

THE NATURAL CAPITAL FUND RULES, 2022

Made: 14th September 2022

Coming into Operation: 20th September 2022

The Guernsey Financial Services Commission (“the Commission”), in exercise of the powers conferred on it by sections 12, 14, 15, 18 and 20 of The Protection of Investors (Bailiwick of Guernsey) Law 2020¹ (“the Law”) makes the following Rules.

¹ Order in Council No. XVIII of 2020.

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PART 1 INTRODUCTION

1.1 Application

- (1) These Rules apply to the use of the description Natural Capital Fund.
- (2) The Commission may in its absolute discretion, by written notice to a licensee, exclude or modify the application of any provision of these Rules.
- (3) 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.

PART 2 GENERAL RULES

2.1 Objectives and investment criteria

2.1.1 Objectives

- (1) The objectives of a Natural Capital Fund must reflect the following –
 - (a) spreading risk, and the criteria for the spread of risk must be specified in the scheme's prospectus; and
 - (b) seeking a return for investors whilst either –
 - (i) making a positive contribution; or
 - (ii) significantly reducing harmto the natural world.

- (2) The objectives of a Natural Capital Fund must align with either –
 - (a) the United Nations Convention on Biological Diversity's Post-2020 Global Biodiversity Framework's 2030 Action Targets;
 - (b) the United Nations Sustainable Development Goals 12-15; or
 - (c) the European Union Taxonomy for Sustainable Activities' Environmental Objectives (c) to (f).

2.1.2 Investment criteria

- (1) The governing body must set appropriate investment criteria and take reasonable steps to ensure that the scheme –
 - (a) invests its property with the aim of achieving the scheme's objectives;
 - (b) only comprises of assets permitted to be held under its principal documents, or prospectus, and be of a nature or type described in the prospectus; and
 - (c) must not be invested in contravention of limits, or restrictions, imposed under its principal documents or prospectus.

2.2 Targets and monitoring

- (1) The governing body must set natural capital targets against which the scheme's positive contribution to the natural world and any reduction of harm, to the natural world, may be tracked. These targets must –
 - (a) be relevant to the scheme's objectives;
 - (b) be based on up-to-date, good quality scientific research;
 - (c) make reference to a relevant baseline position to enable meaningful measurement of progress;
 - (d) be clearly documented; and
 - (e) be reviewed not less than once every twelve months.

- (2) The governing body must -
 - (a) ensure that an appropriate framework of policies, procedures, and controls is in place to monitor and measure performance as well as progress against the targets;
 - (b) use appropriate metrics to measure performance against the targets; and
 - (c) review progress against targets periodically and at least annually.

2.3 Application

- (1) A governing body applying on behalf of a scheme, for designation as a Natural Capital Fund, must submit to the Commission –
 - (a) the appropriate applications;
 - (b) a final version of the prospectus, where required to be issued;
 - (c) a declaration, in accordance with Part 1 of Schedule 1, made by the governing body, that the scheme's objectives and targets comply with these Rules;
 - (d) a report, approved by the governing body, setting out –
 - (i) the investment approach and objectives of the scheme and how these align with relevant international goals set out at rule 2.1.1;
 - (ii) natural capital targets set and the approach used to set them; and
 - (iii) how compliance is monitored;

- (e) a copy of any certification, confirming compliance of the scheme's objectives, targets, and monitoring procedures with these Rules, as provided by a third party expert verifier, where such certification has been obtained;
- (f) the requisite fee; and
- (g) any other information as the Commission may require in a particular case.

2.4 Designation

- (1) A scheme must not describe or promote itself, by any means, as a Natural Capital Fund, unless so designated in accordance with these Rules.
- (2) A scheme that meets, and continues to meet, the requirements of these Rules may be designated a Natural Capital Fund and may use the logo, set out at Schedule 2, subject to any conditions issued by the Commission.

2.5 Oversight of the scheme

- (1) The governing body must notify the designated administrator where the scheme is in contravention of the Law or these Rules.
- (2) The designated administrator must satisfy itself that the governing body has put in place natural capital targets and a monitoring process, with respect to these targets, in accordance with these Rules.
- (3) Where the designated administrator has been notified, by the governing body, or has otherwise become aware, of a contravention of the Law or these Rules, the designated administrator must –
 - (a) immediately take steps to notify, where appropriate, the governing body, manager, and designated custodian;

- (b) immediately inform the governing body that it must ensure steps have been taken to rectify the position;
 - (c) if the position has not been rectified within one month of the date on which the contravention was identified –
 - (i) notify the Commission; and
 - (ii) provide the Commission with the proposals to rectify the breach; and
 - (d) if the position has not been rectified within two months of the date on which the contravention was identified, ensure that all investors are informed or otherwise notify the Commission that such communication has not taken place and the reason why.
- (4) Subsection (3) does not apply to Natural Capital Funds –
- (a) during the first six months from the date of designation, or until the scheme is fully invested, whichever occurs first; or
 - (b) once a decision has been taken to wind up the scheme, in accordance with the scheme’s principal documents, and the Commission has been duly notified.

2.6 Removal of designation

- (1) Where the designated administrator is aware that a Natural Capital Fund continues, after a period of three months from the date when a contravention was identified, not to meet the requirements of these Rules, then it must –
 - (a) provide the declaration of non-compliance, set out in Part 2 of Schedule 1, to the Commission;

- (b) inform the governing body that it must, as soon as possible, cease to use the designation of Natural Capital Fund on all documents and other material, whether electronic or otherwise;
 - (c) ensure that all investors have been notified of any steps taken under this rule; and
 - (d) ensure that a copy of the declaration of non-compliance is placed in a prominent position on the scheme's website.
- (2) Where the circumstances detailed in subsection (1) apply, the scheme's designation as a Natural Capital Fund ceases.
- (3) Where a Natural Capital Fund is being wound up the designated administrator must notify and seek the approval of the Commission if it wishes to continue to use the Natural Capital Fund designation.

2.7 Prospectus disclosures

- (1) In addition to the disclosures required in any other rules to which the Natural Capital Fund is subject, where a prospectus is prepared it must contain –
- (a) notice that the scheme has received the designation of Natural Capital Fund;
 - (b) the objectives, natural capital targets, and investment criteria;
 - (c) information as to how the scheme will meet its objectives and targets; and
 - (d) any material conflicts of interest.

- (2) Subsection (1)(a) does not apply to a scheme which is listed on a recognised stock exchange and where commensurate disclosure has been made by way of a stock exchange announcement.

2.8 Notifications and submissions

2.8.1 Notifications and submissions to the Commission

- (1) The governing body must submit, to the Commission, within six months of the scheme's accounting year end, details of the scheme's performance against its natural capital targets.
- (2) The designated administrator must give immediate written notice, to the Commission, of any material change to disclosure, in the prospectus, set out at rule 2.7.

2.8.2 Notifications and submissions to investors

- (1) The governing body is required to ensure that information on the scheme's performance against its natural capital targets is reported to investors on an annual basis.
- (2) The designated administrator, or manager, must ensure that investors are notified of any changes to the matters set out at rule 2.7.

PART 3 GENERAL PROVISION

3.1 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 -

“the European Union Taxonomy for Sustainable Activities’ Environmental Objectives (c) to (f)” means the environmental objectives –

“(c) the sustainable use and protection of water and marine resources;

(d) the transition to a circular economy;

(e) pollution prevention and control;

(f) the protection and restoration of biodiversity and ecosystems,

established by Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088;

“governing body” means, in the case of a company its directors, in the case of a limited partnership its general partner and in the case of a trust its trustees;

“Natural Capital Fund” means a scheme designated in accordance with these Rules;

“principal documents” means –

- (a) in relation to a unit trust scheme, the trust instrument and management agreement, if any;
- (b) in relation to a company scheme, the articles of incorporation of a Guernsey company (or an equivalent document under the applicable law of a non-guernsey body corporate), the management agreement and the trustee agreement; and
- (c) in relation to a collective investment scheme, other than a unit trust scheme, or a company scheme, the documents dealing collectively with the same or similar obligations and duties as the principal documents constituting a unit trust scheme or a company scheme;

“United Nation’s Sustainable Development Goals 12-15” are goals –

- 12 (Responsible Consumption and Production);
- 13 (Climate Action);
- 14 (Life Below Water); and
- 15 (Life on Land),

of the United Nations Sustainable Development Goals established by the United Nations General Assembly in 2015 as part of the 2030 Agenda for Sustainable Development; and

“scheme” means an authorised collective investment scheme or a registered collective investment scheme.

PART 4 CITATION AND COMMENCEMENT

4.1 Citation and commencement

- (1) These rules may be cited as the Natural Capital Fund Rules.
- (2) These rules come into force on 20th September 2022.

Dated this 14th day of September, 2022

A handwritten signature in black ink, consisting of several loops and a long, sweeping tail that extends to the right.

J.P. Winser

Chairman of the Guernsey Financial Services Commission

For and on behalf of the Commission

SCHEDULE 1

Part 1 – Declaration of compliance

On behalf of the governing body of the scheme:

- I confirm that, as the proposed governing body of the scheme, we are satisfied that the scheme's objectives, targets, and investment criteria meet the requirements of The Natural Capital Fund Rules.
- I confirm that a report, approved by the governing body of the scheme, as required under rule 2.3 of The Natural Capital Fund Rules, has been submitted with this declaration.
- I confirm that, as the proposed governing body of the scheme, we are satisfied that the disclosures made in relation to the scheme meet the requirements of The Natural Capital Fund Rules.
- I confirm that the information supplied is complete and correct, to the best of our knowledge and belief at the time of its submission, and that there are no other facts, material to the notification, of which the Commission should be aware.
- I confirm that we are aware that it is an offence, under the Financial Services Business (Enforcement Powers)(Bailiwick of Guernsey) Law, 2020, to knowingly or recklessly provide the Commission with information which is false or misleading.

Part 2 – Declaration of non-compliance

- I, acting as the designated administrator of the scheme, have become aware that the scheme no longer meets the requirements of the Natural Capital Fund Rules (“the Rules”).
- I, acting as the designated administrator of the scheme, confirm that, to the best of my knowledge, the scheme will no longer use the designation of Natural Capital Fund and will ensure that no references are made to it in any further disclosures to shareholders, or potential shareholders, or in any marketing materials.
- I, as the designated administrator, confirm that, to the best of my knowledge, all investors in the scheme have been notified that the scheme no longer meets the requirements of the Rules and is no longer a designated Natural Capital Fund.
- I confirm that the information supplied is complete and correct, to the best of my knowledge and belief at the time of the submission, and that there are no other facts, material to the declaration, of which the Commission should be aware.
- I am aware that it is an offence, under the Financial Services Business (Enforcement Powers)(Bailiwick of Guernsey) Law, 2020, to knowingly or recklessly provide the Commission with information which is false or misleading.

SCHEDULE 2

Use of the Natural Capital Fund Logo



1. The logo must be reproduced from original artwork provided by the Commission and must comply with the Natural Capital Fund Brand Guidelines which can be found at www.gfsc.gg.
2. The use of the Natural Capital Fund logo must not be misleading.
3. As soon as possible, after a scheme's designation has been removed pursuant to rule 2.6, the scheme and its designated administrator, or any manager or designated custodian of the scheme, must stop using the Natural Capital Fund Logo in respect to that scheme.

EXPLANATORY NOTE

These Rules are made, following a public consultation, to make provision for the voluntary designation, by the Guernsey Financial Services Commission, of a collective investment scheme, registered or authorised under the Protection of Investors (Bailiwick of Guernsey) Law, 2020, as a Natural Capital Fund.

A Natural Capital Fund is required to set objectives which either make a positive contribution or significantly reduce harm to the natural world and align such objectives to international standards.

A Natural Capital Fund is required to set appropriate targets, aligning with its objectives, to put in place appropriate governance arrangements to monitor progress against these targets and to make related disclosures to the Commission and to its investors.

These Rules restrict the use of the term 'Natural Capital Fund' to schemes designated by the Commission and complying with these Rules. The Rules permit designated schemes to use the Natural Capital Fund logo.

