

The Investment Exchange (Notification) Rules 1998

No 26

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 : -

PART 1 - INTRODUCTORY**1.01 Citation, commencement and application**

- (1) These rules may be cited as the Investment Exchange (Notification) Rules 1998 ("the Investment Exchange rules") and shall come into operation on 13 November 1998.
- (2) The Investment Exchange rules apply to any person licensed under the Law to carry on the restricted activity of operating an investment exchange.
- (3) The Commission may in its absolute discretion by notice in writing to a licensed investment exchange exclude or modify the application of any provision of the Investment Exchange rules if the Commission is satisfied that any such derogation will not be prejudicial to the interests of investors.

1.02 Interpretation

- (1) In these rules the following expressions have the meaning assigned to them except where the context otherwise requires : -

"annual accounting reference date", in relation to an exchange, means the date notified to the Commission as the date as at which the annual accounts of the exchange are drawn up, and the **"quarterly accounting reference date"** means the dates three months, six months and nine months before that date;

"category of membership", any category into which an exchange shall divide its members for the purpose of joining the exchange or the conduct of business therein;

"chairman", the Board member elected chairman by the Board of an exchange pursuant to the Rules and Articles of Association of the exchange;

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

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

“exchange”, means a licensed investment exchange;

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

“key individual”, means a person falling within any of the categories set out in paragraph 1(1)(i)-(ix) of Schedule 1 to these rules;

“licensed investment exchange”, means an exchange which is licensed by the Commission under the Law;

“person responsible for compliance”, in relation to an exchange, means a person who is responsible for the monitoring and enforcement of compliance with the rules of the exchange;

“person responsible for finance”, in relation to an exchange, means a person who is responsible for maintaining the accounts and other financial records of the exchange;

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

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

(2) The Interpretation (Guernsey) Law, 1948 applies to the interpretation of these rules throughout the Bailiwick of Guernsey.

(3) A reference in the Investment Exchange rules to :

- (a) an enactment is to that enactment as from time to time amended, repealed and replaced, extended or applied by or under any other enactment; and
- (b) a document, written notice or written instructions shall be taken to be a reference to a document, notice or instructions given in any legible form provided that a printed copy of the document, notice or instructions can be made.

- (4) A guidance note appended to a rule or to a paragraph of a rule gives guidance as to the criteria which the Commission would apply in conjunction with that rule. It is not part of the rules.

PART 2 - NOTIFICATIONS

2.01 General rule

A licensed investment exchange must notify the Commission forthwith, unless otherwise stated, of any event or circumstance specified in Schedule 1 and such notification shall contain the particulars described therein; and where the information is notified orally, it shall be immediately thereafter confirmed in writing.

MADE ON 3 NOVEMBER 1998



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L.C. MORGAN, CHAIRMAN
GUERNSEY FINANCIAL SERVICES COMMISSION

SCHEDULE 1

NOTIFICATIONS

1 Key individuals

- (1) An exchange shall notify the Commission of the fact that any person has (a) become or (b) ceased to be : -
 - (i) the chairman of the exchange;
 - (ii) the chief executive of the exchange;
 - (iii) the person responsible for compliance;
 - (iv) the person responsible for the exchange's finance;
 - (v) a member of the Board of the exchange;
 - (vi) a member of a body to which the Board has delegated rule-making powers;
 - (vii) a member of a body with responsibility for disciplinary matters within the exchange;
 - (viii) an arbitrator appointed by the exchange or a member of an arbitration panel established by the exchange;
 - (ix) a member of a body with responsibility for investigating complaints in respect of business transacted on the exchange.
- (2) In the case of a new appointment falling under paragraph (1)(a) above, the notice shall include details of the person's qualifications and experience.
- (3) In the case of a notification under paragraph (1)(b) above, a statement of the reason for the change shall be given.
- (4) An exchange shall notify the Commission if it becomes aware of any of the following in relation to a key individual :
 - (a) a change of name;
 - (b) a conviction of any offence involving fraud or other dishonesty;
 - (c) a conviction of any offence under any legislation relating to finance business;

- (d) the initiation of saisie, desastre, bankruptcy, winding-up, sequestration or similar proceedings;
 - (e) the refusal of any application for, or revocation or suspension of, any licence, authorisation or registration under any legislation relating to finance business;
 - (f) the imposition of disciplinary measures or sanctions by a regulatory authority or professional body in relation to the individual's professional or business activities; and
 - (g) the making of an order by a court disqualifying that individual from serving as a director of a company or from being concerned with the management of a company.
- (5) An exchange shall notify the Commission of the establishment or abolition of a standing committee of the governing body to which it has delegated either the making or enforcement of rules, such notifications to include the terms of reference of any new committee.
- (6) An exchange shall notify the Commission of any change in the composition or the terms of reference of any committee notified to the Commission under paragraph (5) above.

2 Key individuals and other employees

An exchange shall notify the Commission of :

- (a) the dismissal of any key individual or other employee of the exchange for misconduct; or
- (b) the resignation of any key individual or other employee as a result of an investigation into his alleged misconduct; or
- (c) any other disciplinary action taken against any key individual or other employee as a result of concerns about that person's honesty or integrity.

Guidance Note

The preceding paragraph is not intended to apply to situations where a key individual or other employee is disciplined for reasons not relating to honesty or integrity. For example, poor time keeping.

3 Regulatory plans and rules

An exchange shall provide the Commission with :

- (a) a copy of the exchange's regulatory plan in draft, before it is approved and not later than one month before the period to which the regulatory plan relates; and
- (b) a copy of the final version of the exchange's regulatory plan before the commencement of the period to which it relates; and
- (c) a copy of the exchange's rules before they are made, and of any proposed changes to such rules before such changes are effected.

4 Auditors

- (1) An exchange must appoint a qualified auditor and shall upon the request of the Commission procure that the qualified auditor satisfies the Commission that he is so qualified.
- (2) An exchange shall give the Commission notice of a change of its auditors, including a statement of the reasons for the change.

5 Fees and charges

An exchange shall notify the Commission of : -

- (a) the fees or charges levied by the exchange in respect of membership of the exchange; and
- (b) the transaction charges imposed by the exchange.

6 Annual report, accounts and budget

- (1) An exchange shall provide the Commission with a copy of the following documents: -
 - (a) the annual report of the exchange;
 - (b) the annual accounts of the exchange and the auditor's report thereon; and
 - (c) the annual budget of the exchange.
- (2) The annual report, annual accounts and auditor's report shall be submitted to the Commission within three months of the annual accounting reference date of the exchange.

- (3) The annual budget of the exchange shall be submitted to the Commission not less than one month before the first day of the financial year to which the budget applies.

7 Quarterly management accounts

An exchange shall send to the Commission a copy of quarterly management accounts prepared by the exchange within one month of the quarterly accounting reference date to which the management accounts relate.

8 Annual accounting reference date

An exchange shall notify the Commission of a change in its annual accounting reference date.

9 Constitution of an exchange

- (1) An exchange shall notify the Commission of any proposed change to its constitution, articles of association, governing statute, charter or by-laws, giving reasons for the proposed change, and such notification shall be made before the proposed change is circulated to the exchange's membership for consideration or approval.
- (2) An exchange shall notify the Commission of any change made as a result of the proposals referred to in paragraph (1) above together with the date from which those changes became or are to become effective.

10 Delegation of monitoring

- (1) Where an exchange proposes to delegate the monitoring of compliance with any of its rules to any other body or person, it shall notify the Commission, specifying the monitoring function which it proposes to delegate.
- (2) A notice under paragraph (1) above shall include the name of that other body or person together with evidence of his ability and willingness to perform the relevant monitoring function.
- (3) Where any other body or person proposes to delegate the monitoring of compliance with its rules to an exchange, the exchange shall notify the Commission, specifying the monitoring function which it is proposed to delegate to the exchange.
- (4) Any agreement for delegating monitoring subsequently concluded by the exchange and any alteration of that agreement shall also be notified to the Commission.

11 Complaints

- (1) An exchange must have in operation, and ensure compliance with, a written procedure for the effective consideration and proper investigation of complaints in respect of business transacted by means of its facilities.

- (2) An exchange shall notify the Commission of the following : -
- (a) the total number of complaints received during each quarter of the calendar year distinguishing between complaints relating to : -
 - (i) the exchange's performance of its functions under the Law;
 - (ii) any clearing arrangements made by the exchange;
 - (iii) the conduct of a member of the exchange in relation to its dealings on the exchange; and
 - (iv) business transacted by means of the exchange;
 - (b) the total number of such complaints settled during each quarter of the calendar year, distinguishing between complaints relating to (a)(i), (ii), (iii) and (iv) above;
 - (c) the total number of such complaints which had been pending for more than three months at the end of each quarter of the calendar year distinguishing between complaints relating to (a)(i), (ii), (iii), and (iv) above; and
 - (d) the number of such complaints which were referred to the exchange's arbitration procedures during each quarter of the calendar year.
- (3) For the purposes of paragraph (2) above, a "complaint" is a complaint made in writing to the exchange and any other complaint to which the exchange has replied in writing, being complaints relating to the matters specified in paragraph (2)(a) - (iv) above.
- (4) The information required to be notified by paragraph (2) above shall be submitted to the Commission quarterly at the same time as the Exchange submits its quarterly management accounts to the Commission.
- (5) For the purposes of this rule, where an exchange has given a substantive response in relation to a complaint, unless and until the exchange has received an indication from the complainant that the response is unsatisfactory, the exchange shall be entitled to treat the complaint as settled and resolved after the expiry of four weeks from the date of its response.

12 Trading hours

- (1) An exchange shall notify the Commission of :
 - (a) any change, whether temporary or permanent, in the hours during which business may be conducted by means of the facilities of the exchange;
 - (b) any trading halt; and
 - (c) any suspension in trading of any investment.
- (2) For the purpose of the Investment Exchange Rules, a trading halt shall include a halt in the trading of investments on the exchange as a whole or in relation to a sector, but it shall not include a halt in the trading of individual investments.

13 Force majeure

If any event happens or circumstances arise which make it impossible or impracticable for an exchange to discharge any of its functions as an exchange, it shall notify the Commission immediately, specifying what action it is taking to deal with the situation.

14 Investments listed or dealt on the exchange

- (1) An exchange shall notify the Commission of any proposed change in the type of investments listed or dealt on the exchange.
- (2) In the case of investments falling within 2(1)(f), (g) and (h) of Schedule 1 to the Law, the notice under paragraph (1) shall include details of the investment listed or dealt on the exchange.
- (3) An exchange shall notify the Commission where it discontinues or suspends the listing of any type of investments listed or dealt on the exchange.

Guidance Note

The Commission considers that this rule would not require an exchange to notify the Commission of circumstances where, under the rules of the exchange, dealings in a particular type of investment are temporarily suspended because a prescribed trading limit has been reached. The rule would require the notification of the introduction of dealing in a new category of investment but would not require the notification of dealing in securities of a particular company.

15 Protection of investors

- (1) If any event happens or circumstances arise which make it impossible or impracticable for an exchange to satisfy the continuing requirements set out in Schedule 2, the exchange shall notify the Commission forthwith.
- (2) The notice required under paragraph (1) shall specify the action which is being or has been taken by the exchange to deal with the situation.

16 Insolvency and legal proceedings

- (1) An exchange shall notify the Commission forthwith of the occurrence of any of the following : -
 - (a) the presentation of a petition for the winding up of the exchange;
 - (b) the appointment of a receiver, administrator, liquidator or trustee of assets of the exchange;
 - (c) the making of a composition or arrangement with creditors of the exchange; and
 - (d) where the exchange is an unincorporated association, a resolution to wind up the association.
- (2) An exchange shall notify the Commission if civil proceedings are instituted against it :
 - (a) arising out of the contravention or alleged contravention of the Law or any rules or regulations made under the Law; or
 - (b) which might be expected to have a significant impact on the financial stability of the exchange.
- (3) An exchange shall notify the Commission of any other legal proceedings instituted by or against the exchange.

17 Market information

An exchange shall notify the Commission of any material change in its system for displaying market information.

18 Membership

- (1) An exchange shall notify the Commission of the introduction or abolition of a category of membership.

- (2) An exchange shall notify the Commission of the fact that a person has become or ceased to be a member of the exchange. In the case of the former, the notice shall include the member's name, address and category of membership.
- (3) Any change in the information previously notified under paragraph (2) above shall likewise be notified to the Commission.

19 Suspension and expulsion from membership, and resignations

- (1) Where an exchange suspends or expels a member, it shall notify the Commission of its action, stating the reasons.
- (2) The notice under paragraph (1) shall state the date on which the suspension or expulsion took effect and, in the case of a suspension, its duration.
- (3) The notice required under paragraph (1) shall also specify any other action taken by the exchange in relation to that member.
- (4) Where a person appeals against any action proposed under paragraph (1) above, the exchange shall notify the Commission of that fact and, subsequently, the findings of the appeal.
- (5) Where a person resigns from membership, an exchange shall notify the Commission specifying the name, address, category of membership and the effective date of resignation.

20 Investigations

- (1) An exchange shall notify the Commission when a person has been appointed by the exchange to investigate the affairs of a member of the exchange.
- (2) An exchange shall notify the Commission when it becomes aware that a person has been appointed by any other regulatory body to investigate and report on any aspect of business transacted by means of the facilities of the exchange.
- (3) The notice under paragraph (1) above shall specify the reasons for, and the terms of reference of, the investigation.
- (4) An exchange shall notify the Commission of the findings of any such investigation carried out at the request of the exchange and the action, if any, which is to be or has been taken as a result of such investigation.

Guidance Note

An exchange is not required by this rule to notify inspections carried out in the course of routine surveillance, or to notify enquiries made as part of the procedure for investigating complaints.

21 Disciplinary action

- (1) An exchange shall notify the Commission where it has taken any disciplinary action against a member or an employee of any member, stating the name of the person concerned, details of the action taken and the reasons for the disciplinary action.
- (2) Notification need not be made to the Commission under paragraph (1) unless the disciplinary action is relevant and material to the carrying on of controlled investment business.
- (3) Where an appeal is lodged against the action referred to in paragraph (1), an exchange shall notify the Commission of that fact and the subsequent outcome of the appeal.

22 Offences

- (1) An exchange shall notify the Commission if it becomes aware that any person :
 - (a) has been carrying on unauthorised controlled investment business; or
 - (b) has committed a criminal offence under the Law in the course of carrying on controlled investment business.
- (2) Any notification made to the Commission under paragraph (1) should include any details known to the exchange.

23 Liquidation of, or instruction to close out, positions

Where an exchange liquidates or restricts the open positions on all or any of the investments of a member, or it issues instructions to a member to close out its positions on all or any investments, it shall notify the Commission, giving the following information :

- (a) the name of the member;
- (b) the nature and size of the positions so liquidated or restricted; and
- (c) the reasons for its action.

24 Default of an exchange member

Where an exchange has decided to put a member into default, it shall notify the Commission, giving the following information :

- (a) the name of the member;
- (b) the reasons for the action;
- (c) the name(s) of the clearance system(s) on which the member clears business; and
- (d) where appropriate, a summary of the member's open positions, margin liability and cash and collateral balances in respect of the member's segregated customer accounts and other accounts.

SCHEDULE 2

CONTINUING REQUIREMENTS FOR THE LICENSING OF AN INVESTMENT EXCHANGE

1 Financial, human and technical resources

The exchange must have financial, human and technical resources sufficient for the proper performance of its functions.

2 Safeguards for investors

- (1) The rules and practices of the exchange must ensure that business conducted by means of its facilities is conducted in an orderly manner and so as to afford proper protection to investors.
- (2) The exchange must -
 - (a) limit dealings on the exchange to investments in which there is a proper market; and
 - (b) where relevant, require issuers of investments listed or dealt on the exchange to comply with such obligations as will, so far as possible, afford to persons dealing in the investments proper information for determining their current value.
- (3) The exchange must either itself provide satisfactory procedures (including default procedures) for the settlement of transactions on the exchange or ensure such provision by means of services provided under clearance systems approved by it.
- (4) The exchange must either itself have or secure the provision on its behalf of satisfactory arrangements for recording the transactions effected on the exchange.
- (5) Sub-paragraphs (2), (3) and (4) above are without prejudice to the generality of sub-paragraph (1) above.

3 Monitoring and enforcement

- (1) The exchange must have adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules.
- (2) The arrangements for monitoring may make provision for that function to be performed on behalf of the exchange (and without affecting its responsibility) by any other body or person who is able and willing to perform it.

4 Investigation of complaints

The exchange must have effective arrangements for the investigation of complaints in respect of business transacted by means of its facilities.

5 Promotion and maintenance of standards

The exchange must be able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of investment business and to co-operate, by the sharing of information and otherwise, with the Guernsey Financial Services Commission and any other authority, body or person having responsibility for the supervision or regulation of investment business or other financial services.