client’s* portfolio without prior reference to the *client* (subject to suitability having been established as per Rule 5.2.2);

“elective eligible counterparty” has the meaning given at Rule 7.5.3;

“elective professional client” has the meaning given at Rule 7.4.3;

“eligible counterparty” is considered in Rule 7;

“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 *client* 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;

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

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

“generally accepted accounting principles” refers to financial statements prepared in accordance with International Financial Reporting Standards, UK *generally accepted accounting principles* (“GAAP”) or US GAAP.

“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” has the meaning given in Schedule 5 to *the Law*;

“insurance company” means a company licensed under the Insurance Business (Bailiwick of Guernsey) Law, 2002, as amended.

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

“large undertaking” means a *large undertaking* meeting two of the following size requirements on a company basis:

- (a) balance sheet total of £13,000,000;
- (b) net turnover of £26,000,000;
- (c) own funds of £1,300,000.

“the Law” means the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended;

“licensee” means the holder of a licence to carry on *controlled investment business* issued under *the Law*;

“the Licensees Rules” means the Licensees (Conduct of Business) Rules 2009.

“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*;

“manager” in relation to a *collective investment scheme*, means an entity responsible for the restricted activity of management, in connection with the *collective investment scheme*, as defined by Schedule 2 to *the Law*;

“material records” means such records that would be necessary for the purposes of establishing a complete and accurate record of all aspects of a *licensee’s* conduct of *controlled investment business*. These include (without limitation) records of instructions, transactions, valuations, *contract notes*, and advice;

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

“open-ended collective investment scheme” has the meaning given at Schedule 3 to *the Law*;

“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;

“pension scheme” means a scheme approved under section 155 of the Income Tax (Guernsey) Law, 1975, as amended.

“permanent data” means such records, documents or data as are considered material for the establishment and ongoing proper conduct of *controlled investment business* by a *licensee*. These include (without limitation): mandates and other agreements, *client* take-on documentation, *client* profiles, records relating to due diligence and other checks made and the findings of such checks. In the case of *Category 1 controlled investment business* these

also include (without limitation): prospectuses, constitutive documents and agreements relevant to the *licensee*;

“per se eligible counterparty” has the meaning given at Rule 7.5.2;

“per se professional client” has the meaning given at Rule 7.4.2;

“principal manager” has the meaning given in the *Class A Rules*;

“professional client” is considered in Rule 7;

“professional investor” has the meaning given in paragraphs 1 & 2 of the definition in the Qualifying Investor Funds Guidance, issued May 2007.

“qualified auditor” means a person who has a place of business in Guernsey and is a member of:

- (a) The Institute of Chartered Accountants in England and Wales; or
- (b) The Institute of Chartered Accountants of Scotland; or
- (c) The Institute of Chartered Accountants in Ireland; or
- (d) The Association of Chartered Certified Accountants; or
- (e) a body outside the United Kingdom undertaking a similar regulatory role and having equivalent professional standards for membership as any of the bodies specified in paragraphs (a) to (d).

For the purpose of this definition a “person” is defined as a partnership, body corporate or an individual with a current practising certificate issued by the bodies referred to in (a) to (e) above.

“Recognised Investment Exchange” means regulated market for the purposes of the Company Securities (Insider Dealing) (Bailiwick of Guernsey) Law, 1996, as amended, that is, any market established under the rules of an investment exchange specified in the Schedule to the Insider Dealing (Securities and Regulated Markets) Order 1996, as amended;

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

“Regulatory Laws” means –

- (a) the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended;

- (b) the Banking Supervision (Bailiwick of Guernsey) Law, 1994, as amended;
- (c) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000, as amended;
- (d) the Insurance Business (Bailiwick of Guernsey) Law, 2002, as amended;
- (e) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended;
- (f) any other enactment or statutory instrument prescribed for the purposes of Rule 1 by regulations of *the Commission*;

“relevant person”, in relation to a *licensee*, means any of the following:

- (a) a *director*, partner or equivalent, *manager* or *agent* of the *licensee*;
- (b) a *director*, partner or equivalent, or *manager* of any *agent* of the *licensee*;
- (c) an *employee* of the firm or of an *agent* of the *licensee*, as well as any other natural person whose services are placed at the disposal and under the control of the *licensee* or an *agent* of the *licensee* and who is involved in the carrying on by the *licensee* of *controlled investment business*; or
- (d) a natural person who is directly involved in the provision of services to the *licensee* or to its *agent* under a contractual arrangement for the purpose of the carrying on by the *licensee* of *controlled investment business*;

“retail client” is considered in Rule 7;

“Self-Regulatory Organisation” or “SRO” means a body (whether a body corporate or an unincorporated concern) 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 subject to its regulation;

“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;

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

“subsidiary” has the meaning given in Schedule 5 to *the Law*;

2. Corporate Governance and Senior Management Responsibility in respect of Controlled Investment Business

2.1. Corporate Governance

- 2.1.1. The *Board* of a *licensee* must ensure that there are effective and appropriate policies, procedures and controls, as described at Rule 3, in place which provide for the *Board* to meet its obligations under *the Law* and these Rules.
- 2.1.2. In meeting the requirements of *the Licensees Rules*, the *Board* of the *licensee* must evaluate and record the assessment of its compliance with *the Commission's* document "Guidance on Corporate Governance in the Finance Sector in Guernsey"- reference Schedule 1. The *Board* should also refer to Rule 3.
- 2.1.3. The *Board* of a *licensee* must retain responsibility for the outsourcing of any of its functions.
- 2.1.4. For the avoidance of doubt, the *Board* of an administered *licensee* remains responsible for the conduct of the administered entity.

Guidance Note:

Licensees may utilise outsourcing. In such circumstances the *Board* should make reference to *the Commission's* "Outsourcing of functions by entities licensed under the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended".

- 2.1.5. Every *licensee*, other than a *licensee* administered by another firm in the Bailiwick, must appoint a *chief executive* (the formal title being at the discretion of the *licensee*) and appoint a replacement to fill this position as and when it becomes vacant.
- 2.1.6. A *licensee's Board* and 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:

Where the *licensee* is administered by another firm in the Bailiwick, *the Commission's* expectation is that the composition of the *Board* contains at least one Guernsey resident *director*. Such *director* would be considered as *the Commission's* point of contact in the first instance.

For any other *licensees*, it is anticipated that there are at least two Guernsey resident *directors*, or equivalent, in order to comply with Schedule 4 to *the Law*.

“Reasonable steps” at Rule 2.1.6 above includes having in place sufficient management controls and compliance procedures and a system for ensuring that such controls continue to be sufficient and that *employees* are observing internal compliance procedures.

3. Compliance Arrangements

3.1. General

- 3.1.1. The *Board* has effective responsibility for compliance with *the Law*, *the Licensees Rules* and any rules or guidance made under *the Law*. In particular the *Board* must take responsibility for the policy on review of compliance and discuss a review of compliance at appropriate intervals.
- 3.1.2. As such it should ensure that a *licensee* takes reasonable steps, including the establishment and maintenance of procedures, to ensure that its officers and *employees* act, to the extent applicable, in conformity with-
- (a) their own and their employer's relevant responsibilities under *the Law* and the rules made thereunder;
 - (b) the *Regulatory Laws*;
 - (c) the requirements of the statutory restrictions on market abuse, insider dealing, money laundering and countering the financing of terrorism;
 - (d) any other enactment prescribed for the purposes hereof by regulation of *the Commission*;
 - (e) appropriate arrangements on propriety in personal dealings;
 - (f) guidelines issued by *the Commission* from time to time relevant to the carrying on of *controlled investment business*; and
 - (g) requirements of any *Self-Regulatory Organisation*, *Recognised Professional Body* or *Recognised Investment Exchange* of which the *licensee* is a member or subject to its regulation.
- 3.1.3. A *licensee* must keep a breaches register to log all instances of non-compliance with legislation, regulations and rules as listed in Rule 3.1.2.
- 3.1.4. 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*, and made available to *the Commission* on demand.
- 3.1.5. *The Commission* may require changes to the arrangements and the *licensee* shall implement and comply with any such requirements.
- 3.1.6. A *licensee* must review its written compliance procedures at least annually.

Guidance Note:

It is not the role of *the Commission* to approve compliance arrangements. Accordingly it is the responsibility of the *Board* to determine the “appropriate intervals” referred to in 3.1.1. However, such an interval should be no longer than one year.

3.2. The Compliance Officer

- 3.2.1. 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.
- 3.2.2. The *Board* must ensure that the *Compliance Officer* appointed :
- (a) be either a natural person or, if a legal person, *the Commission* should be informed of the natural person who takes responsibility for compliance within the organisation as the *Compliance Officer*;
 - (b) be resident in Guernsey;
 - (c) has sufficient resources to perform his duties;
 - (d) has timely access to all records required under Rule 6;
 - (e) receives full co-operation from all staff;
 - (f) reports directly to the *Board*;
 - (g) has regular contact with the *Board* to ensure that the *Board* is able to satisfy itself that all the requirements of *the Law* and *the Licensees Rules* are being met; and
 - (h) be fully aware of both his obligations and those of the *licensee* under *the Law* and *the Licensees Rules*.
- 3.2.3. Where a *licensee* is considering the outsourcing of compliance functions and/or providing the *Compliance Officer* with additional support from third parties, from elsewhere within the *group* or externally, then the *licensee* must:
- (a) comply with *the Commission's* “Guidance Note, Outsourcing of functions by entities licensed under the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended”;
 - (b) ensure that roles, responsibilities and respective duties are clearly defined and documented; and
 - (c) ensure that the *Compliance Officer*, other third parties and all *employees* understand their respective roles, responsibilities and duties.

- 3.2.4. Where the compliance function itself is outsourced to a third party the *licensee* should advise *the Commission* of the name(s) of the natural person(s) employed by the *licensee* (or its administrator / manager where applicable) responsible for oversight of the outsourcee.

Guidance Note:

Where the compliance function itself is outsourced to a third party, the *licensee* should be aware that the *licensee* remains responsible for compliance with *the Law* and the rules and regulations made thereunder. A *licensee* cannot contract out of its statutory and regulatory responsibilities.

3.3. Compliance Monitoring Programme

- 3.3.1. The *Board* of a *licensee* must, in addition to complying with the preceding requirements of *the Licensees Rules* -

- (a) establish such other policies, procedures and controls as may be appropriate and effective for the purposes of ensuring compliance with *the Licensees Rules, the Law* and any other rules made under *the Law*;
- (b) establish and maintain an effective policy, for which responsibility must be taken by the *Board*, for the review of its compliance with the requirements of *the Licensees Rules, the Law* and any other rules made under *the Law* and such policy shall include provision as to the extent and frequency of such reviews;
- (c) ensure that a review of its compliance with these Rules is discussed and minuted at a meeting of the *Board* at appropriate intervals, and in considering what is appropriate a *licensee* must have regard to the risk taking into account -
 - (i) the size, nature and complexity of the *licensee's controlled investment business*;
 - (ii) its *clients*, products and services; and
 - (iii) the ways in which it provides those products and services;
- (d) The *Board* has effective responsibility for compliance with *the Licensees Rules, the Law* and any other rules made under *the Law*. In particular the *Board* must take responsibility for the policy on review of compliance and discuss a review of compliance at appropriate intervals.
- (e) In meeting the requirements of *the Licensees Rules, the Law* and any other rules made under *the Law*, the *Board* of a *licensee* must evaluate and record the evaluation of its compliance with *the Commission's* document

“Guidance on Corporate Governance in the Finance Sector in Guernsey” – see Schedule 1.

- (f) A *licensee* must also ensure that there are effective and appropriate policies, procedures and controls in place which provide for the *Board* to meet its obligations relating to compliance review, in particular the *Board* must:
- (i) ensure that the compliance review policy takes into account the size, nature and complexity of the business and includes a requirement for sample testing of the effectiveness and appropriateness of the policies, procedures and controls;
 - (ii) consider whether it would be appropriate to maintain a separate internal audit function to assess the adequacy and effectiveness of the area of compliance;
 - (iii) ensure that when a review of compliance is discussed by the *Board* at appropriate intervals the necessary action is taken to remedy any identified deficiencies; and
 - (iv) provide adequate resources either from within the *licensee*, within the *group*, or externally to ensure that the compliance policies, procedures and controls of the *licensee* are subject to regular monitoring and testing as required by *the Licensees Rules*.
- (g) The *Board* may delegate some or all of its duties but must retain responsibility as per Rule 3.1.1.

3.4. Annual Compliance Return

- 3.4.1. A *licensee* must file annually with *the Commission* its *compliance return* in the format defined at Schedule 2 and within the timeframe stated in Rule 4.2.6.

Guidance Note:

In order to be able to file the *compliance return*, the *licensee* should consider the relationship between its compliance monitoring programme and the required considerations within the *compliance return*. The *Board* of the *licensee* should not be in a position to complete the *compliance return* without an effective compliance monitoring programme.

3.5. Employee Screening

- 3.5.1. A *licensee* shall maintain effective and appropriate procedures, when hiring *employees*, for the purpose of ensuring high standards of *employee* probity and competence.
- 3.5.2. The *Board* of a *licensee* is responsible for *employee* screening.
- 3.5.3. In order for a *licensee* to ensure that *employees* are of the required standard of competence and probity, which will depend on the role of the *employee*, the *licensee* must:-
- (a) obtain and confirm appropriate references at the time of recruitment;
 - (b) require information from the *employee* with regard to any regulatory action taken against him;
 - (c) require information from the *employee* with regard to any criminal convictions and the provision of a check of his criminal record (subject to the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002); and
 - (d) confirm his educational and professional qualifications.

3.6. Employee Training

- 3.6.1. The *Board* of the *licensee* is responsible for *employee* training.
- 3.6.2. A *licensee* shall ensure that relevant *employees* receive comprehensive ongoing training to ensure competence for duties including but not limited to:-
- (a) *the Law* and the rules made thereunder;
 - (b) the obligations of *employees* and their potential liability in failing to meet those obligations;
 - (c) the implications of non-compliance by *employees* with any relevant legislation, rules or guidance;
 - (d) its policies, procedures and controls for ensuring compliance with *the Law* and *the Licensees Rules* and any other relevant legislation, rules or guidance.
- 3.6.3. The *licensee* shall maintain a training log to record the training directors and employees of a *licensee* receive.

Guidance Note:

The Commission requires *licensees* to provide adequate training for their staff in accordance with Principle 9. Training should take into account each staff

member's existing experience and educational and professional qualifications. Appropriate training should also cover *licensees'* in-house training provisions.

The Commission expects that the *Board* of a *licensee* shall exercise oversight of the training process both in terms of its planning and execution and to document that oversight.

The Commission places emphasis on the *licensee's* system of supervision and administrative controls to ensure that *employees* do not act beyond their competence.

4. Accounting Records and Financial Statements

4.1. Accounting Records

- 4.1.1. Every *licensee* must keep accounting records in English which are sufficient to show and explain its transactions which:
- (a) disclose with reasonable accuracy, at any time, the financial position of the *licensee* at that time;
 - (b) enable the *licensee* to demonstrate its continuing compliance with the *Capital Adequacy Rules*;
- 4.1.2. Where a *licensee* acts as a *designated manager* or a *designated custodian*, the *licensee* must keep accounts in English which:
- (a) enable a *designated manager* of a Class A Scheme to keep the daily record required under the *Class A Rules*;
 - (b) enable the reports to holders to be prepared by each of the *designated manager* and the *designated custodian* of *open-ended collective investment schemes*; and
 - (c) enable the *designated manager* and *designated custodian* to demonstrate compliance with *the Licensees Rules* at any time.
- 4.1.3. In respect of compliance with 4.1.2, should a *licensee* outsource this activity, it should have daily access to this information and must continue to comply with *the Commission's* "Guidance on Outsourcing of functions by entities licensed under the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended".

4.2. Audited financial statements

- 4.2.1. Every *licensee* must prepare *audited financial statements* covering the period from the immediately preceding *accounting reference date* (or, in the case of a new business, from the date of incorporation) to the next following *accounting reference date* which shall as a minimum include:-
- (a) accounts complying with *generally accepted accounting principles*;
 - (b) in the case of a *designated manager* only, provide details of the aggregate balance of all *client accounts*;
 - (c) in the case of a *designated manager* only, show the aggregate value of all scheme property under management as at the relevant *accounting reference date*, calculated for each scheme in accordance with the *Class A Rules*; and

(d) an auditor's report thereon, which shall include a statement of financial resources certified by the auditor confirming that the appropriate financial resources requirement specified in the *Capital Adequacy Rules* is satisfied.

4.2.2. In addition, a *licensee* which is subject to an expenditure-based requirement under the *Capital Adequacy Rules* shall prepare, within one month of the month end, a statement of financial resources in respect of each month. If required by *the Commission*, it will be made available for inspection.

4.2.3. Unless the *licensee* is preparing *audited financial statements* from the period of incorporation to the *accounting reference date*, *audited financial statements* shall be prepared in respect of a period no longer than 12 months from the previous *accounting reference date*.

4.2.4. Where the *licensee* is preparing *audited financial statements* from the period of incorporation to the *accounting reference date*, *audited financial statements* should be prepared to the date notified to *the Commission* at the time of making an application for a licence.

4.2.5. Any change in the *accounting reference date* of a *licensee* must immediately be notified to *the Commission* together with a statement of reasons for the change.

4.2.6. Unless the *licensee* is regulated under another of the *Regulatory Laws*, and *the Commission* has confirmed in writing that that specific law takes precedence over its obligations under *the Licensees Rules*, copies of the *audited financial statements* shall be submitted to *the Commission* by no later than four months after the *accounting reference date* together with the *Compliance Return* at Schedule 2.

4.3. Auditor

4.3.1. Every *licensee* must appoint a *qualified auditor* and confirm to *the Commission* that the *qualified auditor* is so qualified.

4.3.2. 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.

5. Conduct of Business

5.1. Fitness and propriety

- 5.1.1. *A licensee must observe the Principles in carrying on its controlled investment business.*

Guidance Note:

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

The Principles are a statement of the standards expected of a licensee.

Breach of a Principle will be taken into account for the purposes of discipline and intervention.

The Principles are not exhaustive and conformity with them does not excuse a failure to observe other regulatory requirements.

In considering whether a licensee remains a fit and proper person, the Commission will also have regard to Schedule 4 to the Law.

5.2. Client relations

5.2.1. Client agreements

- (a) Where a licensee provides investment services to a retail client, whether on a discretionary basis or otherwise, it must do so under a written agreement signed both by the licensee and client which sets out in adequate detail the basis and terms on which the services are provided and the extent of the discretion to be exercised by the licensee, unless the client specifically advises in writing that he does not wish such a written agreement to be used.
- (b) If the licensee is to provide investment services on an execution-only basis, the basis and terms on which the services are provided should be set out in adequate detail and signed by both the licensee and the client;
- (c) Where a licensee provides investment services to a professional client or an eligible counterparty, whether on a discretionary basis or otherwise, it must provide that client with the terms on which the licensee is prepared to provide the activities proposed.

- (d) Where it is not practicable for a *licensee* to provide the information required by rule 5.2.1(c) before commencing business with the *client* the *licensee* shall provide it to the *client* as soon as practicable.

Guidance Note:

In all provision of *investment services*, it is important that both parties understand the responsibilities of the *licensee*. Where a *licensee* conducts business on an execution-only basis, it is particularly important that the limitations of the *licensee's* responsibilities are closely adhered to. If the *licensee* were to provide advice to the *client* on purchases or sales, for the purpose of these Rules, this would not constitute an execution-only arrangement. *The Licensees Rules* anticipate a clear definition, within any written agreement, of an execution-only relationship.

There is a distinction between the provision of advice on transactions and the provision of best execution on a transaction. For example, the *licensee* might decide to delay, or stagger, the disposal of a *controlled investment* in order to achieve best execution.

5.2.2. Suitability

- (a) A *licensee*, at the outset of its provision of advisory or discretionary *investment services* to a *client*, should ensure that it has obtained sufficient knowledge of the *client* to ensure that any advice or discretionary decision is suitable to the requirements of the *client*.
- (b) A *licensee* should establish and maintain systems to ensure that its *employees* do not procure, endeavour to procure or advise anyone to enter into a transaction if that *employee* is not competent to advise on that transaction or to assess its suitability for investors.
- (c) A *licensee* must take reasonable steps to ensure that it does not in the course of its *controlled investment business* -
- (i) recommend an investment to a *client*; or
 - (ii) effect or arrange a discretionary transaction with or for any *client*,
 - (iii) unless the recommendation or transaction is suitable for him having regard to the facts disclosed by that *client*, the terms of any agreement with that *client*, and other relevant facts about the *client* of which the *licensee* is, or reasonably should be, aware.
- (d) Reasonable steps would include the *licensee* actively obtaining information from a *client* and documenting it in a readily accessible

manner. Such records should be retained for a period of six years from the date the relationship ceases.

5.2.3. Disclosure

- (a) Before a *licensee* provides *investment services* to a *client*, it must disclose to him in writing the professional experience of the *licensee*, the regulatory history of the *licensee* (including any disciplinary history) and the basis or amount of its charges for the provision of those services.
- (b) Rule 5.2.3 shall not apply where a *licensee* provides *investment services* to a *client* who is an *eligible counterparty*.
- (c) A *licensee* which intends to carry on *stock lending activity* pursuant to Rule 9.1.1(f) where it will borrow a *client's* stock for its own account or lend a *client's* stock to an *associate* must disclose its or its *associate's* interest to the *client*, either generally or in respect of each transaction.
- (d) A *licensee* must not recommend a transaction or investment strategy to a *client* or act as a *discretionary manager* for him unless it has taken reasonable steps to make him aware of the risks involved, including conflicts of interest.

5.2.4. Periodic information

- (a) Rule 5.2.4 shall not apply where a *licensee* provides *investment services* to a *client* who is an *eligible counterparty*.
- (b) Rule 5.2.4 shall not apply where a *client* has self service access to a statement service, for example where statements are available via the internet, and *the client* has agreed in writing for Rules 5.2.4(c) and 5.2.4(d) to not apply.
- (c) A *licensee* which manages *controlled investments* for a *client* must send a valuation report at intervals which are not less frequent than -
 - (i) quarterly in respect of securities or securities-related cash balances; and
 - (ii) monthly for *derivatives* or derivatives-related cash balances,

unless the *client* advises the *licensee* in writing that he wishes them less frequently (although the *client* must be sent a valuation report on at least an annual basis). If the *client* advises the *licensee* in writing that he does not wish to receive a valuation report, the *licensee* must prepare one in accordance with *the Licensees Rules* and keep it with the *client's* records. Where the *licensee* has categorised the *client* as a *professional client* under the provisions of Rule 7, it may decide not to send out its records.

- (d) Where the *licensee* only provides custody services for a *client*, statements of assets held in custody should be sent to that *client* in the intervals defined at Rule 5.2.4(c).

5.3. Dealing, managing and advising

5.3.1. *Client* order priority

- (a) A *licensee* must deal with *client* and own account orders fairly and in due turn.
- (b) Rule 5.3.1(a) shall not apply where a *licensee* provides *investment services* to a *client* who is an *eligible counterparty*.

5.3.2. Timely execution

- (a) Once a *licensee* has agreed with a *client* or decided in its discretion to effect or arrange a *client* order, it must effect or arrange the execution of the order as soon as reasonably practicable in the circumstances.
- (b) Rule 5.3.2 shall not apply where a *licensee* provides *investment services* to a *client* who is an *eligible counterparty*.
- (c) Rule 5.3.2(a) 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 *client*. Such a decision must be documented.

5.3.3. Best execution

- (a) Where a *licensee* deals with or for a *client*, it must seek to provide best execution, unless there is a specific instruction, in writing, from the *client*.
- (b) The *licensee* should have an expressly stated best execution policy within its procedures and disclose it to *clients*. The policy should state the execution venues that the *licensee* intends to use.
- (c) 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.
- (d) For the purposes of Rule 5.3.3(a), 5.3.3(b) and 5.3.3(c) above, a *licensee* provides best execution if –
 - (i) it takes reasonable care to ascertain the price which is the best available for the *client* in the relevant market at the time for transactions of the kind and size concerned; and
 - (ii) unless the circumstances require it to do otherwise in the interests of the *client*, it deals at a price which is not less advantageous to him.

- (e) In applying best execution, the *licensee* should have regard to the best price, the likelihood of execution and settlement at that price, and the costs of execution. The *licensee* should also pay regard to the nature of the order.
- (f) In applying best execution, a *licensee* should leave out of account any charges disclosed to the *client* which it or its *agent* would make.
- (g) As part of its compliance monitoring programme (referred to in Rule 3.3) the *licensee* must review a suitable sample of orders to ensure they are executed in accordance with its best execution policy.
- (h) Rule 5.3.3 shall not apply where a *licensee* provides *investment services* to a *client* who is an *eligible counterparty*.

Guidance Note:

Where the *licensee* relies on another party to fulfil best execution, the ultimate responsibility remains with itself. Therefore the *licensee* should make whatever enquiries it considers necessary to establish reliance and document these enquiries.

As stated at 5.3.3(a) the *licensee* should look to obtain best execution for its *clients*. Where possible, comparisons to similar transactions in the same (and other) execution venues should be made.

Speed of execution, likelihood of execution and settlement, size and nature of the order, market impact, and any other implicit transaction costs may only be given precedence over the immediate price consideration insofar as they are instrumental in delivering the best possible result to the *retail client*.

5.3.4. Timely and fair allocation

- (a) A *licensee* must ensure that a transaction it executes is promptly allocated.
- (b) Where a *licensee* has aggregated an order for a *client* transaction with an order for an own account transaction, or with another order for a *client* transaction, then in the subsequent allocation -
 - (i) it must not give unfair preference to itself or to any of those for whom it dealt; and
 - (ii) if the *licensee* cannot satisfy itself that all orders can be achieved, it must give priority to satisfying orders for *client* 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.

(c) Rule 5.3.4(b) shall not apply where a *licensee* provides *investment services* to a *client* who is an *eligible counterparty*.

5.3.5. Restrictions on allocations to officers and *employees*

(a) In making allocations under Rule 5.3.4, no allocation may be made to the personal account of any officer or *employee* of the *licensee* unless:-

(i) he is wholly unconnected with the transaction or any prior decision to undertake it; or

(ii) his allocation arises solely because of a prior recorded decision by the *licensee* that a prescribed block of the transaction should be reserved for allocation to *employees* of the *licensee* and the *licensee* shall ensure that it is a term of the contract of employment of each *employee* and ensure that it is drawn explicitly to the attention of each *employee* that he may not make an arrangement with any other person whereby that person participates in any transaction on his behalf or in expectation of any reciprocal benefit on another occasion.

5.3.6. Price at which allocations are to be effected

(a) In any allocation of transactions to which the provisions of this Rule apply, the price at which such allocation is made to interested parties shall (save as mentioned in rule 5.3.7 below) be the price per unit of the total transaction (account being taken of fees and commissions).

(b) Rule 5.3.6(a) shall not apply where a *licensee* provides *investment services* to a *client* who is an *eligible counterparty*.

5.3.7. Series of transactions treated as one

(a) Where a *licensee* effects a series of transactions during any one period of 24 hours (commencing with the first transaction in that series) or any one or more subsequent successive periods of 24 hours to achieve one investment decision or objective, then the *licensee* may ascribe a uniform price to the transactions effected during each such period of 24 hours, calculated as the weighted average of the various prices of the transactions effected during the relevant 24 hour period.

(b) Rule 5.3.7(a) shall not apply where a *licensee* provides *investment services* to a *client* who is an *eligible counterparty*.

5.3.8. Churning and switching

(a) A *licensee* must not:

(i) make a recommendation to a *client* to deal; or

(ii) deal or arrange a deal in the exercise of its discretion for any *client*, if the dealing would reasonably be regarded as too frequent in the circumstances.

(b) A *licensee* must not:

(i) make a recommendation to a *client* to switch within or between a *controlled investment*; or

(ii) effect such a switch in the exercise of its discretion for a *client*,

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

(c) Rules 5.3.8(a) and (b) shall not apply where a *licensee* provides *investment services* to a *client* who is an *eligible counterparty*.

5.3.9. Dealing ahead of published research or analysis

(a) If a *licensee* becomes aware that an *associate* intends to publish to *clients* a written recommendation, or a piece of research or analysis, it must not effect an own account transaction in the investment concerned or any related investment until the *clients* for whom the publication was principally intended have had (or are likely to have had) a reasonable opportunity to react to it, unless it has documented and evidenced that the conditions at Rule 5.3.9(b) have been satisfied.

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

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

(ii) 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;

(iii) the *licensee* deals in order to fulfil an unsolicited *client's* order;

(iv) the *licensee* believes on reasonable grounds that it needs to deal to fulfil *clients'* 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 *clients'* interests by a material amount; or

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

5.3.10. Staff Dealing Policy

- (a) The *licensee* must have a staff dealing policy that complies with the requirements of the Company Securities (Insider Dealing) (Bailiwick of Guernsey) Law, 1996 and any other requirements under *the Law*.

5.4. Promotion

5.4.1. The *licensee*, if responsible for promotion and advertising, must:-

- (a) ensure that any materials issued are clear, fair and not misleading; and
- (b) take all reasonable steps with a view to ensuring that any form of promotion or advertising in a country or territory outside of the Bailiwick of Guernsey is in accordance with the laws and regulations in force in that country or territory.

6. Record Keeping

6.1. Records

- 6.1.1. All records prepared in order to comply with *the Licensees Rules* shall be retained for a period of at least six years from their occurrence.
- 6.1.2. A *licensee* shall keep, for a period of six years from their occurrence, a record of occurrences which have, or in the opinion of the person responsible for compliance or any *client* may have, involved an alleged breach of *the Law* or the rules and regulations made under it and of the steps taken with a view to ensuring that such occurrences do not recur.
- 6.1.3. Unless otherwise stated, all *material records* and *permanent data* prepared in order to comply with *the Licensees Rules* shall be retained for the duration of the relevant relationship and also for a period of at least six years starting from the date that the relevant relationship ceased. For the purpose of this rule, the term “relationship” includes any direct relationship a *licensee* has with a *client* in respect of *controlled investment business* and any relationship a *licensee* has either directly with a *collective investment scheme*, or with another party, in respect of services it provides to that scheme.
- 6.1.4. A *licensee* shall keep, and properly maintain, records relating to its *controlled investment business* and any other activities affecting its *controlled investment business*, in a form capable of prompt reproduction in English and capable of being checked or audited, so as to demonstrate compliance with *the Law* and the regulations and rules made under it.
- 6.1.5. A *licensee* shall make such records available at any time to *the Commission*, its *employees* and any persons authorised by it for any purpose whatsoever.
- 6.1.6. A *licensee* must review, at least annually, the ease of retrieval of, and condition of paper and electronically retrievable records including telephone records and recordings.

6.2. Scheme property records

- 6.2.1. Where a *designated custodian* itself or any other appropriately licensed person has custody of scheme property and documents of title or documents evidencing title to scheme property, records shall be maintained by the custodian to explain in respect of each scheme:-
- (a) the location of scheme property and documents of title or documents evidencing title to scheme property; and
 - (b) when the *licensee* took custody of or relinquished custody of the scheme property or documents of title or documents evidencing title; and

- (c) the nature, amount and nominal value of the scheme property or documents of title or documents evidencing title.

6.3. Records relating to transactions

6.3.1. In respect of investors in a *collective investment scheme*:

- (a) On the receipt of instructions from an investor to effect a transaction in the units of a *collective investment scheme*, a *designated manager* shall make a record of:-
 - (i) the name of the investor; and
 - (ii) the name of the *collective investment scheme* and the number of units or the subscription monies the subject of the instructions; and
 - (iii) the nature of the proposed transaction; and
 - (iv) the date and time the relevant instructions were received; and
 - (v) any other information necessary to complete this transaction.
- (b) It shall be sufficient compliance with this Rule if the record is made in an electronic recording which also records, second by second, the time at what is spoken is recorded.

6.3.2. In respect of scheme property of a *collective investment scheme*:

- (a) On transmission of instructions
 - (i) Where a *designated manager* in arranging a transaction on account of a *collective investment scheme* gives instructions to another person to effect it, the *designated manager* shall simultaneously with the giving of the instructions make a record of:-
 - (1) the name of the *collective investment scheme*; and
 - (2) the name of the other person so instructed; and
 - (3) the terms of the instructions, including the name of the asset; and
 - (4) the date and time on which the instructions were so given;

and it shall be sufficient compliance with this Rule if the record is made in an electronic recording which also records, second by second, the time at what is spoken is recorded.

(b) On execution

(i) Where a transaction is effected by a *designated manager*, the *designated manager* shall make a record of:-

- (1) the name of the *collective investment scheme* and the property which is the subject of the transaction; and
- (2) the day, the price and other terms on which the transaction was effected including, where any conversion between the currencies is involved, the rate of exchange; and
- (3) the brokers to the transaction; and
- (4) where the *designated manager* effected the transaction in the capacity of both buyer and seller, that fact;

and it shall be sufficient compliance with this Rule if the record is made in an electronic recording which also records, second by second, the time at what is spoken is recorded.

6.3.3. Record keeping of allocation of transactions

(a) Where a *designated manager* has effected a transaction to which Rule 5.3.4 applies it shall allocate the transaction between the interested parties as soon as practicable after the transaction has been effected and, upon such allocation, shall keep or procure the keeping of records of:-

- (i) the date and time of the allocation; and
- (ii) the investments the subject of the allocation; and
- (iii) the identity of the interested parties and the designation of any relevant account of the interested parties.

6.4. In respect of controlled investments held on behalf of a client

6.4.1. A *licensee* which holds custody of *controlled investments* on behalf of a *client*, or which appoints another person to be the custodian of *client* investments, must perform a reconciliation in accordance with 6.4.2 below as often as is necessary to ensure the accuracy of its records relating to *clients'* investment entitlements.

6.4.2. Reconciliations are to be performed as follows:

(a) Where *client* 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 *client* investments.

- (b) Where *client* investments are not physically held by a *licensee*, the *licensee's* record of *clients'* investment entitlements must be reconciled, at least every three months, with statements obtained from the *eligible custodian* or other holder.

6.5. Destruction of records or files

- 6.5.1. Without limiting any other obligation under *the Law* or the rules and regulations made under it or under the laws of Guernsey, a *licensee* shall ensure that it and its *directors* and *employees* and other persons to the extent that they are under its power and control shall not, without the express consent in writing of *the Commission*, amend, destroy, make further entries in, or erase, any record or file (whether in documentary or electronic form) which is, or may be, relevant to any matter which is the subject of any kind of investigation, disciplinary or other process, or appeal under *the Law* or the rules and regulations made under it.

7. Categorising Clients

7.1. General definition

- 7.1.1. Subject to Rules 7.1.3 and 7.1.4, any person with or for whom a *licensee* carries on *controlled investment business* is a *client* of that *licensee*.
- 7.1.2. A *client* of an *agent* is a *client* of the *licensee* for whom that *agent* acts or intends to act in the course of business for which that *licensee* has accepted responsibility via a contractual arrangement. Such acceptance of responsibility should be evidenced and demonstrable.
- 7.1.3. Where a *licensee* is acting as a *designated manager* of a *collective investment scheme* authorised or registered under *the Law*, the *licensee* may categorise the investors in the *collective investment scheme* as if they were *retail clients* without applying the provisions of Rule 7.2 and 7.7.
- 7.1.4. For the avoidance of doubt, where a *licensee* is acting as the *designated custodian* of a *collective investment scheme* authorised or registered under *the Law*, for the purposes of these rules it is deemed to be carrying on *controlled investment business* with the *collective investment scheme*. This rule does not provide any derogation from the provisions of the other rules to which the *collective investment scheme* is subject.

7.2. Notification to Clients

- 7.2.1. A *licensee* must:
- (a) notify a *client* of its categorisation as a *retail client*, *professional client*, or *eligible counterparty* in accordance with this Rule; and
 - (b) prior to the provision of services, inform a *client* about:
 - (i) the right that *client* has to request a different categorisation; and
 - (ii) any limitations to the level of *client* protection that such a different categorisation would entail.

Guidance Note:

Rule 7.6 requires a *licensee* to allow a *client* to request re-categorisation as a *client* that benefits from a higher degree of protection. A *licensee* should therefore notify a *client* that is categorised as a *professional client* or an *eligible counterparty* of its right to request a different categorisation.

7.3. Retail clients

7.3.1. A *retail client* is a *client* who is not a *professional client* or an *eligible counterparty*.

7.4. Professional clients

7.4.1. A *per se professional client* or an *elective professional client* is a *professional client*.

7.4.2. Each of the following is a *per se professional client* unless and to the extent it is an *eligible counterparty* or is given a different categorisation under Rule 7:

(a) not a member of the public; or

(b) a *Large Undertaking* and/or a *Professional Investor*;

7.4.3. A *licensee* may treat a *client* as an *elective professional client* if the *licensee* undertakes an adequate assessment of the expertise, experience and knowledge of the *client* that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the *client* is capable of making his own investment decisions and understanding the risks involved. If the *client* is an entity, the assessment should be performed in relation to the person authorised to carry out transactions on its behalf.

Guidance Note

In making the assessment required at Rule 7.4.3, the *licensee* should have regard, inter alia for:-

- the frequency of the *client's* dealing in the relevant *controlled investments*;
- the size of the *client's* portfolio of cash and *controlled investments*; and
- the *client's* relevant professional expertise.

The *Commission* would not object to the application of the criteria for “Experienced Investors” or “Knowledgeable Employees” laid out in the Qualifying Investor Funds Guidance in making the assessment.

7.4.4. A *licensee* may treat a *client* as an *elective professional client* if the following procedure is followed:

(a) the *client* must state in writing to the *licensee* that it wishes to be treated as a *professional client* either generally or in respect of a particular service or transaction or type of transaction or product;

(b) the *licensee* must give the *client* a clear written warning of the protections and investor compensation rights the *client* may lose; and

- (c) the *client* must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections.

Guidance Note.

An *elective professional client* should not be presumed to possess market knowledge and experience comparable to a *per se professional client*.

- 7.4.5. If a *licensee* becomes aware that a *client* no longer fulfils the initial conditions that made it eligible for categorisation as a *professional client*, the *licensee* must take the appropriate action.

Guidance Note.

Professional clients are generally responsible for keeping the *licensee* informed about any change that could affect their current categorisation.

7.5. Eligible counterparties

- 7.5.1. A *per se eligible counterparty* or an *elective eligible counterparty* is an *eligible counterparty*.

- 7.5.2. Each of the following is a *per se eligible counterparty* (including an entity licensed under similar local legislation in its own jurisdiction) unless and to the extent it is given a different categorisation under Rule 7:

- (a) any entity licensed for Dealing, Managing or Advising under *the Law*;
- (b) an *approved bank*;
- (c) an *insurance company*;
- (d) a *collective investment scheme*;
- (e) a *pension scheme* or its management company;
- (f) a national government or its corresponding office, including a public body that deals with the public debt;
- (g) a central bank;
- (h) a supranational organisation;
- (i) any other entity that is
 - (i) incorporated outside the Bailiwick; and
 - (ii) is suitably licensed, authorised or qualified by primary or secondary legislation in its home jurisdiction

- 7.5.3. A *licensee* may treat a *client* as an *elective eligible counterparty* if:
- (a) the *client* is an undertaking;
 - (b) a *per se professional client* and;
 - (c) he requests such categorisation and the *licensee* undertakes an adequate assessment of the expertise, experience and knowledge of the *client* that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the *client* is capable of making his own investment decisions and understanding the risks involved; and
 - (d) the *licensee* has obtained express confirmation from the prospective counterparty that it agrees to be treated as an *eligible counterparty*.
- 7.5.4. A *licensee* may obtain a prospective counterparty's express confirmation that it agrees to be treated as an *eligible counterparty* either in the form of a general agreement or in respect of each individual transaction.

7.6. Providing clients with a higher level of protection

- 7.6.1. A *licensee* must accede to a *client's* request for re-categorisation as a *client* that benefits from a higher degree of protection.
- 7.6.2. A *licensee* may, either on its own initiative or at the request of the *client* concerned:
- (a) treat as a *professional client* or a *retail client* a *client* that might otherwise be categorised as a *per se eligible counterparty*;
 - (b) treat as a *retail client* a *client* that might otherwise be categorised as a *per se professional client*,
- and if it does so, the *client* will be re-categorised accordingly.
- 7.6.3. If a *per se eligible counterparty* requests treatment as a *client* whose business with the *licensee* is subject to conduct of business protections, but does not expressly request treatment as a *retail client* and the *licensee* agrees to that request, the *licensee* must treat that *eligible counterparty* as a *professional client*.
- 7.6.4. The ways in which a *client* may be provided with additional protections under this section include re-categorisation on:
- (a) a general basis;
 - (b) a trade by trade basis;
 - (c) in respect of one or more specified rules;

- (d) in respect of one or more particular services or transactions; or
- (e) in respect of one or more types of product or transaction.

7.7. Policies, Procedures and Records

7.7.1. A *licensee* must implement appropriate written internal policies, procedures and controls to categorise its *clients*.

7.7.2. A *licensee* may satisfy Rule 7.2.1 by either:

- (a) issuing a standard notice to the *client* when they are given the *client* agreement; or
- (b) by incorporating the notice in the text of the *client* agreement.

In the case of (a) the *licensee* must keep a copy of the standard form for inspection while it is in use and for six years after the *licensee* ceases to use it.

7.7.3. A *licensee* must make a record in relation to each *client* of:

- (a) the categorisation established for the *client* under this section, including sufficient information to support that categorisation;
- (b) evidence of despatch to the *client* of any notice required under Rule 7.2.1 and, if such notice differs from the relevant standard form, a copy of the actual notice provided; and
- (c) a copy of any agreement entered into with the *client* under Rule 7.

This record must be made at the time of categorisation and should be retained for at least 6 years after the *licensee* ceases to carry on business with or for that *client*.

8. Complaints

8.1. Complaints Procedure

- 8.1.1. Every *licensee* must have in operation, and ensure compliance with, a written procedure for the effective consideration and proper handling of any complaints relating to the *licensee's controlled investment business*, howsoever received.
- 8.1.2. The *licensee* shall ensure that each of its officers and *employees* responsible for dealing with *clients* is at all times aware of the procedure and of the obligation to follow it.

Guidance Note:

It is expected that all complaints are reviewed by at least a senior officer of the *licensee* who is independent of the circumstances giving rise to the complaint. An appropriate person could be the *Compliance Officer*.

8.2. Notifications

- 8.2.1. 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.
- 8.2.2. For the purposes of Rule 8.2.1, 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.

8.3. Record Keeping

- 8.3.1. Every *licensee* shall maintain a register in which it records any complaints received, along with sufficient details to allow it to be able to demonstrate that it has dealt (or is dealing) with such complaints in accordance with the *Licensees Rules*.

9. Client Assets

9.1. Safekeeping of client assets

9.1.1. A *licensee* which has custody of a *client's controlled investments* must:

- (a) keep safe, or arrange for the safekeeping by an *eligible custodian* of any documents of title relating to them;
- (b) ensure that registrable investments which it buys or holds for a *client* in the course of conducting its *controlled investment business* are properly registered in the *client's* name or, with the consent of the *client*, 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 *client*;
- (c) where title to investments is recorded electronically, ensure that *client* entitlements are separately identifiable from those in the beneficial ownership of the *licensee* and any other *client* 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 *client's* entitlements to be identified by an account designation name or number which is unique to that *client*;
- (d) not use a *client's* investments for its own account unless it has obtained that *client's* prior written consent;
- (e) where the *licensee* registers *clients'* investments in the name of an *own nominee*, accept responsibility for the acts or omissions of that nominee;
- (f) not lend, or arrange the lending of *clients'* investments to a third party unless:
 - (i) the *client* to whom the investment belongs has consented, in writing, and the loan is subject to appropriate documented terms and conditions;
 - (ii) where *clients'* investments belonging to more than one *client* are registered in the same name, each *client* whose investments are so registered has consented, in writing, to the lending of *client* investments registered in that name, and each *client's* entitlement is clearly ascertained;
 - (iii) adequate collateral is obtained and maintained for the duration of the loan, in accordance with any written instructions given by the *client*;
and

- (iv) the *licensee* arranges for all income, inclusive of dividends, fees or commissions, earned thereby (other than any fees payable to the *licensee* for arranging the loan) either to be paid to the *client* direct or to be received by the *licensee* on the *client's* account and treated as *client money* unless instructed otherwise by the *client*.

9.2. Client Money

- 9.2.1. *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*. *Client money* may be held in a different currency to that of receipt.
- 9.2.2. For the purposes of Rule 9.2.1: -
 - (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*; and
 - (c) 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*.

9.3. Client Money Accounts

- 9.3.1. 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*.
- 9.3.2. If not already confirmed by the bank, 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 that 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*.

- 9.3.3. If, in the case of a *client account* with an *approved bank* outside Guernsey, the bank declines to give the acknowledgement required in Rule 9.3.2 above or if the *licensee* has any other ground for believing that *client money* will not be protected as effectively as it would be if held in a *client account* in Guernsey, the *licensee* shall not pay or transfer *client money* into that account.
- 9.3.4. Rule 9.3.3 above does not apply to money held by a *licensee* which is also licensed under the Banking Supervision (Bailiwick of Guernsey) Law, 1994, as amended on behalf of a *client* in an account with itself.
- 9.3.5. *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 Rule 9.4.1 below.
- 9.3.6. 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.
- 9.3.7. Money received pursuant to Rules 9.3.5 and 9.3.6 which is not *client money* should be paid out of the *client money bank account* no later than one *business day* after the day on which the money had been cleared.
- 9.3.8. Rule 9.3.7 shall not apply to amounts of less than £25 (or currency equivalent).

9.4. Payments from Client Money Accounts

- 9.4.1. Money ceases to be *client money* if it is paid:-
- (a) to the *client*;
 - (b) into a bank account in the name of the *client* (not being an account which is also in the name of the *licensee*); or
 - (c) to the *licensee* itself; where it is due and payable to the *licensee*.
- 9.4.2. The following items may be withdrawn from a *client account*:-
- (a) money, not being *client money*, paid into the account for the purpose of opening or maintaining the account;
 - (b) money paid into the account in contravention of *the Licensees Rules*;
 - (c) money properly required for a payment to or on behalf of a *client*;

- (d) money properly required for or towards payment for the purchase of units, shares, partnership interests or of a debt due to the *licensee* from a *client* other than in respect of fees or commission;
- (e) subject to Rule 9.4.3, money properly required for or towards payment of fees or commissions payable to the *licensee* and specified in a statement delivered to the *client* showing how those fees and commissions have been calculated;
- (f) money drawn on a *client's* authority or in conformity with any contract between the *licensee* and the *client*;
- (g) money which may be properly transferred into another *client account*;
- (h) if a cheque is paid into a *client account* and that cheque includes money which is not *client money*, that money which is not *client money* shall be withdrawn from the account as soon as cleared funds are credited to the account in respect of that cheque;
- (i) interest withdrawn from the *client money bank account*.

9.4.3. Money shall not be withdrawn from a *client account* for or towards payment of fees or commissions payable to the *licensee* unless the fees or commissions have been calculated in accordance with the formula disclosed to *clients* in the relevant *permanent data* documentation.

9.4.4. Where a *licensee* draws a cheque or other payable order under Rule 9.4.1 above, the money does not cease to be *client money* until the cheque or order is despatched.

9.4.5. Where a *licensee* makes a payment to a *client* 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 *client* or other party has received that payment in cleared funds.

9.4.6. Where a *licensee* has contracted to rebate commission to a *client*, the amount becomes *client money* when it becomes payable and should be settled within the timeframe agreed in the contract.

9.4.7. No money, other than money required by Rule 9.3.5 or Rule 9.6.1(a) or Rule 9.6.1(b) to be paid into a *client account*, shall be paid into such an account unless:-

- (a) the money is the *licensee's* own money and it is required to be so paid for the purpose of opening or maintaining the account and the amount is the minimum amount required for the purpose; or

- (b) the money is the *licensee's* own money and it is so paid in order to restore in whole or in part any money paid out of the account in contravention of *the Licensees Rules* or to restore the account out of an overdraft position.

9.5. Operation of Client Money Accounts

- 9.5.1. A *licensee* shall maintain records sufficient to demonstrate compliance with Rule 9.
- 9.5.2. A *licensee* must 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*.
- 9.5.3. The *client money* account must not become overdrawn and there must not be a shortfall in *client money* upon reconciliation with the statement issued by the *approved bank*.
- 9.5.4. In the event of a breach of Rule 9.5.3 the *licensee* must immediately restore the account as described in Rule 9.4.7(b)

9.6. Provisions applicable only in relation to collective investment schemes

- 9.6.1. Subject to Rule 9.4.1, a *designated manager/licensee* which is liable to pay money to a *client*, either
- (a) in respect of a transaction entered into with or for that *client* in the course of the *designated manager's/licensee's* business; or
- (b) by way of interest (if any) on *client money*,
- must forthwith upon the same becoming due and payable ensure that such money is held for that *client* in a *client account* unless the *designated manager's/licensee's* debt is discharged by paying such money directly to the *client*.
- 9.6.2. Money which may be withdrawn in accordance with Rule 9.4.2 by way of payment from a *client* to the *designated manager/licensee* shall be withdrawn immediately the *designated manager/licensee* becomes entitled to withdraw it.
- 9.6.3. Where interest is payable on a *client account*, the *designated manager/licensee* shall notify *clients* as to whom the interest is payable within the scheme particulars of the *collective investment scheme*.

Guidance Note:

These Rules anticipate that *client money* is recorded in the name of the *licensee*; in the case of *collective investment schemes*, these Rules apply

whether *client money* is recorded in the name of the *designated manager* or *principal manager*.

10. Contract Notes

10.1. General

- 10.1.1. A *licensee* shall, after a transaction has been effected with or on behalf of a *client* in a *collective investment scheme* which is authorised or registered under *the Law* or in a *Category 2 controlled investment*, deliver or send or arrange for there to be delivered or sent to the *client* (or to a person nominated by the *client* for the purpose) a statement relating to the transaction (a “*contract note*”).
- 10.1.2. Rule 10.1.1 shall not apply where a *licensee* provides *investment services* to a *client* who is an *eligible counterparty*.

10.2. Contents and other requirements

- 10.2.1. The *contract note* shall contain:
- (a) the name and address of the *licensee*; and
 - (b) the *client's* name or other designation, and account number; and
 - (c) the dealing day in respect of the transaction; and
 - (d) in the case of a transaction in a *collective investment scheme* which is authorised or registered under *the Law*, the time of pricing in respect of the transaction; and
 - (e) the name of the *controlled investment* and the number of units subject of the transaction or the size of the transaction; and
 - (f) whether the transaction is one of sale, purchase or conversion and, as the case may be, the sale, purchase or conversion price of the units, shares and limited partnership interests or *controlled investment*; and
 - (g) the total consideration payable at the settlement date and the amount thereof; and
 - (h) where the transaction involves the conversion of one currency into another the rate of exchange obtained in effecting that conversion; and
 - (i) the amount or percentage and type of any charges whether included in the price or otherwise, unless the *licensee* is dealing as principal; and
 - (j) whether any commission is or will be payable in connection with the transaction by or on behalf of (or to) the *licensee* or an *associate* and, if so, to (or from) whom; and

(k) the settlement date; and

(l) any other relevant matters in relation to the transaction.

10.3. Other requirements

10.3.1. In the case of a transaction in an *open-ended collective investment scheme* which is authorised or registered under *the Law*, the *contract note* shall be sent in accordance with the scheme's principal documents and in any case before the close of business on the seventh *business day* following the day on which the transaction was effected.

10.3.2. For a transaction effected in a *Category 2 controlled investment*, the *contract note* shall be sent as soon as practicable except where the *client* specifically requests, in writing, otherwise.

10.3.3. For the purpose of Rules 10.3.1 and 10.3.2:

(a) a transaction effected after the close of business on any *business day* but before the end of that *business day* shall be treated as having been effected before the close of business on the next following *business day*; and

(b) where a series of transactions is treated as one transaction in pursuance of Rule 5.3.7, the end of the relevant period of 24 hours shall be treated as the time at which the transaction was effected; and

(c) where a transaction falls to be allocated in accordance with Rules 5.3.4 to 5.3.6, the transaction shall be treated as having been effected on the day on which the allocation is made.

10.3.4. In the event that a *client* for whom a *licensee* has effected a sale, conversion 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*.

11. Conflicts of Interest

11.1. Conflicts of interest policy

11.1.1. *Licensees* shall establish, implement and maintain an effective conflicts of interest policy, set out in writing and appropriate to the size and organisation of the *licensee* and the nature, scale and complexity of its business.

11.1.2. Where the *licensee* is a member of a *group*, the policy must also take into account any circumstances, of which the *licensee* is or should be aware, which may give rise to a conflict of interest arising as a result of other members of the *group*.

11.2. Contents of the Conflicts of interest policy

11.2.1. The conflicts of interest policy established in accordance with Rule 11.1 shall include the following content:

(a) it must identify, with reference to the specific *controlled investment business* carried out by or on behalf of the *licensee*, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more *clients*;

(b) it must specify procedures to be followed in order to manage such conflicts.

11.2.2. *Licensees* shall ensure that the procedures provided for in Rule 11.2.1(b) are designed to ensure that *relevant persons* engaged in *controlled investment business* involving a conflict of interest of the kind specified in Rule 11.2.1(a) carry on that *controlled investment business* at a level of independence appropriate to the size and organisation of the *licensee* and the nature, scale and complexity of the business and of the *group* to which it belongs.

11.2.3. For the purposes of Rule 11.2.1(b), the procedures to be followed and measures to be adopted shall include such of the following as are necessary and appropriate for the *licensee* to ensure the requisite degree of independence:

(a) effective procedures to prevent or control the exchange of information between *relevant persons* engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more *clients*;

(b) the separate supervision of *relevant persons* whose principal functions involve carrying out activities on behalf of, or providing services to, *clients* whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the *licensee*;

- (c) the removal of any direct link between the remuneration of *relevant persons* principally engaged in one activity and the remuneration of, or revenues generated by, different *relevant persons* principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
- (d) procedures to prevent or limit any person from exercising inappropriate influence over the way in which a *relevant person* carries out *controlled investment business*; and
- (e) procedures to prevent or control the simultaneous or sequential involvement of a *relevant person* in *controlled investment business* where such involvement may impair the proper management of conflicts of interest.

11.2.4. If the adoption or the practice of one or more of those procedures does not ensure the requisite degree of independence, *licensees* shall adopt such alternative or additional measures and procedures as are necessary and appropriate for those purposes.

11.2.5. Where procedures made by the *licensee* in accordance with Rule 11.1 to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to *client* interests will be prevented, the *licensee* shall clearly disclose the general nature and sources of conflicts of interest to the *client* before undertaking business on its behalf.

11.2.6. *Licensees* shall make disclosure to *clients*, pursuant to Rule 11.2.5, including sufficient detail, taking into account the nature of the *client*, to enable that *client* to take an informed decision with respect to the *controlled investment business* in the context of which the conflict of interest arises.

11.3. Record of services or activities giving rise to detrimental conflict of interest

11.3.1. *Licensees* shall keep and regularly update a record of the *controlled investment business* carried out by or on behalf of the *licensee* in which a conflict of interest entailing a material risk of damage to the interests of one or more *clients* has arisen or may arise.

11.4. Gifts and Inducements

11.4.1. Having regard to Rules 11.1 to 11.3, inclusive, a *licensee* must take reasonable steps to ensure that neither its *directors*, *employees* 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 to conflict significantly with any duties of the recipient (or the recipient's employer) owed to a *client* in connection with *controlled investment business*.

- 11.4.2. Rule 11.4.1 shall not apply where a *licensee* provides *investment services* to a *client* who is an *eligible counterparty*.

12. Immediate Notifications

12.1. Notifications under the Law

12.1.1. Where a person shall become -

- (a) a *director* or *controller* of a *licensee* which is a company; or
- (b) a partner in a *licensee* which is a partnership;

the *licensee* should refer to the requirements of sections 27C and 28A of *the Law*.

12.2. Name and Address

12.2.1. 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*.

12.3. Key Employees

12.3.1. A *licensee* shall give written notice forthwith to *the Commission* of the fact that and the date on which any person has :-

- (a) become
 - (i) a *manager* who is connected with the *licensee's controlled investment business* in Guernsey;
 - (ii) the secretary of the *licensee*, in the case of a Bailiwick company;
 - (iii) the *Compliance Officer* in Guernsey as per Rule 3.2.
- (b) ceased to be
 - (i) a *manager* who is connected with the *licensee's controlled investment business* in Guernsey;
 - (ii) the secretary of the *licensee*, in the case of a Bailiwick company;

(iii) the *Compliance Officer* in Guernsey as per Rule 3.2.

12.3.2. A notice under Rule 12.3.1(b) shall include a statement of the reasons for the change.

12.4. Information regarding key employees

12.4.1. 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 Rule 12.3.1:

- (a) a change of name;
- (b) the refusal of any application for, or revocation or suspension of, any licence, authorisation or registration under any legislation relating to *finance business*;
- (c) the imposition of disciplinary measures or sanctions by a regulatory authority (including a *Self-Regulatory Organisation*) or professional body in relation to the individual's professional or business activities; and
- (d) 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.

12.5. Information regarding all employees

12.5.1. 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.

12.5.2. 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, which shall include *employees* under probation.

12.5.3. A record shall be maintained of the names of any *employees* disciplined by a *licensee* in connection with any breach of *the Law* or rules made thereunder or with any other conduct which may reasonably be expected to affect the conduct of the *licensee's controlled investment business* including particulars of:-

- (a) the offence for which the *employee* was disciplined; and
- (b) steps taken to discipline the *employee*.

Details of the particulars required to be recorded under Rule 12.5.3(a) and (b) above shall be submitted to *the Commission* within seven days of the *employee* being so disciplined. Any record made for the purposes of this Rule shall be kept until six years have expired from the date on which disciplinary steps were taken.

12.6. General

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

- (a) the presentation of an application for the winding-up (other than a petition for a voluntary winding-up for the purposes of reconstruction or amalgamation) of, or administration order on, the *licensee* or 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 voluntary 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 (including a *Self-Regulatory Organisation*) or *Recognised Professional Body* to investigate the affairs of the *licensee*;
- (f) the imposition of disciplinary measures or sanctions on the *licensee* or its *directors* in relation to its *finance business* by any regulatory authority (including a *Self-Regulatory Organisation*) or *Recognised Professional Body*;
- (g) the bringing against any *licensee* or its *directors* 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.

12.7. Holding company

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

- (a) the *holding company's* (or entity's) name;
- (b) its principal business;
- (c) the name of its *directors*; and
- (d) the address of its registered office.

12.8. Subsidiaries

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

12.8.2. The notice shall specify the following:-

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

12.9. Proposed change in restricted activity

12.9.1. A *licensee* shall give written notice forthwith to *the Commission* of any significant change in the business plan, irrespective of whether it requires any change to its licence.

12.10. Written notice

12.10.1. A *licensee* shall give written notice and details forthwith to *the Commission* where it has reason to believe that:-

- (a) it will be unable to comply with, or be unable to demonstrate compliance with, the requirements of *the Licensees Rules*;
- (b) a *director* or *employee* has been engaged in activities involving fraud or other dishonesty in relation to the *licensee's controlled investment business* in Guernsey;
- (c) the *licensee's* auditor may qualify the accounts; or
- (d) the liabilities of a *subsidiary* of the *licensee* exceed its assets.

13. Annual Notifications

13.1. General

- 13.1.1. In addition to any other obligations contained in these Rules, a *designated manager* must notify *the Commission* in writing each year of any change in respect of the information contained in the *application form* for authorisation or registration of a *collective investment scheme*.
- 13.1.2. The first such notification must be submitted to *the Commission* within 12 months of the date on which a declaration of authorisation or registration was issued and thereafter at intervals of not more than 12 months.
- 13.1.3. For the avoidance of doubt, nil returns are required.

Schedule 1 - Guidance on Corporate Governance in the Finance Sector in Guernsey

The following is an extract taken from *the Commission's* paper titled "Guidance on Corporate Governance in the Finance Sector in Guernsey", issued on 10 December 2004. The full text may be found on *the Commission's* web site.

GUIDANCE ON CORPORATE GOVERNANCE IN THE FINANCE SECTOR IN GUERNSEY

2. General Responsibilities of the Board of Directors

The *Board of Directors* ("the *Board*") is responsible for the corporate governance of the organisation. Members of the *Board* should be proactive in recognising and understanding the risks the organisation faces in achieving its business objectives and should demonstrate effective and prudent management of those risks.

The *Board* should ensure that the organisation's operations are conducted reasonably and within the framework of any applicable laws, regulations, rules, guidelines and codes as well as established policies and procedures.

Risk Management

The *Board* and management should analyse existing and prospective business, products and services to identify and measure the types and significance of the current and potential risks to be managed and controlled, both individually and in the aggregate. The *Board* and management should develop and implement appropriate and prudent risk management policies and procedures and monitor their effectiveness through timely, accurate and complete information systems.

Internal Control Procedures

The *Board* should establish internal control procedures that are, in the *Board's* opinion, necessary and sufficient for the purposes of managing operational risks and conducting the organisation's business having regard to its size, nature and complexity.

Duties of Directors

The *Board* should ensure that collectively its members have sufficient expertise to understand and challenge the important issues in relation to the operation and control of the organisation.

Each *Director*, in exercising the powers of a *Director* and discharging the duties as a *Director*, should act with honesty, integrity and in good faith with a view to the best interests of the organisation and its stakeholders.

3. Composition of the Board of Directors

The *Board* should regularly review its composition, taking into account the nature, scale and complexity of the business, and the requirements of any applicable laws, regulations, rules, guidelines and codes.

Self Assessment

The *Board* should regularly assess and document whether its approach to corporate governance achieves its objectives and, consequently, whether the *Board* itself is fulfilling its own responsibilities. The *Board* should review the effectiveness of its overall approach to governance and make changes where that effectiveness needs to be enhanced. In carrying out this review the *Board* should assess whether the organisation's control environment is appropriate and effective, taking into account the nature and scale of the business, its approach to governance, management and style of communication, organisation structure, resource availability, procedures and controls.

Schedule 2 – Compliance Return

Compliance Return

To: The Director of Investment Business

.....("the Licensee")

PERIOD OF RETURN

from.....(date) to(date) (the "Period")

We certify that the compliance return has been accurately completed in all material aspects to the best of the Licensee's knowledge and belief.

Signed Chief Executive

..... Compliance Officer

Dated

Approved by resolution of the Board of the Licensee on(date)

Compliance Return

The following questions should be answered with a YES or NO and, where indicated, appropriate details should be provided if applicable. If a particular question is inapplicable to the Licensee it should be deleted and the reason given. *The Licensees Rules* should be studied before answering the questions.

- | | | | | | |
|-------------------|-----|--|-----|----|----------------------|
| 1 Business | 1.1 | Has the <i>Licensee</i> carried on any <i>controlled investment business</i> in the Period outside the restricted activities and categories stated in its Licence? | YES | NO | If YES, give details |
| | 1.2 | Is the <i>Licensee</i> satisfied that it has conducted its <i>controlled investment business</i> at all times in accordance with <i>the Law</i> , and all of the rules and regulations made thereunder (including the <i>Licensees Rules</i>), and any other legislation, regulation and rules as defined by Rule 3.1.2 of the <i>Licensees Rules</i> ? (Please refer also to 3A.3) | YES | NO | If NO, give details |
| | 1.3 | Have the <i>audited financial statements</i> , submitted with this return, received an unqualified audit report from the auditors? | YES | NO | If NO, give details |
| | 1.4 | Has the auditor's management letter for the <i>licensee</i> been attached? | YES | NO | If NO, give reason |
| | 1.5 | Have the <i>audited financial statements</i> of <i>collective investment schemes</i> for which the <i>licensee</i> acts as either <i>designated manager</i> , <i>principal manager</i> or <i>designated custodian</i> received an unqualified audit report from the auditors? | YES | NO | If NO, give details |
| | 1.6 | Have the auditors' management letters for the <i>collective investment schemes</i> for which the <i>licensee</i> acts as <i>designated manager</i> been attached? | YES | NO | If NO, give reason |

2	Conditions	2.1	Is the <i>Licensee</i> subject to any Conditions on the Licence?	YES	NO
		2.2	If YES, has the <i>Licensee</i> complied with such Conditions?	YES	NO If NO, give details
3	Compliance				
3A	Compliance Arrangements	3A.1	Does the <i>Licensee</i> have and make available to <i>directors</i> and <i>employees</i> (if any) written procedures which incorporate and ensure compliance with <i>the Law</i> and all of the rules and regulations made thereunder, including the <i>Licensees Rules</i> ?	YES	NO If NO, give reason
		3A.2	Does the <i>Licensee</i> have arrangements which it is satisfied are adequate to comply with Principle 9 (Internal Organisation) and the <i>Licensees Rules</i> ?	YES	NO If NO, give details of action being taken to comply
		3A.3	Is the <i>Licensee</i> satisfied that its arrangements for ensuring compliance (including complaints procedures) as required by the <i>Licensees Rules</i> have been effective throughout the Period?	YES	NO If NO, give details
3B	Compliance Monitoring	3B.1	Can the <i>Licensee</i> demonstrate that it carried out regular and sufficient monitoring procedures during the Period?	YES	NO If NO, give details
		3B.2	Is the <i>Licensee</i> satisfied that sufficient action has been taken to correct deficiencies?	YES	NO If NO, give details of action still being taken

		3B.3	Has the <i>Licensee's Board</i> and senior management been made aware at regular intervals of compliance monitoring findings?	YES	NO	If NO, give details of Board involvement
3C	Records of Compliance	3C.1	Is the record of occurrences which have, or may have, involved a breach of <i>the Law</i> and/or any of the rules and regulations made thereunder, including the <i>Licensees Rules</i> , and any other legislation, regulation and rules as defined by Rule 3.1.2 of the <i>Licensees Rules</i> , complete and accurate? Please submit this record as part of this return.	YES	NO	If NO, explain reason, and action being undertaken
		3C.2	Is there any material or significant matter or trend, revealed by such record, which should be drawn to <i>the Commission's</i> attention?	YES	NO	If YES, give details
4	Client Money and Clients' Assets					
4A	Client Money	4A.1	Does the <i>Licensee</i> have effective systems of control to enable it to comply with section 9 of the <i>Licensees Rules</i> ?	YES	NO	If NO, give details of action being taken
		4A.2	Although forbidden by the <i>Licensees Rules</i> , did any <i>client money bank account</i> go into overdraft during the period?	YES	NO	If YES, give details of action taken
		4A.3	Was the <i>Licensee</i> in compliance with section 9 of the <i>Licensees Rules</i> at all times during the Period?	YES	NO	If NO, give details of breaches

4B Clients' Assets	4B.1	Has the <i>Licensee</i> effective systems to enable it to comply with the <i>Licensees Rules</i> in respect of <i>Clients' Assets</i> ?	YES	NO	If NO, give details of action being taken
	4B.2	Was the <i>Licensee</i> in compliance with those Rules at all times during the Period	YES	NO	If NO, give details of breaches
4C Reconciliations	4C.1	Have the following been performed in the Period, in the manner and at the times required by <i>the Licensees Rules</i> ?			
		a) Client money reconciliations	YES	NO	If NO, give reasons
		b) <i>Client</i> title documents counts and reconciliations.	YES	NO	If NO, give reasons
5 Notifications Requirements	5.1	Has <i>the Commission</i> been notified of all notifications relating to: Rules 12 and 13 of the <i>Licensees Rules</i> , any other notifications required elsewhere under the <i>Licensees Rules</i> , or any notifications required under <i>the Law</i> or the rules and regulations made thereunder, and any other legislation, regulation and rules as defined by Rule 3.1.2 of the <i>Licensees Rules</i> ?	YES	NO	If NO, give details
	5.2	Has any event taken place which requires <i>the Commission's</i> prior approval or statement of no objection, without the relevant approval or statement being given?	YES	NO	If YES, give details

6	Other Regulatory Action	6.1	Has the <i>Licensee</i> notified the <i>Commission</i> of any relevant disciplinary action or investigation in another jurisdiction or other company in the same <i>group</i> ?	YES	NO	If NO, give details
7	Completeness of Information	7.1	Are there any material or significant matters concerning the <i>Licensee's controlled investment business</i> or its compliance procedures which have not been disclosed to the GFSC in accordance with <i>the Law</i> and the rules and regulations made thereunder, including <i>the Licensees Rules</i> ?	YES	NO	If YES, give details
		7.2	Are there any matters relating to an earlier compliance return or qualification in an auditor's report which remain unresolved?	YES	NO	If YES, give details
8	Complaints	8.1	Does the Licensee have a complaints policy.	YES	NO	If NO, give details of action being taken
		8.2	In respect of <i>Significant Complaints</i> , Licensees are required to provide the following statistical information for the Period:			
			a) the number of <i>significant complaints</i> received during the Period;			Number:
			b) the number of <i>significant complaints</i> settled during the Period; and			Number:
			c) the number of <i>significant complaints</i> that have remained unsettled three months after receipt.			Number:

Nil Returns are required.

