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# THE LICENSEES (CONDUCT OF BUSINESS) RULES, 2021

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The Guernsey Financial Services Commission (“the Commission”), in exercise of the powers conferred on it by sections 12, 13, 14 and 15, of The Protection of Investors (Bailiwick of Guernsey) Law 2020<sup>1</sup> (“the Law”) makes the following Rules.

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<sup>1</sup> Order In Council No. XVIII of 2020.

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## PART 1 INTRODUCTION

### 1.1 Application

- (1) The Licensee (Conduct of Business) Rules 2021 replace The Licensee (Conduct of Business) Rules 2016<sup>2</sup>.
- (2) These Rules apply to all licensees unless specifically agreed otherwise by the Commission in accordance with (3).
- (3) The Commission may in its absolute discretion, by written notice, exclude or modify the application of any provision of these Rules.
- (4) The Commission may issue supplementary guidance regarding the standards of conduct and practice expected in relation to any aspect of the regulatory framework. Such guidance will not constitute rules of the Commission.

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<sup>2</sup> G.S.I. No.92 of 2016.

## PART 2 CORPORATE GOVERNANCE AND SENIOR MANAGEMENT RESPONSIBILITY

### 2.1 Corporate Governance

- (1) The board must ensure that there are effective and appropriate policies, procedures, and controls in place which allow the board to meet its obligations under the Law and these Rules.
- (2) The board must evaluate and record the assessment of its compliance with “The Finance Sector Code of Corporate Governance” or any successor codes.
- (3) The board must retain responsibility for any of its outsourced functions.
- (4) The board of an administered licensee remains responsible for the conduct of the administered entity.
- (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 when it falls vacant.
- (6) A licensee’s board and senior management must take all reasonable steps to ensure that all employees of the licensee are aware of the requirement to avoid serious damage to the licensee’s reputation or its financial position.
- (7) Where a licensee is administered by another firm, in the Bailiwick, the composition of the board must include at least one Guernsey resident director. For any other licensees the composition of the board must include at least two Guernsey resident directors.

## 2.2 Financial advisers

- (1) A licensee providing advice to retail clients on controlled investment business must authorise one or more financial advisers to act on its behalf.
- (2) A licensee must not advise retail clients, on controlled investment business, other than via a financial adviser who has been authorised to act on its behalf in accordance with this rule.
- (3) An authorisation, in accordance with (1), must be in writing and must state –
  - (a) the name of the financial adviser;
  - (b) the name of the issuer;
  - (c) the classes of controlled investment business the financial adviser may provide advice on;
  - (d) whether the authorisation is restricted to stated classes of controlled investment business; and
  - (e) that the issuer is responsible for the actions and conduct of the financial adviser concerned when acting, or purporting to act, under it.
- (4) It is the responsibility of the board of a licensee to ensure that the activities of a financial adviser are reviewed and managed by a suitably qualified and experienced individual.

## PART 3 COMPLIANCE ARRANGEMENTS

### 3.1 General

- (1) The board has effective responsibility for compliance with the Law, these Rules, and any other rules or guidance made under the Law.
- (2) The board must take responsibility for the policy on review of compliance and discuss a review of compliance at appropriate intervals.
- (3) The board must ensure that a licensee takes reasonable steps, including the establishment and maintenance of procedures, to ensure that its officers and employees act in conformity with –
  - (a) their own and their employer's relevant responsibilities under the Law, and any rules made under it;
  - (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) appropriate arrangements on propriety in personal dealings;
  - (e) guidance documents, issued by the Commission, which are relevant to the carrying on of controlled investment business; and
  - (f) 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.
- (4) A licensee must keep a breaches register to log all instances of non-compliance with (3).

- (5) A licensee must ensure that compliance procedures are set out in writing and that a copy is kept at the offices of the licensee and made available to the Commission on demand.
- (6) The Commission may require changes to the arrangements and the licensee must implement and comply with any such requirements.
- (7) A licensee must review its written compliance procedures at least annually.

### **3.2 The compliance officer**

- (1) A licensee must appoint a compliance officer, in Guernsey, to be responsible for compliance.
- (2) The board must ensure that the compliance officer –
  - (a) is either a natural person or, if a legal person, the Commission should be informed of the natural person who takes on the responsibility within the organisation;
  - (b) is resident in Guernsey;
  - (c) has sufficient resources to perform their duties;
  - (d) has timely access to all records required under Part 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 it is able to satisfy itself that all the requirements of the Law and these Rules are being met; and

- (h) is fully aware of both their obligations and those of the licensee under the Law and these Rules.
- (3) Where a licensee is considering outsourcing the compliance functions, or providing the compliance officer with additional support from third parties, within the group or externally, then the licensee must –
- (a) consider the Commission’s “Guidance Note, Outsourcing functions by entities licensed under the Protection of Investors (Bailiwick of Guernsey) Law, 2020”;
  - (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.
- (4) Where the compliance function itself is outsourced to a third party the licensee must notify the Commission of the names of the natural persons employed by the licensee, or its administrator or manager where applicable, and responsible for oversight.

### **3.3 Compliance monitoring programme**

- (1) The board of a licensee must –
- (a) establish such other policies, procedures and controls as may be appropriate and effective for the purposes of ensuring compliance with the Law, these Rules, and any other rules made under the Law;
  - (b) establish and maintain an effective policy, for which responsibility rests with the board, for the review of its compliance with the requirements of the Law, these Rules, and any other rules made under the Law. The policy must include provision as to the extent and frequency of reviews;

- (c) ensure that a review of its compliance with these Rules is discussed and minuted at board meetings and at appropriate intervals. In considering what is appropriate a licensee must have regard to risk, taking into account –
  - (i) the size, nature, and complexity of the licensee’s controlled investment business;
  - (ii) its clients, products, and services; and the ways in which it provides those products and services;
- (d) the board must take responsibility for the policy on review of compliance and discuss a review of compliance at appropriate intervals;
- (e) the board must evaluate and record the evaluation of its compliance with the Finance Sector Code of Corporate Governance or any successor codes;
- (f) ensure it meets 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 compliance;
  - (iii) ensure that when a review of compliance is discussed by the board 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 in these Rules;
- (g) the board may delegate some, or all, of its duties but must retain overall responsibility.

### **3.4 Annual compliance return**

- (1) A licensee must file annually, with the Commission, its compliance return in the format defined in Schedule 2 and no later than four months after the accounting reference date.

### **3.5 Employee screening**

- (1) A licensee must maintain effective and appropriate procedures, when hiring employees, for the purpose of ensuring high standards of employee probity and competence.
- (2) The board is responsible for employee screening.
- (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 them;

- (c) require information from the employee with regard to any criminal convictions and the provision of a check of their criminal record; subject to the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002;
- (d) confirm their educational and professional qualifications; and
- (e) obtain either a valid statement of professional standing from that employee; or evidence that the employee has successfully completed the regulatory module of an acceptable qualification prior to authorisation as a financial adviser.

### **3.6 Employee training**

- (1) The board is responsible for employee training.
- (2) Every licensee must create and implement a training and competency scheme for all employees appropriate to the nature and scale of the licensee's business.
- (3) A licensee must ensure that relevant employees receive comprehensive ongoing training to ensure competence including, but not limited to, –
  - (a) the Law and any rules made under it;
  - (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.
- (4) The licensee must maintain a training log to record the training that the directors and employees receive.

- (5) The licensee and its board must ensure that each of its financial advisers hold qualifications which meet the Commission's minimum standards. The Commission may specify by when qualifications must be obtained and the licensee and its board must ensure that those qualifications are obtained within the relevant timeframe.
- (6) In the event that a financial adviser fails to obtain the necessary qualifications within the specified timeframe, the licensee and its board must take the necessary steps to revoke the authorisation and stop that individual from providing advice to retail clients until the qualifications are obtained.
- (7) A financial adviser must carry out, and record, a minimum of 35 hours of relevant continuing professional development per annum of which a minimum of 21 hours must be structured.
- (8) A licensee must obtain a statement of professional standing from each financial adviser within three months of the expiry of a valid statement. Where a financial adviser does not provide a statement to the licensee, authorisation must be revoked until a valid statement has been obtained.

## PART 4 ACCOUNTING RECORDS AND FINANCIAL STATEMENTS

### 4.1 Accounting Records

- (1) Every licensee must keep accounting records, in English, which are sufficient to show and explain its transactions and –
  - (a) disclose with reasonable accuracy, at any time, the current financial position of the licensee; and
  - (b) enable the licensee to demonstrate its continuing compliance with The Licensee (Capital Adequacy) Rules 2021 (“the Capital Adequacy Rules”).
- (2) Where a licensee acts as a designated administrator, or a designated custodian, they must keep accounts, in English, which –
  - (a) enable a designated administrator of a class A scheme to keep the daily record required under the applicable Authorised Collective Investment Scheme (Class A) Rules;
  - (b) enable the reports to holders to be prepared by each of the designated administrator and the designated custodian of open-ended collective investment schemes; and
  - (c) enable the designated administrator and designated custodian to demonstrate compliance with these Rules.
- (3) Where a licensee outsources the activity of keeping accounts 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, 2020.

## 4.2 Audited financial statements

- (1) Every licensee must prepare audited financial statements covering the period from the preceding accounting reference date, or in the case of a new business from the date of incorporation, to the next accounting reference date. These must, at a minimum, include –
  - (a) accounts complying with generally accepted accounting principles;
  - (b) in the case of a designated administrator only –
    - (i) provide details of the aggregate balance of all client accounts;
    - (ii) 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
  - (c) an auditor's report which must 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.
- (2) A licensee which is subject to an expenditure-based requirement under the Capital Adequacy Rules must prepare, within one month of the month end, a statement of financial resources in respect of each month. It must be made available, to the Commission, on request.
- (3) Audited financial statements must be prepared –
  - (a) for a period which is no longer than 12 months from the previous accounting reference date; or
  - (b) where the licensee is preparing the audited financial statements from the period of incorporation to the accounting reference date, audited financial statements must be prepared to the date notified to the Commission at the time of making the application for a licence.

- (4) The licensee must notify the Commission, immediately, of any change to the accounting reference date. The notification must include a statement of reasons for the change.
- (5) Unless the licensee is regulated under another of the Regulatory Laws, and the Commission has confirmed in writing that specific law takes precedence over its obligations under these Rules, copies of the audited financial statements must be submitted to the Commission no later than four months after the accounting reference date together with the Compliance Return set out at Schedule 2.

### **4.3 Auditor**

- (1) Every licensee must appoint an auditor and confirm, to the Commission, that the auditor is qualified.
- (2) A licensee must provide the Commission with written notice of a change of its auditor, including a statement of reasons for the change.

## PART 5 CONDUCT OF BUSINESS

### 5.1 Fitness and propriety

- (1) A licensee must observe the Principles, set out at Schedule 1, when carrying on its controlled investment business.
- (2) A licensee must have adequate and effective systems of control in place to ensure that its financial advisers comply with the requirements of Schedule 3.

### 5.2 Client relations

- (1) In this rule the term "client" refers to any person with or for whom the licensee carries on, or intends to carry on, controlled investment business.

#### 5.2.1 Client agreements

- (1) Where a licensee provides investment services to a retail client, whether on a discretionary basis or not, it must do so under a written agreement. The agreement must –
  - (a) be signed by both the licensee and the client; and
  - (b) set 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 they do not want such a written agreement to be used.

- (2) If the licensee is to provide investment services on an execution-only basis, the basis and terms on which the services are provided must be set out, in adequate detail, and signed by both the licensee and the client.
- (3) Where a licensee provides investment services to a professional client or an eligible counterparty, whether on a discretionary basis or not, it must provide that client with the terms on which the licensee is prepared to provide the activities proposed.
- (4) Where it is not practicable for a licensee to provide the information required in (3) before commencing business with the client the licensee must provide it to the client as soon as practicable.

#### 5.2.2 Suitability

- (1) A licensee, at the outset of its provision of advisory or discretionary investment services to a client, must 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.
- (2) A licensee must 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.
- (3) A licensee must take reasonable steps to ensure that it does not –
  - (a) recommend an investment to a client; or
  - (b) effect or arrange a discretionary transaction with, or for, any client

unless the recommendation or transaction is suitable for them, having regard to; the facts obtained by the licensee, 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.

### 5.2.3 Disclosure

- (1) This rule does not apply where a licensee provides investment services to a client who is an eligible counterparty.
- (2) Before a licensee provides investment services to a client it must disclose to them, in writing, the services, products offered, and the expertise of the licensee.
- (3) A licensee which intends to carry on stock lending activity, where it will borrow a client's stock for its own account or lend a client's stock to an associated party, must disclose its, or its associated party's, interest to the client either generally or in respect of each transaction.
- (4) A licensee must not recommend a transaction or investment strategy to a client, or act as a discretionary manager for them, unless it has taken reasonable steps to make them aware of the risks involved and any conflicts of interest.

### 5.2.4 Fees, charges, and remuneration

- (1) Before entering into an agreement to provide investment services to a client a licensee must disclose to the client, in writing, all fees and charges for providing those services, together with the basis of their calculation.
- (2) A licensee must disclose all remuneration to be received in connection with a transaction, prior to the execution of the transaction. If the amounts are not known then the basis of the calculation must be provided.
- (3) Remuneration must be disclosed in a manner appropriate to the category of client to which it relates.
- (4) Subsection (2) does not apply for execution-only business unless the client requests disclosure of the remuneration the licensee has, or will, receive.

### 5.2.5 Periodic information

- (1) This does not apply –
  - (a) where a licensee provides investment services to a client who is an eligible counterparty; or
  - (b) where a client has self-service access to a statement service and the client has agreed, in writing, that this rule does not apply.
- (2) A licensee which manages controlled investments for a client must send a valuation report at intervals which are not less frequent than –
  - (a) quarterly, in respect of securities or securities-related cash balances; and
  - (b) monthly, for derivatives or derivatives related cash balances,unless the client advises the licensee, in writing, that he wishes them less frequently.
- (3) Where the client advises that they do not wish to receive a valuation report, the licensee must prepare one and keep it with the client's records.
- (4) Where the licensee only provides custody services for a client, statements of assets held in custody must be sent to that client in the intervals defined in (2).

### 5.2.6 Business transfer

- (1) A licensee must obtain the prior written consent, of the Commission, in respect of any transfer of a block of business to or from the licensee, where such transfer will occur at the licensee's instigation or with their agreement.

### 5.3 Dealing, managing, and advising

#### 5.3.1 Client order priority

- (1) A licensee must deal with client and own account orders fairly and in due turn. This does not apply where a licensee provides investment services to a client who is an eligible counterparty.

#### 5.3.2 Timely execution

- (1) 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. This does not apply where a licensee provides investment services to a client who is an eligible counterparty.
- (2) Section (1) 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

- (1) This does not apply where a licensee provides investment services to a client who is an eligible counterparty.
- (2) 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.
- (3) The licensee must have an expressly stated best execution policy within its procedures and disclose it to its clients. The policy must state the execution venues that the licensee intends to use.
- (4) A licensee may rely on another person who executes the transaction to provide best execution but only if it believes, on reasonable grounds, that it will do so.
- (5) A licensee provides best execution if –

- (a) 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
  - (b) 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 them.
- (6) In applying best execution, the licensee must –
- (a) have regard to the best price, the likelihood of execution and settlement at that price, and the costs of execution;
  - (b) pay regard to the nature of the order; and
  - (c) leave out of account any charges disclosed to the client which it or its agents would make.
- (7) As part of its compliance monitoring programme the licensee must review a suitable sample of orders to ensure they are executed in accordance with its best execution policy.

#### 5.3.4 Timely and fair allocation

- (1) This does not apply where a licensee provides investment services to a client who is an eligible counterparty.
- (2) A licensee must ensure that a transaction it executes is promptly allocated.
- (3) 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 –
  - (a) it must not give unfair preference to itself or to any of those for whom it dealt; and

- (b) 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.

#### 5.3.5 Restrictions on allocations to officers and employees

- (1) 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 –
  - (a) they are wholly unconnected with the transaction or any prior decision to undertake it; or
  - (b) the 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 and must ensure that –
    - (i) it is a term in the contract of employment of each employee; and
    - (ii) it is drawn explicitly to the attention of each employee that they may not make an arrangement, with any other person, whereby that person participates in any transaction on their behalf, or in expectation of any reciprocal benefit, on another occasion.

#### 5.3.6 Price at which allocations are to be effected

- (1) This does not apply where a licensee provides investment services to a client who is an eligible counterparty.
- (2) In any allocation of transactions to which the provision of this rule applies, the price at which such allocation is made, to interested parties, must be the price per unit of the total transaction unless rule 5.3.7 applies.

### 5.3.7 Series of transactions treated as one

- (1) This does not apply where a licensee provides investment services to a client who is an eligible counterparty.
- (2) 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 transactions effected during the relevant 24 hour period.

### 5.3.8 Churning and switching

- (1) This does not apply where a licensee provides investment services to a client who is an eligible counterparty.
- (2) A licensee must not –
  - (a) make a recommendation to a client to deal; or
  - (b) 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.
- (3) A licensee must not –
  - (a) make a recommendation to a client to switch within or between a controlled investment; or
  - (b) 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.

### 5.3.9 Dealing ahead of published research or analysis

- (1) If a licensee becomes aware that an associated party 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 been documented and evidenced that the conditions set out in (2) have been satisfied.
- (2) A licensee may effect an own account transaction if –
  - (a) the publication could not reasonably be expected to materially affect the price of the investment concerned; or any related investment;
  - (b) the licensee is a market maker in the investment concerned, or in a related investment, and the transaction is effected by it in good faith in the normal course of market making;
  - (c) the licensee deals in order to fulfil an unsolicited client's order;
  - (d) 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' interest by a material amount; or
  - (e) the licensee or its associated parties disclose in the publication that it, or its associated parties, have effected or may effect an own account transaction in the investment concerned or any related investment.

### 5.3.10 Staff dealing policy

- (1) 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 and Advertising

### 5.4.1 Issue of materials

- (1) The licensee, if responsible for promotion and advertising, must ensure that any materials used –
  - (a) are clear, fair, and not misleading;
  - (b) do not contain any statement, promise, or forecast which is untrue;
  - (c) are not designed in such a way as to distort or conceal any relevant subject material;
  - (d) are clearly recognisable as an advertisement;
  - (e) are not likely to be misunderstood;
  - (f) where appropriate, state that the investment value is not guaranteed or that the value may fluctuate;
  - (g) do not employ phrases such as “tax-free” or “tax-paid” without making clear which taxes are being referred to; and
  - (h) do not contain information about past performance unless it contains a warning that past performance is not necessarily a guide to future performance and may not be repeated.

#### 5.4.2 Regulatory status

- (1) The regulatory status of the licensee is to be included on all communications.

#### 5.4.3 Overseas promotion and advertising

- (1) A licensee must 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 is in accordance with the legislation in force in that country or territory.

## PART 6 RECORD KEEPING

### 6.1 Retention requirements

- (1) In this Part the retention periods set out are absolute. They continue to apply after the surrender of a licence and where the licensee ceases to do business.

### 6.2 Records

- (1) All records prepared in order to comply with these Rules must be retained for a period of at least six years.
- (2) A licensee must keep, for a period of six years, a record of occurrences that have, or may have, involved an alleged breach of the Law, or the rules and regulations made under it, and the steps taken with a view to ensuring that such occurrences do not recur.
- (3) Unless otherwise stated all material records and permanent data, prepared in order to comply with these Rules, must 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 relationship ceased. For the purpose of this section, 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 the scheme.
- (4) A licensee must keep and properly maintain records relating to its controlled investment business and any other activities affecting its controlled investment business, in English, and capable of being checked and audited, to demonstrate compliance with the legislation.
- (5) A licensee must make such records available, at any time, to the Commission, its employees, and any persons authorised by it.

- (6) A licensee must review, at least annually, the ease of retrieval of, and condition of, paper and electronic records; including telephone records and recordings.
- (7) Where a financial adviser recommends the early redemption, lapsing, or partial or full withdrawal of a controlled investment, details of such occurrences must be maintained for a period of six years together with an explanation of the reasons for the occurrence or evidence that such an explanation has been sought.

### **6.3 Scheme property records**

- (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 must 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;
  - (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.

### **6.4 Records relating to transactions**

- (1) In respect of investors in a collective investment scheme –
  - (a) on receipt of instructions from an investor to effect a transaction in the units of a collective investment scheme, a designated administrator must make a record of –

- (i) the name of the investor;
  - (ii) the name of the collective investment scheme and the number of units, or the subscription monies, subject to instruction;
  - (iii) the nature of the proposed transaction;
  - (iv) the date and time the relevant instructions were received; and
  - (v) any other information necessary to complete the transaction; and
- (b) it will be sufficient if the record is made in an electronic format which also records, second by second, the time of the recording.
- (2) In respect of scheme property of a collective investment scheme –
- (a) on transmission of instructions –
    - (i) where a designated administrator, in arranging a transaction on account of a collective investment scheme, gives instructions to another person to effect it, the designated administrator must, simultaneously with the giving of the instructions, make a record of –
      - (aa) the name of the collective investment scheme;
      - (ab) the name of the other persons so instructed;
      - (ac) the terms of the instructions, including the name of the asset; and
      - (ad) the date and time on which the instructions were given

and it will be sufficient if the record is made in an electronic format which also records, second by second, the time;

(b) on execution, where a transaction is effected by a designated administrator, the designated administrator must make a record of –

- (i) the name of the collective investment scheme and the property which is the subject of the transaction;
- (ii) the day, the price, and other terms on which the transaction was effected including, where any conversion between currencies is involved, the rate of the exchange;
- (iii) the brokers to the transaction; and
- (iv) where the designated administrator effected the transaction in the capacity of both buyer and seller, that fact,

and it will be sufficient if the record is made in an electronic format which also records, second by second, the time.

## **6.5 Record keeping of allocation of transactions**

(1) Where a designated administrator has effected a transaction to which rule 5.3.4 applies it must allocate the transaction between the interested parties as soon as practicable after the transaction has been effected and, on allocation, must keep or procure the keeping of records of –

- (a) the date and time of the allocation;
- (b) the investments subject to allocation; and
- (c) the identity of the interested parties and the designation of any relevant account of the interested parties.

## **6.6 In respect of controlled investments held on behalf of a client**

- (1) A licensee which holds custody of controlled investments on behalf of a client, or which appoints another person to be custodian of client investments, must perform a reconciliation as often as is necessary to ensure the accuracy of its records relating to clients' investment entitlements.
- (2) Reconciliations must 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 client investments; and
  - (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.

## **6.7 Destruction of records or files**

- (1) A licensee must ensure that it, and its directors and employees and other persons, to the extent that they are under its power and control, must not, without the express written consent of the Commission, amend, destroy, make further entries in, or erase any record or file 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.

## PART 7 CATEGORISING CLIENTS

### 7.1 General definition

- (1) Any person with, or for whom, a licensee carries on a controlled investment business is a client of that licensee.
- (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.
- (3) Where a licensee is acting as a designated administrator of a collective investment scheme authorised or registered under the Law, the licensee may categorise the investors in that scheme as if they were retail clients without applying the provisions of rule 7.2 and rule 7.7.

### 7.2 Notification to clients

- (1) A licensee must –
  - (a) notify a client, in writing, of its categorisation as a retail client, professional client, or eligible counterparty;
  - (b) prior to the provision of services, inform a client about –
    - (i) the effect of this categorisation;
    - (ii) any limitations to the level of client protection that categorisation entails; and
    - (iii) the right that client has to request a different categorisation.

### 7.3 Retail clients

- (1) A retail client is a client who is not a professional client or an eligible counterparty.

### 7.4 Professional clients

- (1) A *per se* professional client or an elective professional client is a professional client.

- (2) Each of the following is a *per se* professional client –

- (a) a large undertaking; or
- (b) a professional investor,

BUT not a member of the public.

- (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 and this gives reasonable assurance that the client is capable of making their own investment decisions and understanding the risks involved. If the client is an entity then the assessment should be performed in relation to the person authorised to carry out transactions on its behalf.

- (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 consequence of losing such protections.
- (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.

## 7.5 Eligible counterparties

- (1) A *per se* eligible counterparty or an elective eligible counterparty is an eligible counterparty.
- (2) Each of the following is a *per se* eligible counterparty –
  - (a) any entity licensed for dealing, managing, or advising under the Law;
  - (b) an approved bank;
  - (c) an insurance company licensed under the Insurance Business (Bailiwick of Guernsey) Law, 2002;
  - (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 –
    - (aa) incorporated outside the Bailiwick; and
    - (ab) is suitably licensed, authorised, or qualified by primary or secondary legislation in its home jurisdiction.
- (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;
  - (c) they request such categorisation and the licensee undertakes an adequate assessment of the expertise, experience, and knowledge of the client that gives reasonable reassurance that the client is capable of making their own investment decisions and understanding the risks involved; and
  - (d) the licensee has obtained 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

- (1) A licensee must accede to a client’s request for re-categorisation as a client that benefits from a higher degree of protection.
- (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.

- (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.
- (4) The ways in which a client may be provided with additional protections include re-categorisation –
  - (a) on a general basis;
  - (b) on 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**

- (1) A licensee must implement appropriate written internal policies, procedures, and controls to categorise its clients.
- (2) A licensee may satisfy rule 7.2 by either –

- (a) issuing a standard notice to the client, when they are given the client agreement, and keeping a copy of the standard form for inspection while it is in use and for six years after the licensee ceases to use it; or
  - (b) by incorporating the notice in the text of the client agreement.
- (3) A licensee must make a record in relation to each client of –
- (a) the categorisation established for the client, including sufficient information to support that categorisation;
  - (b) evidence of despatch to the client of any notices under rule 7.2 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 this rule

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

## PART 8 COMPLAINTS

### 8.1 Complaints procedure

- (1) Every licensee must have, and ensure compliance with, a written procedure for the effective consideration and fair and proper handling of any complaints relating to the licensee's controlled investment business.
- (2) The licensee must ensure that each of its officers and employees responsible for dealing with clients is, at all times, aware of the complaints procedure and of the obligation to follow it.

### 8.2 Notifications

- (1) If a complaint remains unsettled for longer than three months from the date of the licensee becoming aware of the complaint, the licensee must inform the Commission, within fourteen days, and must also advise the complainant that he may inform the Commission directly of the complaint.
- (2) The licensee must inform the Commission, within fourteen days, of it becoming aware of a significant complaint and must also advise the complainant that they may inform the Commission directly of the complaint.
- (3) The licensee must inform the Commission, within fourteen days, of it becoming aware of a series of complaints regarding any one employee, whether a current employee or not.
- (4) For the purposes of (1), where a licensee has given a substantive response in relation to a complaint or significant complaint, unless and until the licensee has received an indication from the complainant that the response is unsatisfactory, the licensee is 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**

- (1) Every licensee must 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 with, or is dealing with, such complaints in accordance with these Rules.

## PART 9 CLIENT ASSETS

### 9.1 Safekeeping of client assets

- (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, any documents of title relating to them;
  - (b) ensure that registerable 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 the 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. It will 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; 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**

- (1) Client money is money, in 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 different currency to that of receipt.
- (2) Client money must be held separately, from the licensee's own money, in one or more dedicated client money bank accounts.

## **9.3 Client money accounts**

- (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, must be held in a client account with an approved bank.
- (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 the bank's written acknowledgment that –

- (a) 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) interest earned on the account will be credited to the account or to an account of the same type; and
  - (c) 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.
- (3) If, in the case of a client account with an approved bank outside Guernsey, the bank declines to provide the acknowledgment required 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 must not pay or transfer client money into that account.
- (4) Section (3) does not apply to money held by a licensee which is also licensed under the Banking Supervision (Bailiwick of Guernsey) Law, 2020 on behalf of a client in an account with itself.
- (5) Client money held or received by a licensee must 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.
- (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, must 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.
- (7) Money received 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. This does not apply to amounts of less than £25, or equivalent.

#### 9.4 Payments from client money accounts

- (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.
  
- (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 these Rules;
  - (c) money properly required for 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 and commission;
  - (e) 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 must be withdrawn from the account as soon as cleared funds are credited to the account in respect of that cheque; and
  - (i) interest withdrawn from the client money bank account.
- (3) Money must not be withdrawn from a client account for, or towards, payment of fees or commissions payable to the licensee unless those fees or commissions have been calculated in accordance with the formula disclosed to clients in the relevant permanent data communication.
- (4) Where a licensee draws a cheque or other payable order the money does not cease to be client money until the cheque or order is dispatched.
- (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.
- (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.
- (7) No money, other than money required to be paid in under these Rules, must be paid into such an account unless the money is the licensee's own money
  - 
  - (a) and it is required to be paid for the purpose of opening or maintaining the account and the amount is the minimum amount required for the purpose; or
  - (b) it is paid to restore, in whole or in part, any money paid out of the account in contravention of these Rules, or to restore the account out of an overdraft position.

## **9.5 Operation of client money accounts**

- (1) A licensee must maintain records sufficient to demonstrate compliance with this Part.
- (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.
- (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.
- (4) In the event of a breach the licensee must immediately restore the account.

## **9.6 Provisions applicable only in relation to collective investment schemes**

- (1) A designated administrator or licensee which is liable to pay money to a client, either in respect of a transaction entered into with, or for, that client, in the course of business or by way of interest on client money, must immediately ensure that such money is held, for the client, in a client account unless the designated administrator or licensee's debt is discharged by paying such money directly to the client.
- (2) Money which may be withdrawn by way of payment from a client to the designated administrator, or licensee, must be withdrawn immediately.
- (3) Where interest is payable on a client account the designated administrator, or licensee, must notify clients as to whom the interest is payable within the scheme particulars of the collective investment scheme.

## PART 10 CONTRACT NOTES

### 10.1 General

- (1) A licensee must, after a transaction has been effected with or on behalf of a client in a collective investment scheme, 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 that purpose, a statement relating to the transaction (a "contract note"). This does not apply where the licensee provides investment services to a client who is an eligible counterparty.

### 10.2 Contents

- (1) The contract note must contain –
  - (a) the name and address of the licensee;
  - (b) the client's name, or other designation, and account number;
  - (c) the dealing day in respect of the transaction;
  - (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;
  - (e) the name of the controlled investment and the number of units subject of the transaction or the size of the transaction;
  - (f) whether the transaction is one of sale, purchase, or conversion and the price of the units, shares, limited partnership interests, or controlled investment;

- (g) the total consideration payable at the settlement date and the amount;
- (h) where the transaction involves the conversion of one currency into another, the rate of exchange obtained in effecting that conversion;
- (i) the amount, or percentage, and type of any charges, whether or not included in the price, unless the licensee is dealing as principal;
- (j) whether any remuneration commission is, or will, be payable in connection with the transaction by, or on behalf of or to, the licensee or an associate and to, or from, whom;
- (k) the settlement date; and
- (l) any other relevant matters in relation to the transaction.

### 10.3 Other requirements

- (1) For a transaction in an open-ended collective investment scheme which is authorised or registered under the Law, the contract note must be sent in accordance with the scheme's principal documents and before the close of business on the seventh business day following the day on which the transaction was effected.
- (2) For a transaction effected in a Category 2 controlled investment, the contract note must be sent as soon as practicable except where the client specifically requests, in writing, otherwise.
- (3) For the purposes of (1) and (2) –
  - (a) a transaction effected after the close of business on any business day, but before the end of that business day, must be treated as having been effected before the close of business on the next following business day;

- (b) where a series of transactions is treated as one, the end of the relevant period of 24 hours must be treated as the time at which the transaction was effected; and
  - (c) where a transaction falls to be allocated in accordance with rule 5.3.4 to rule 5.3.6, the transaction must be treated as having been effected on the day on which the allocation is made.
- (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.

## PART 11 CONFLICTS OF INTEREST

### 11.1 Conflicts of interest policy

- (1) Licensees must establish, implement, and maintain an effective conflicts of interest policy, appropriate to the size and organisation of the licensee and the nature, scale, and complexity of its business.
- (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 of which may give rise to a conflict of interest relating to other members of the group.
- (3) The conflicts of interest policy must include the following –
  - (a) identification, with reference to the specific controlled investment business carried out by or on behalf of the licensee, of the circumstances which do, or may, give rise to a conflict of interest entailing a material risk of damage to the interests of one or more clients; and
  - (b) specific procedures to be followed to manage such conflicts.
- (4) Licensees must ensure that any procedures implemented, under this rule, are designed to ensure that relevant persons engaged in controlled investment business involving a conflict of interest carry on that business at a level of independence appropriate to the size and organisation of the licensee and the nature, scale, and complexity of the business or the group to which it belongs.
- (5) Procedures to be followed and any measures adopted must include, where appropriate –

- (a) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of 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.
- (6) If the adoption or the practice of one or more of these procedures does not ensure the requisite degree of independence, licensees must adopt alternative or additional measures and procedures as necessary.
- (7) Where procedures 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 must clearly disclose the general nature and sources of conflicts of interest to the client before undertaking business on its behalf.
- (8) Licensees must make disclosure which includes sufficient detail, taking into account the nature of the client, to enable that client to make an informed decision with respect to the controlled investment business.

## **11.2 Record of services or activities giving rise to detrimental conflict of interest**

- (1) Licensees must 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 client has arisen or may arise.

## **11.3 Gifts and inducements**

- (1) This does not apply where a licensee provides investment services to a client who is an eligible counterparty.
- (2) 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 gifts, 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.

## PART 12 NOTIFICATIONS

### 12.1 Name and address

- (1) A licensee must give written notice to the Commission, within fourteen days, 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; or
  - (e) a change in the address for the service of notices or documents.

### 12.2 Key employees

- (1) A licensee must notify the Commission, in writing and within fourteen days, of any changes to –
  - (a) key employees as set out in sections 40, 41 and 42 of the Law; or
  - (b) the financial adviser

providing reasons for this change, and must only act on those changes in accordance with the relevant sections of the Law and these Rules.

### **12.3 Information regarding key employees**

- (1) A licensee must give written notice, to the Commission within fourteen days, of it becoming aware of any of the following matters in relation to key employees –
  - (a) a change of name;
  - (b) the refusal of any application for, or revocation or suspension of, a license, 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;
  - (d) 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; or
  - (e) any breach of Schedule 3 by a financial adviser.
- (2) A notice made must include a statement of the circumstances and all known matters related to the reason for the notification.

### **12.4 Information regarding all employees**

- (1) A licensee must give written notice, to the Commission, within fourteen days of it becoming aware of the occurrence of any 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; or
  - (c) the institution of *saisie, désastre*, bankruptcy, sequestration, or similar proceedings.
- (2) A licensee must give written notice, to the Commission within fourteen days, of the summary dismissal of any employee in the Bailiwick and the reasons for this dismissal, which must include employees under probation.
- (3) A record must be maintained of the names of any employees disciplined by a licensee for any breach of the Law or rules, or for 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,

and details must be submitted, to the Commission, within seven days of the employee being disciplined.

## 12.5 General Proceedings

- (1) A licensee must give written notice, to the Commission within fourteen days, of the occurrence of any of the following –
- (a) the presentation of an application for the winding-up of, other than for the voluntary winding-up for the purposes of reconstruction or amalgamation, or an 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 or surrender of, any licence, authorisation, or registration to carry on finance business under any legislation, whether in the Bailiwick 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.

## **12.6 Holding company**

- (1) A licensee must give written notice, to the Commission within fourteen days, if it either becomes, or ceases to be, a subsidiary of another company or entity. The notice must specify the following –
  - (a) the holding company's, or entity's, name;
  - (b) its principal business;
  - (c) the names of its directors; and

- (d) the address of its registered office.

## **12.7 Subsidiaries**

- (1) A licensee must give written notice, to the Commission within fourteen days, of the formation, acquisition, disposal, or dissolution of a subsidiary.
- (2) The notice must specify the following –
  - (a) the subsidiary's name; and
  - (b) its principal business, if any.

## **12.8 Proposed change in restricted activity**

- (1) A licensee must give written notice, to the Commission within fourteen days, of any significant change in the business plan irrespective of whether it requires any change to its licence.

## **12.9 Other occasions requiring written notice**

- (1) A licensee must give written notice and details, to the Commission within fourteen days, 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 these 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 the Bailiwick;
  - (c) the licensee's auditor may qualify the accounts; or

- (d) the liabilities of a subsidiary or holding company of the licensee exceed its assets.

## PART 13 GENERAL PROVISION

### 13.1 Interpretation

- (1) In these Rules terms have their ordinary meaning unless specifically defined in the Law or in these Rules.
- (2) In these Rules the following definitions should be followed -

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

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

**“approved bank”** means a person who is licensed under The Banking Supervision (Bailiwick of Guernsey) Law, 2020, or is registered under The Banking Business (Jersey) Law, 1991, or authorised under the Isle of Man Financial Services Act 2008, or is authorised to carry on a banking or deposit-taking business under the law of the UK, of any EU member State, or under the law of any country or territory which may be listed in notices issued by the Commission;

**“associated party”** in relation to a licensee means –

- (a) an undertaking in the same group as the 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 associated party;
- (c) any other person whose business or domestic relationship with the licensee or its associated party, or with the partners, directors, managers, or employees of the licensee, or its associated party, 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;

**“attitude to investment risk”** means the level of risk which a client is willing to take, and able to accept, in order to achieve their financial goals; taking into consideration the client’s capacity for loss;

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

**“block of business”** means business that increases the receiving licensee’s, or reduces the transferring licensee’s, fee income by 15% or more; such figure being calculated using the last audited accounts of that licensee;

**“capacity for loss”** means the financial loss a client could tolerate without a detrimental effect to their standard of living at the date of investment or inception of the policy;

**“client account”** means an account with an approved bank which –

- (d) is in the name of the manager; and
- (e) 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 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;

**“complaint”** means any oral or written expression of dissatisfaction, whether justified or not, for or on behalf of a person about the provision of, or failure to provide, a financial service which alleges that the complainant has suffered (or may suffer) financial loss, material distress, or material inconvenience;

**“derivative”** includes a contract for differences, a future, or an option;

**“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 these Rules;

**“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 and thereafter, having made reasonable enquiries, 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, i.e. 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;

**“financial adviser”** means a person authorised by a licensee to give advice to retail clients on controlled investment business;

**“generally accepted accounting principles”** includes those accepted in –

- (a) the UK;
- (b) the United States; or
- (c) any other country approved in writing by the Commission;

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

**“large undertaking”** means any commitment 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;

**“manager”** means -

- (a) in relation to a person, means an employee who, under the immediate authority of their employer, is responsible either alone, or jointly with one or more other persons, for the conduct of the licensee’s controlled investment business; and
- (b) in relation to a collective investment scheme, means an entity responsible for the restricted activity of management, in connection with the collective investment scheme, and defined in Schedule 2 of 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;

**“own nominee”** means, in relation to a licensee, 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;

**“permanent data”** means such records, documents, and 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;

**“professional investor”** is –

- (a) a Government, local authority, public authority, or supra-national body, either in the Bailiwick or elsewhere; or
- (b) a person, partnership, or other unincorporated association or body corporate, whether incorporated, listed, or regulated in an OECD country or otherwise, whose ordinary business or professional activity includes, or it is reasonable to expect includes acquiring, underwriting, managing, holding, or disposing of investments whether as principal or agent; or the giving of advice on investments;

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

**“shortfall provisions”** means that where a policyholder exercises their right to cancel a contract they may not get a full refund of the money they have paid if the value of the investment falls before the cancellation notice is received by the provider;

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

**“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

**“statement of professional standing”** means a certificate issued by a body listed in the guidance note on training and competency schemes issued by the Commission.

## **PART 14 SAVINGS, REVOCATIONS, CITATION AND COMMENCEMENT**

### **14.1 Savings**

- (1) Any exclusion or modification granted by the Commission, under The Licensees (Conduct of Business) Rules, 2009, or The Licensees (Conduct of Business) Rules, 2016, will continue to apply where the Law and these Rules provide scope for such exclusions or modifications.

### **14.2 Revocations**

#### **14.2.1 The Collective Investment Schemes (Designated Persons) Rules, 1988**

- (1) The Collective Investment Schemes (Designated Persons) Rules, 1988 are revoked.

#### **14.2.2 The Licensees (Financial Resources, Notification, Conduct of Business and Compliance) Rules, 1998**

- (1) The Licensees (Financial Resources, Notification, Conduct of Business and Compliance) Rules, 1998 are revoked.

#### **14.2.3 The Licensees (Conduct of Business) Rules, 2009**

- (1) The Licensees (Conduct of Business) Rules, 2009 are revoked.

#### **14.2.4 The Licensees (Conduct of Business) Rules, 2016**

- (1) The Licensees (Conduct of Business) Rules, 2016 are revoked.

### 14.3 Citation and commencement

- (1) These Rules may be cited as the Conduct of Business Rules 2021.
- (2) These Rules come into force on 1<sup>st</sup> November 2021.

Dated this 29<sup>th</sup> day of October 2021

A handwritten signature in black ink, appearing to read 'C.A. Schrauwers', with a horizontal line underneath the name.

C.A. SCHRAUWERS

Chairman of the Guernsey Financial Services Commission

For and on behalf of the Commission

## **SCHEDULE 1**

### **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 their 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 them 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 them.

#### **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 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 it might reasonably be expected to disclose.

**SCHEDULE 2**  
**Compliance Return**

Form 142 (Investment Audited Financial Statements and Compliance Returns (Licensee)) as indicated on the Licensee's timeline on their online submission page.

## SCHEDULE 3

### Conduct of Financial Advisers

- (1) General principles
  - (a) Financial advisers must be authorised by the licensee by whom they are employed, and only authorised financial advisers may advise retail clients on controlled investments in or from the Bailiwick.
  - (b) A person must not use the term “financial adviser” unless authorised to do so by an entity appropriately licensed by the Commission.
  - (c) No standards can be exhaustive in all circumstances. In areas where the terms are not specific, financial advisers should be guided by the Principles of Conduct of Finance Business and the underlying spirit of these requirements.
  - (d) Lack of mention of a particular act or omission must not be taken as indication that such an act or omission constitutes acceptable professional conduct.
  - (e) A financial adviser must –
    - (i) comply with all applicable laws, enactments, regulations, rules, codes, guidance, principles, and instructions when dealing with clients;
    - (ii) in the conduct of business, provide advice objectively and not act in any way which is contrary to these principles or any other relevant legislation or standards;
    - (iii) whenever possible, make an appointment before visiting a client;

- (iv) where unsolicited calls are unavoidable, but deemed to be in the client's best interests, ensure that they are made at an hour likely to be convenient to the client; and
  - (v) when making unsolicited contact with prospective clients, for the purpose of marketing or advising on controlled investments, the financial adviser must identify themselves at the start of the call and explain the genuine purpose of the call. The purpose of the call should be to discuss the prospective client's financial arrangements and not to sell specific products.
- (f) Prior to providing advisory services to a client, a financial adviser must –
- (i) make it known that they represent a regulated entity which assumes responsibility for their conduct while advising clients on financial matters;
  - (ii) disclose to the client, in writing, the classes of products on which they are authorised to provide advice, their qualifications, and professional experience;
  - (iii) disclose to the client, in writing, the range, scope, and any limitations in the products or product providers on which they are able to advise;
  - (iv) fully explain, to the client, any involvement in conditional selling;
  - (v) ensure that they have sufficient knowledge of the legislation affecting the client including taxation. If they are unable to advise a client then they should inform them and, if possible, refer them to a person who can give appropriate advice;
  - (vi) give advice only on those matters in which they are competent and must seek or recommend specialist advice where necessary;

- (vii) not use or disclose any information acquired from clients except in the normal course of negotiating, maintaining, renewing, encashing, or surrendering a controlled investment for a client unless the written consent of the client has been obtained beforehand, or disclosure of the information is required in the public interest, or is compelled by law;
- (viii) not inform the client that their name has been provided by another person without that person's consent, and must disclose that person's name if requested to do so by the client; and
- (ix) inform the client of any ongoing services provided by the licensee and must disclose to the client, in writing, all fees and charges for providing those services.

(2) Assessing suitability

- (a) Prior to recommending a controlled investment, or any material change to an existing controlled investment, including cancellation, the financial adviser must –
  - (i) obtain and record sufficient knowledge of the client's personal and financial circumstances, and understanding of their objectives, to ensure that any advice is suitable to the needs, wishes, and financial position of the client;
  - (ii) make a documented assessment of the client's attitude to investment risk. In the event of a recommendation to be made in joint names, a separate assessment should be made of each person and a documented decision made, with the clients, for an overall attitude to investment risk;
  - (iii) make a documented assessment of the affordability of the funds to be invested by the client and of the client's capacity for loss; and

- (iv) maintain evidence on each client's file of product research carried out, including but not limited to quotations, illustrations, and comparisons, unless the licensee maintains a board or committee approved 'white list'.
- (3) Product research and recommendation
- (a) A financial adviser must –
    - (i) not advise a client to convert, allow to lapse, cancel, or surrender any product unless it can be demonstrated that the action is in the best interests of the client. If such action is advised then the reasoning should be fully documented in the written advice provided to the client;
    - (ii) not make comparisons with any other types of investments unless they clarify the differing characteristics of each investment;
    - (iii) not make inaccurate or unfair criticisms of any financial institution;
    - (iv) not withhold any written evidence or documentation relating to the product from the client;
    - (v) if using illustrations, projections, and forecasts supplied by a provider, ensure that the client is provided with all relevant documentation that has been supplied;
    - (vi) ensure that all illustrations, projections, and forecasts are relevant to the specific country where the client is resident and, if they are not, explain the differences; and
    - (vii) use their judgment objectively, in the best interests of their clients, where a choice of provider is available.

- (b) Prior to the inception, or any other material change to, including cancellation, of a controlled investment and in order to assist the client in making an informed decision, a financial adviser must provide the client with written advice which must include, as a minimum –
- (i) a recommendation setting out, in plain language, what product is being recommended, how it meets the client’s needs, wishes, and financial position and why it is favourable over any other products considered;
  - (ii) the principal terms of any product recommended;
  - (iii) an explanation of the key risks associated with the product being recommended. It is not sufficient to rely on provider literature for this purpose;
  - (iv) in the case of products where the investment return is not guaranteed, explain that it is not guaranteed. Where a product purports to be guaranteed, explain any conditions or limitations applying to the guarantee;
  - (v) an explanation of the different surrender values that may be available over the term of the controlled investment, including a warning that surrender practice may vary;
  - (vi) warning of the possible penalties of early surrender, whether at the choice of the client or through their death. Where a terminal bonus may be payable, emphasise that the product will normally have to run its full term before the bonus becomes payable;
  - (vii) details of any cooling off period relating to the particular product being recommended and an explanation that there will be an opportunity for the client to cancel or withdraw from the contract and set out the period during which they will be able to exercise this option. Any shortfall provisions should also be explained at this time;

- (viii) disclosures, to the client, of the extent of research carried out, including the names of the providers and products considered;
  - (ix) full and frank disclosure of any matter which may affect the client's decisions;
  - (x) an explanation, to the client, of the amount of remuneration that the licensee will receive as a result of the sale or variation of each product recommended; and an explanation of any and all charges, including bid-offer spread charges and cancellation charges, that will, or may, be incurred both at inception and throughout the arrangement. If the amounts are not known then the basis of calculation must be provided;
  - (xi) explain that deductions are made to cover the cost of life cover, commission, expenses, surrender penalties, and other charges as applicable.
- (c) A financial adviser may issue written advice post inception provided –
- (i) they have provided the client with the information required, at (b), verbally;
  - (ii) not doing so would mean the financial adviser being unable to meet the duty to provide best execution in accordance with rule 5.3.3;
  - (iii) the written advice is provided to the client as soon as practicable and in sufficient time to make use of any cancellation period that may be available to them.
- (d) After providing a client with a written recommendation, a financial adviser must –

- (i) afford the client reasonable time to consider the written advice prior to the client making a decision to accept the recommendation, unless the written advice had been provided post inception;
- (ii) ensure, as far as possible, that when a client is completing an application form, or any other document, that all material facts are accurately and properly disclosed making it clear, to the client, that all answers or statements are the client's own responsibility. If the financial adviser completes the proposal form on behalf of the client then the client must be asked to check the details before signing the form and be provided adequate opportunity to do so; and
- (iii) inform the client of the name of each provider with whom a contract is placed. This information must be given prior to the inception of the product and any changes must be advised at the earliest opportunity to the client.

(4) Post inception principles

- (a) Following the inception of a controlled investment, the financial adviser must, as soon as reasonably practicable –
  - (i) ensure that any confirmation of investment, certificates, or evidence of cover, and the basis of payments, are provided to the client at inception and again on any renewal; and
  - (ii) have proper regard for the wishes of a client who seeks to terminate any agreement.

(5) Breaches

- (a) If a financial adviser breaches any part of these principles they must immediately inform the licensee by whom they are employed.

## EXPLANATORY NOTE

These Rules have been re-drafted in line with the Commission's Revision of Laws Implementation Project.

In 2020 the Protection of Investor (Bailiwick of Guernsey), 1987, Law was replaced with the 2020 Law and the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020<sup>3</sup>. All Rules made, under the earlier enactment, have been checked for validity and legality.

The Rules have been re-drafted to bring them into line with the Commission's current legal drafting practice and to ensure that all out-of-date references have been replaced.

Although these Rules have been re-drafted and re-formatted, the content and legal meaning remains the same as that under the previous Rules.

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<sup>3</sup> Order In Council No. XVII of 2020.