



Jersey Financial  
Services Commission

# Collective Investment Funds (Jersey) Law 1988

Code of Practice

For Certified Funds

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## Glossary of Terms

Unless otherwise defined, the following terms when used in the Code of Practice shall have the meanings set out below. If not defined below or elsewhere in the Code, terms, where relevant, have the same meanings as are ascribed to them in the Collective Investment Funds (Jersey) Law 1988, as amended (the **Law**).

AIF Regulations	means the Alternative Investment Funds (Jersey) Regulations 2012, as amended.
anti-money laundering legislation	includes the Proceeds of Crime (Jersey) Law 1999, the Money Laundering (Jersey) Order 2008 and the Terrorism (Jersey) Law 2002, as well as any other applicable laws and United Nations or European Union Sanctions Orders applied within Jersey, all as amended from time to time. The legislation must be observed in conjunction with the requirements of the relevant Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism, issued by the JFSC.
Applicable Rules	in relation to a <i>Fund</i> , means the following: <ul style="list-style-type: none"> <li>› the <i>Law</i>, any Orders and Regulations made under it and the <i>Code</i>;</li> <li>› other legislation relevant to the activities of the <i>Fund</i>;</li> <li>› the principles contained in the <i>Guide</i> relevant to each specific <i>Fund</i>;</li> <li>› any conditions attached to a <i>Certificate</i>;</li> <li>› policy statements issued by the JFSC from time to time; and</li> <li>› the Fund's Constitutive Documents and prospectuses.</li> </ul>
Affiliate of the Fund	means any person whose name is linked to the promotion of the <i>Fund</i> .
Associate of the Fund	has the same meaning as given in the Classification Guide for Jersey Expert Funds.
Certificate	means a certificate granted under Article 8B of the <i>Law</i> .
Certificate Holder	means the person described in Article 8A(1) of the <i>Law</i> who is issued with a <i>Certificate</i> .
Code	means the Code of Practice for Certified Funds.
collective investment fund	has the same meaning as in Article 3 of the <i>Law</i> .
<a href="#">complaint</a>	<u>means any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a service that relates to the business of the <i>Fund</i>, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience.</u>

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Constitutive Documents	means the principal documents governing the formation of a <i>Fund</i> , including: <ul style="list-style-type: none"> <li>› the trust instrument in the case of a <i>Fund</i> which is a unit trust;</li> <li>› the memorandum and articles of association of a <i>Fund</i> which is a company;</li> <li>› the limited partnership agreement where the <i>Fund</i> is a limited partnership;</li> <li>› the <i>Fund</i> rules (if any);</li> <li>› any agreement for the management of the <i>Fund</i>; and</li> <li>› any agreement appointing a custodian to the <i>Fund</i>,</li> </ul> but excludes <i>Fund Services Business Agreements</i> other than those listed above.
CPD	means Continuing Professional Development.
Exceptions Regulations	means the Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002, as amended.
Fund	means a certified fund within the meaning of the <i>Law</i> . <sup>1</sup>
Fund Assets	means assets of any description belonging to the <i>Fund</i> or made available by or due to a <i>Unitholder</i> .
fund service provider	means a person who carries on <i>fund services business</i> .
fund services business	has the same meaning as in Article 1 of the Financial Services (Jersey) Law 1998 as amended.
Fund Services Business Agreement	means the agreement or equivalent document by which a person is appointed as a provider of <i>fund services business</i> to a <i>Fund</i> .
Guide	means any guide published by the JFSC from time to time, and as applicable to each individual <i>Fund</i> , including, but without limitation: <ul style="list-style-type: none"> <li>› the <i>Jersey Expert Fund Guide</i>;</li> <li>› the <i>Jersey Listed Fund Guide</i>;</li> <li>› the <i>OCIF Guide</i>;</li> <li>› the <i>Jersey Eligible Investor Fund Guide</i>; and</li> <li>› the Non-domiciled Fund Guide.</li> </ul>
Jersey Eligible Investor Fund	means a <i>Fund</i> meeting the characteristics set out in and authorised under the <i>Jersey Eligible Investor Fund Guide</i>
Jersey Eligible Investor Fund Guide	means the latest version of the Jersey Eligible Investor Fund Guide published by the JFSC setting out the conditions applicable to <i>Jersey Eligible Investor Funds</i> .
Jersey Expert Fund	means a <i>Fund</i> meeting the characteristics set out in and authorised under the <i>Jersey Expert Fund Guide</i> .

<sup>1</sup> For clarification this includes any sub-funds and cells of that Fund.

Jersey Expert Fund Guide	means the latest version of the Jersey Expert Fund Guide published by the <i>JFSC</i> setting out the conditions applicable to <i>Jersey Expert Funds</i> .
<u>JFSC</u>	<u>means the Jersey Financial Services Commission.</u>
Jersey Listed Fund	means a <i>Fund</i> meeting the characteristics set out in and authorised under the <i>Jersey Listed Fund Guide</i> .
Jersey Listed Fund Guide	means the latest version of the Jersey Listed Fund Guide published by the <i>JFSC</i> setting out the conditions applicable to <i>Jersey Listed Funds</i> .
OCIF Guide	means the latest version of the OCIF Guide to establishing an <i>OCIF</i> published by the <i>JFSC</i> .
key person	has the same meaning as provided by Article 1 of the <i>Law</i> .
Law	means the Collective Investment Funds (Jersey) Law 1988, as amended.
OCIF	means a <i>Fund</i> approved by the <i>JFSC</i> as a Jersey open-ended unclassified <i>collective investment fund</i> offered to the general public.
principal person	has the same meaning as provided by Article 1 of the <i>Law</i> .
Recognized Fund	has the same meaning as provided by Article 1 of the <i>Law</i> .
Unit	has the same meaning as provided by Article 1 of the <i>Law</i> .
Unitholder	any person who participates in the <i>Fund</i> or who may participate in the <i>Fund</i> as the context dictates.
Unregulated Fund	means a fund that has filed a notice in accordance with Article 3 of Schedule 1 or Schedule 2 of the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008, as amended.

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## Introduction

The Code is issued by the JFSC under powers given to it by Article 15 of the Law. The Code has been prepared and issued for the purpose of setting out the principles and detailed requirements that must be complied with in respect of any certified fund, and any provision of the Law or any Regulations or Order made under it.

It is the responsibility of the Fund, operating through the Certificate Holder, to comply with these principles and requirements, and to implement such additional practices as it considers necessary for the proper management and control of its business. In exceptional circumstances, where strict adherence to the Code would produce an anomalous result, a Fund may apply to the JFSC for variance from the Code.

Where the Fund, operating through the Certificate Holder, considers that it may not be able to achieve full compliance with the Code for a temporary period (for example, for a short period after first being licensed) it should, in advance, agree a plan of action (to include timescales) with the JFSC to bring itself into full compliance with the Code.

Where the Fund is constituted as a limited partnership or unit trust, the intention is that the governing body of the Fund, being those with ultimate control over and responsibility for the Fund, should ensure the Code is adhered to and that the Fund is operated in a manner that complies with the Code. Accordingly, responsibility for failing to comply with requirements of the Code will rest with the Fund's governing body. For a limited partnership this means the general partner and for a unit trust it means the trustee.

The Certificate Holder may appoint one or more persons (for example the appointed manager of the Fund) to carry out the actions necessary for the Certificate Holder to comply with the Code (including through the provision for adoption by the Fund of policies, procedures, systems, controls and disaster recovery arrangements), however ultimate responsibility for compliance with the Code remains with the Fund operating through the Certificate Holder.

The Code provides enforceable requirements in the form of high level principles supported by detailed rules in the areas of corporate governance, conduct of business and prudential matters and are arranged under nine principles which are further described, explained and delimited as the case may be. Those principles are:

1. A Fund must conduct its business with integrity;
2. A Fund must act in the best interests of Unitholders;
3. A Fund must organise and control its affairs effectively for the proper performance of its business activities and be able to demonstrate the existence of adequate risk management systems;
4. A Fund must be transparent in its business arrangements with Unitholders;
5. A Fund must maintain, and be able to demonstrate the existence of, both adequate financial resources and adequate insurance;
6. A Fund must deal with the JFSC and other authorities in Jersey in an open and co-operative manner;

7. A Fund must not make statements that are misleading, false or deceptive; and
8. A Fund must at all times comply and be operated in accordance with any applicable Guide.
9. A Fund must comply, where relevant, with the applicable sections of the Code of Practice for Alternative Investment Funds and AIF Services Business.

Each section of the Code is designed to be understood by reference to its full text, including any notes. The Code should be read by Certificate Holders in conjunction with the Law and its subordinate legislation, together with any conditions attached to a Certificate held under the Law, and the relevant Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism.

Certain parts of the Code:

- › replace conditions formerly imposed on the Fund by means of Certificate conditions;
- › only apply to particular types of Fund such as OCIFs, Jersey Expert Funds, Jersey Listed Funds, and Jersey Eligible Investor Funds; or
- › only apply where the Fund is also an alternative investment fund as defined in Regulation 3 of the Alternative Investment Funds (Jersey) Regulations 2012.

For example special provisions are documented in principles 8 and 9 of the Code.

In complying with the Code the JFSC recognizes there may be some degree of overlap or duplication with the requirements of other applicable Codes, notably the Code of Practice for Fund Services Business. In those circumstances, where one document is fully compliant with both sets of requirements it can be used for both purposes in order to reduce duplication.

### Consequences of breaching the Code

Failure by a Fund to follow the Code represents grounds for the JFSC to take regulatory action. Where the JFSC has reason to believe that at any time there has been a failure on the part of a Fund to comply with the Code, it may consider making use of its regulatory powers which, in serious cases, could include requiring a Fund to wind up and revocation of its Certificate.

In addition, failure to comply with a Code may support a decision by the JFSC that, for example, continued non-compliance or other failure to remedy the circumstances giving rise to the breach may be addressed by the issue of a written direction under Article 13 of the Law. Such a direction might impose requirements on the Fund to do or not to do things, remove persons, or cease operations. In appropriate circumstances that direction can be made public.

Whilst failure to comply with the Code shall not of itself render any person liable to proceedings of any kind (excluding regulatory action that may be taken by the JFSC in response to a contravention) or invalidate any transaction, the Code shall be admissible in evidence if it appears to the court conducting proceedings to be relevant to any question arising in the proceedings, and shall be taken into account in determining any such question.

Where it appears to the JFSC that a person has failed to comply with the Code, it may issue a public statement under Article 17 of the Law.

In a number of places the Code requires the JFSC to be advised of a matter “in writing”. For the avoidance of doubt, a notification given by email, or by means of the JFSC’s [online](#) portal, will be considered by the JFSC to meet that requirement (unless the particular Code requirement specifies otherwise how a notification “in writing” must be given).

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### Revision of the Code

In accordance with Article 15(1) of the Law, the JFSC may, after consultation with such persons as appear to be representative of the interests concerned, revise the Code by revoking, varying, amending or adding to its provisions.

In July 2017 the JFSC published Consultation Paper No. 6, proposing a number of amendments to the Code and, in December 2017, published a feedback paper summarising respondents' comments and the JFSC's responses.

Rather than detail the amendments here, the JFSC has published a version of the Code that highlights the amendments applied.

### Effective Date

This revised Code is effective from 21 March 2018.

Any person that has made an application to the JFSC which is currently under consideration, should review the Code and contact the JFSC to discuss any areas where compliance on grant of a certificate may be an issue.

**John Harris**

**Director General**

3 January 2018

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## Advisory note regarding the application of the Code

The *Code* applies to all unclassified *collective investment funds* issued with a *Certificate* by the JFSC under Article 8B of the *Law*.

Principle 9 of the *Code* is only applicable to certain *Funds*, namely any that meet the definition of an alternative investment fund as defined in Regulation 3 of the Alternative Investment Funds (Jersey) Regulations 2012, as amended (the **AIF Regulations**).

The *Code* does not apply to non-Jersey funds, *Recognized Funds* or *Unregulated Funds*.

Any *Fund* approved by the JFSC as a Jersey open-ended unclassified *collective investment fund* offered to the general public (in other words an *OCIF*) established prior to the introduction of the *Code* shall not be deemed to be in breach of them by virtue of any pre-existing variance from the terms of the *OCIF Guide*.

Responsibility for complying with the *Code* is as follows:

- › company – the board of directors;
- › limited partnership – the general partners(s); and
- › unit trust – the trustee(s).

For unit trusts and limited partnerships references in the *Code*:

- › to the *Fund* should be read as references to (i) in the context of the *Fund* taking or not taking action or to the business activities of the *Fund*, to the *Certificate Holder* on behalf of the *Fund*, and (ii) otherwise, to the *Certificate Holder*;
- › to any subsidiary or *Affiliate of the Fund* should be read as references to any subsidiary or *Affiliate* of the *Certificate Holder* on behalf of the *Fund*;
- › to any parent of the *Fund* should be regarded as not applicable; and
- › to any member of the same corporate group as the *Fund* should be interpreted accordingly.



## The Principles

### 1 A Fund must conduct its business with integrity.

- 1.1 Failure to comply with the above principle will be considered amongst the most serious of breaches of the *Code*.
- 1.2 Without limiting the breadth of the above principle, a *Fund* must not:
  - 1.2.1 act or refrain from acting; or
  - 1.2.2 contract or have any other arrangement;so as to avoid, or seek to avoid, any regulatory responsibilities it may have under the *Code* unless the *Code* expressly permits any such avoidance.

## 2 A Fund must always act in the best interests of Unitholders.

- 2.1 A *Fund* must act with due skill, care and diligence to fulfil the responsibilities that it has undertaken.
- 2.2 Where a *Fund* is authorised to exercise discretion in the execution of its function, it must exercise that discretion in a proper manner and maintain proper records of its actions and decisions.
- 2.3 A *Fund* must avoid conflicts of interest arising with its *fund service providers* or any of their associates. Where such a conflict does arise (and disclosure of the nature of such conflict has not previously been made to *Unitholders*), the *Fund* must address such conflict through internal rules of confidentiality, or by declining to act, or by disclosing the nature of the conflict to *Unitholders*.
- 2.4 A *Fund* must transact its business in an expeditious manner.
- 2.5 When entering into financial, banking or other transactions, the *Fund* must:
  - 2.5.1 always act in the best interests of *Unitholders*; and
  - 2.5.2 not effect such transactions with inappropriate frequency or in excessive size.
- 2.6 Where a *Fund* underwrites or sub-underwrites any offer for the issue, sale or exchange of securities or other investments, all commissions and fees payable to the *Certificate Holder* and/or any other *fund service provider* to the *Fund* in respect of such underwriting or sub-underwriting shall, subject to the *Fund's Constitutive Documents*, form part of the assets of the *Fund*.
- 2.7 When dealing with *Unitholders*, a *Fund* should ensure that all *Unitholders* are treated fairly.
- 2.8 Where changes are to be made to the rights of *Unitholders* that do not require prior approval of *Unitholders*, the *Fund* is to give *Unitholders* sufficient notice of the proposed changes.
- 2.9 A *Fund* should ensure appropriate due diligence is undertaken on the suitability of its investments.
- 2.10 Where the *Fund* is a hedge fund disclosure should be made to *Unitholders* of:
  - 2.10.1 the existence of any side letters agreed by the *Fund* with one or more *Unitholders*; and
  - 2.10.2 the extent to which the terms of any such side letters may have a material adverse effect on non-party *Unitholders*.
- 2.11 A *Fund* which is a hedge fund should obtain confirmation from its bankers and/or prime brokers that they are duly authorised for the conduct of the business performed in respect of the *Fund*.

**Notes:**

- 1 *With reference to paragraph 2.4, it is incumbent on the parties (namely the Fund through its governing body on the one hand and the fund service providers on the other) to ensure this aspect is covered in the relevant Fund Services Business Agreements. The JFSC anticipates compliance with the Code generally to be part of the contractual arrangements entered into with the service provider.*
- 2 *Paragraph 2.6 need not apply to general partners of private equity funds that are Jersey Listed Funds, Jersey Expert Funds or Jersey Eligible Investor Funds who do not account for all or part of the commission earned from underwriting arrangements entered into on behalf of the Fund provided their ability to do so is clearly disclosed in the Fund's offering documents.*
- 3 *The requirement in paragraph 2.7 does not apply to any discount that may be offered to or negotiated by an individual Unitholder in relation to the fees charged upon his investment in a Fund, or require the Fund to offer a similar discount to any other Unitholder.*
- 4 *Paragraph 2.7 does not apply in respect of any arrangements set out in a Fund's Constitutive Documents, Applicable Rules or material contracts providing for preferential rights or treatment or conferring other priorities on certain persons or classes.*
- 5 *What is sufficient notice for the purposes of paragraph 2.8 will depend upon the nature of the changes. The JFSC wishes to see Unitholders have sufficient time to consider the options put before them and to take action if necessary.*
- 6 *This principle does not affect the priority of any legal duties owed to any other person (for example creditors of the Fund).*
- 7 *Paragraph 2.10 does not apply to side letters in existence at the date of implementation of the Code and the JFSC acknowledges that a Fund may have regard to the guidance note published by Alternative Investment Management Association (AIMA) in September 2006 (as updated) when considering the materiality of terms of a side letter, the nature of its disclosure, and the timing of its disclosure.*

### 3 A Fund must organise and control its affairs effectively for the proper performance of its activities and be able to demonstrate the existence of adequate risk management systems.

#### 3.1 Corporate Governance

- 3.1.1 A *Fund* must operate an effective corporate governance system that must include the following key elements:
- 3.1.1.1 adequate span of control must exist that is appropriate to the nature of the business of the *Fund*. The *Fund* must be directed by at least two appropriately qualified and experienced people ('four eyes');
  - 3.1.1.2 the relationship of *principal persons* and *key persons* within the *Fund* must be such as to ensure that they can all exercise independent judgement without duress or undue influence from one another in the best interests of the *Fund*, and so as to secure compliance with the *Applicable Rules*; and
  - 3.1.1.3 responsibilities must be apportioned among the *Fund's principal persons* and *key persons* in such a way that their individual responsibilities and accountabilities are clear, and that the business of the *Fund* is adequately monitored and controlled at senior management and board level.
- 3.1.2 Clearly defined procedures must be in place so that there is appropriate oversight in order to address the principles of risk management:
- 3.1.2.1 an assessment of the risks present in the business of the *Fund* must be made, and those risks must be documented, as must the ways in which they are monitored and controlled; and
  - 3.1.2.2 the *Fund* must maintain accurate and reliable information systems and timely and appropriate management reporting.
- 3.1.3 Where the *Fund* believes the business of the *Fund* warrants it, a separate risk management committee must be established.
- 3.1.4 Except for temporary periods not exceeding two months (unless a longer period is agreed in writing by a duly authorised officer of the JFSC), the board of the *Fund*, where constituted as a company, shall include at least two directors who are resident in Jersey.

3.1.5 All aspects of corporate governance arrangements must be subject to appropriately regular review to ensure their continuing adequacy in light of the *Fund's* risk profile, and include a periodic self-assessment, or external assessment, of the board's effectiveness.

**Notes:**

- 1 *Corporate governance is the system by which an organisation is directed and controlled. A corporate governance framework specifies the distribution of rights and responsibilities among different participants in the organisation and sets out the rules and procedures for making decisions. Risk management is an integral part of the*

corporate governance framework. *In the context of Principle 3, “risk” refers to all the risks that a Fund faces, or may face, as a business enterprise.* With respect to unit trusts and limited partnerships, the JFSC anticipates matters such as corporate governance (and compliance with the Code generally) to be part of the Fund Services Business Agreements entered into by the trustee or general partner on behalf of the Fund.

- 2 With reference to paragraph 3.1.1, where the fund is constituted as a unit trust or limited partnership, the principal persons and key persons will be those fulfilling that role in respect of its Certificate Holder unless notified otherwise to the JFSC.
- 3 The JFSC envisages that a risk management committee referred to in paragraph 3.1.3 would be appointed by the governing body of the Fund from amongst their number. For example, unit trusts often have sub-committees. In the case of unit trusts and limited partnerships, a committee could be drawn from the boards of the trustee or the general partner.
- 4 With reference to paragraph 3.1.4, where a Fund is constituted as a limited partnership or unit trust, an equivalent requirement is contained in the Code of Practice for Fund Services Business.
- 5 While interpretation of statutes is ultimately a matter for the courts, the JFSC considers that Unitholders in the Fund are not principal persons for the purposes of the Law.

## 3.2 Internal systems and controls

### 3.2.1 A Fund must:

- 3.2.1.1 operate robust internal control systems to ensure compliance with the *Applicable Rules*. Such systems should be reviewed periodically to ensure that they are working effectively;
- 3.2.1.2 ensure that adequate business resumption, disaster recovery and contingency arrangements are in place and tested at appropriate intervals;
- 3.2.1.3 ensure that its systems enable management to guard properly against involvement in financial crime and ensure that the *Fund* is complying with the *Code*, and with *anti-money laundering legislation*. Failure to follow legislation to counter money laundering and the financing of terrorism, or the relevant Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism, may form the basis for regulatory action by the JFSC;
- 3.2.1.4 ensure that all transactions and decisions are properly authorised by persons with the requisite knowledge and experience to effect such transactions or make such decisions;
- 3.2.1.5 have due regard to the principles of the sound business practice policy<sup>2</sup> document issued by the JFSC from time to time in respect of the activities it undertakes; and

<sup>2</sup> Formerly the sensitive activities policy.

- 3.2.1.6 comply with the JFSC's policy on outsourcing as may be updated from time to time.
- 3.2.2 A Fund must:
  - 3.2.2.1 ensure that its *principal persons*, *key persons* and any other employees are fit and proper for their roles;
  - 3.2.2.2 vet and monitor the competence and probity of its *principal persons*, *key persons* and any employees;
  - 3.2.2.3 have proper procedures in place to determine that its *principal persons*, *key persons* and all other employees at the time of appointment to a role are fit and proper; and
  - 3.2.2.4 obtain and retain copies of documentary evidence of qualifications held by employees which are to be used by the Fund to assess the competence of those employees.
- 3.2.3 Where complex transactions are undertaken or complex structures are administered (either by the nature of the entity or the jurisdiction of the proper law or forum of that entity), more specialised qualifications, experience or other competencies are likely to be required and where this occurs Funds should ensure such additional requirements are met.

Notes:

- 1 This section is subject to the restrictions imposed by the Rehabilitation of Offenders (Jersey) Law 2001, which prohibits an employer requesting information from its employees and prospective employees about convictions that are "spent". This general prohibition is subject to exceptions provided by the Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002 (**Exceptions Regulations**). The exceptions cover principal persons, key persons and defined categories of employees of holders of and applicants for Certificates under the Law.
- 2 As a consequence of Regulation 21 of the Exceptions Regulations, the Rehabilitation of Offenders (Jersey) Law 2001 does not prohibit employers from asking principal persons, key persons and defined categories of employees about convictions for 'relevant offences', even though such convictions may have been obtained some time ago and would otherwise be regarded as 'spent convictions' as defined by the Rehabilitation of Offenders (Jersey) Law 2001. To be consistent with the Code, it will be necessary for employers to make use of such exceptions when screening employees who are subject to these exceptions.
- 3 'Employees' as identified in this section includes not only direct employees, but also indirect employees such as temporary and contracted employees and other contracted service providers.
- 4 Appointment to a role may include a promotion or a move to a different role within the Fund.
- 5 The JFSC may periodically request the Fund to provide records or such other means of demonstrating the competence of any principal persons, key persons and employees.
- 6 With reference to paragraph 3.2.1.5, the sound business practice policy is primarily concerned with avoiding reputational damage to Jersey. A Fund with an investment focus on one or more of the listed activities in the policy should be brought to the

*attention of the JFSC in writing by the Certificate Holder unless the focus is clear from the offering documents produced to the JFSC when the Fund is approved.*

### 3.3 Continuing Professional Development (CPD)

- 3.3.1 Where a *Fund* is constituted as a company, *CPD* is a compulsory requirement for all *principal persons* and *key persons* of the *Fund*. Additionally, *CPD* is compulsory for *key persons* of *Funds* structured as unit trusts or limited partnerships. The *Fund* is required to maintain *CPD* records for these persons in their current roles, although it is permissible for the *Fund* to require these persons to keep their own individual records and to account to the *Fund* on a regular basis.
- 3.3.2 The *Fund* is responsible for ensuring that the *CPD* is appropriate to those persons identified in paragraph 3.3.1 taking into account their job descriptions or roles, current duties and future development needs.
- 3.3.3 The persons identified in paragraph 3.3.1 may achieve their *CPD* targets by adhering to the requirements of their own relevant professional body. However, where the relevant professional body does not prescribe how *CPD* should be achieved, there are a number of acceptable ways to attain the minimum *CPD* requirement, including, but not restricted to:
- 3.3.3.1 studying for further qualifications;
  - 3.3.3.2 in-house training, seminars, conferences and product presentations;
  - 3.3.3.3 computer-based training;
  - 3.3.3.4 one-to-one tuition;
  - 3.3.3.5 reading relevant professional and trade magazines;
  - 3.3.3.6 personal structured study; and
  - 3.3.3.7 attending external training courses.
- 3.3.4 The *Fund* is responsible for determining how much time is to be spent on *CPD* each year. As a general indication, it is expected that the majority of those persons identified in paragraph 3.3.1 should undertake not less than 25 hours per year, of which not more than 5 hours may be relevant reading. This amount should be prorated for those employees that work part-time. However, the *JFSC* acknowledges that such a level of *CPD* may not be appropriate in the context of every type of *Fund*. In such circumstances a reduced level of *CPD* may be appropriate provided that it is determined in accordance with a reasoned, written policy setting out the *Fund's* approach to determining acceptable *CPD* levels.

#### Notes:

- 1 *Where reliance is being placed on the requirements of professional bodies that have their own CPD requirements as a condition of continued membership, the Fund must provide individuals with adequate opportunity in order to enable them to comply with these professional requirements. Additionally, the Fund must take a view on the extent to which such professional CPD is relevant to the Fund's business and may therefore be counted towards the persons' work-related CPD.*

- 2 *It is also recognized that some individuals may be subject to CPD requirements as a result of other Codes of Practice issued from time to time by the JFSC. In these circumstances it may be impractical for such individuals to spend the amount of time determined in accordance with paragraph 3.3.4 on CPD which is relevant to that individual's role in relation to the Fund and it is a matter for the Fund to determine a suitable level of CPD under the Code for such persons.*
- 3 *Where an entity registered as a fund services business under the Financial Services (Jersey) Law 1998 is providing its own staff to act as key persons or principal persons in respect of the Fund, the JFSC recognizes that such persons will already be subject to CPD requirements under the Fund Services Business Code of Practice. CPD performed in that way will count towards meeting the CPD requirements under the Code. Where a key person or principal person is provided by a fund service provider, the Certificate Holder may rely on a written confirmation by that fund service provider that such person has satisfied their CPD requirement in respect of the Fund.*
- 4 *The JFSC acknowledges that not all directors of the Fund will be locally resident and subject to CPD requirements under other laws or Codes of Practice. The JFSC considers it is acceptable for the Fund to demonstrate (through board minutes or otherwise) that any non-resident directors have received periodic updates on changes to the regulatory requirements including legislation to counter money laundering or the financing of terrorism.*

### 3.4 Compliance Officer, Money Laundering Reporting Officer and Money Laundering Compliance Officer

This section sets out the responsibilities of the Compliance Officer, the Money Laundering Reporting Officer and the Money Laundering Compliance Officer, and the importance the JFSC attaches to these roles.

- 3.4.1 A *Fund* must appoint a Compliance Officer.
- 3.4.2 The Compliance Officer must:
  - 3.4.2.1 have appropriate independence and direct access to the *Fund's* board of directors or equivalent of the company, trustee(s) or general partner(s);
  - 3.4.2.2 hold either an appropriate (as determined by the *Fund*) compliance or other professional qualification or be studying towards such a qualification;
  - 3.4.2.3 have unfettered access to all business lines and support departments;
  - 3.4.2.4 have appropriate status within the *Fund* to ensure that directors and senior management react to and determine whether to act upon his or her recommendations;
  - 3.4.2.5 be able to devote sufficient time, and have sufficient resources to discharge properly the responsibilities of the position; and
  - 3.4.2.6 be based in Jersey.
- 3.4.3 The *Fund* must ensure that the Compliance Officer is responsible for:
  - 3.4.3.1 ensuring the *Fund* has robust arrangements for compliance with *Applicable Rules*;



- 3.4.3.2 ensuring appropriate monitoring of operational performance and promptly instigating action to remedy any deficiencies in the arrangements;
- 3.4.3.3 ensuring that a register is maintained of breaches of *Applicable Rules* and regulatory requirements;
- 3.4.3.4 providing the principal point of contact on regulatory matters; and
- 3.4.3.5 immediately notifying the JFSC in writing:
  - › if a breach of *Applicable Rules* occurs that affects the rights of *Unitholders* or the operation of the *Fund* and is not satisfactorily resolved within one month; or
  - › if the *Fund* considers it to be in the best interests of the *Fund* or *Unitholders*; or
  - › of a breach or series of breaches that suggests the *Fund* is failing to meet any of the requirements of the *Code*.
- 3.4.4 In the event that a Compliance Officer is temporarily unable to fulfill his or her duties, the *Fund* must notify the JFSC in writing and designate an appropriately skilled and experienced alternate. The JFSC considers that a period in excess of four weeks would constitute being temporarily unable to fulfill their responsibilities.
- 3.4.5 It is a requirement of the Money Laundering (Jersey) Order 2008 that a *Fund* must appoint a Money Laundering Reporting Officer and a Money Laundering Compliance Officer. The relevant Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism sets out additional requirements for the *Fund*.
- 3.4.6 The roles of Compliance Officer, Money Laundering Reporting Officer and Money Laundering Compliance Officer meet the definition of a *key person* as defined by Article 1 of the *Law*. Consequently, Article 12A of the *Law* applies and, prior to being appointed to a *key person* role, the prospective individual must:
  - 3.4.6.1 have submitted either a completed Personal Questionnaire or a Proforma Letter for Advising Changes, as appropriate; and
  - 3.4.6.2 be in receipt of the JFSC's confirmation that it has no objection to the individual being appointed.

**Notes:**

- 1 *Where the Fund has an inexperienced compliance resource, the JFSC would expect the Fund to support this area of operation where necessary, either internally or possibly through the use of consultancy services.*
- 2 *There is no specific requirement for a Fund to be subject to an internal audit review. However, the JFSC will recognise and take comfort from those Funds that have effective internal audit controls, or where such functions are provided from elsewhere within a group. The JFSC requires access to internal audit reports and requires that such reports are made available to external auditors.*
- 3 *Where operating volumes are at a level for it to be appropriate, the Compliance Officer, the Money Laundering Reporting Officer and the Money Laundering Compliance Officer maybe the same person.*

- 4 *In the case of unit trusts and limited partnerships, where the trustee or general partner is a fund service provider regulated under the Financial Services (Jersey) Law 1998 as amended, it must comply with the Code of Practice for Fund Services Business under which it is required to appoint a Compliance Officer, Money Laundering Reporting Officer and a Money Laundering Compliance Officer in respect of fund services business. In that situation it is possible for the same person to also fulfil the roles described in Note 3 in respect of the Fund.*
- 5 *Where the same Compliance Officer, Money Laundering Reporting Officer or Money Laundering Compliance Officer is appointed for more than one fund, the JFSC will accept one written notification setting out the name of each fund affected by the change. Such notification should be sent to the JFSC and not to the Companies Registry.*

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### 3.5 Complaints

- 3.5.1 A *Fund* must establish and maintain an effective *complaint* handling system and procedures and, in particular, must:
  - 3.5.1.1 maintain adequate records of *complaints* against the *Fund*, including a central register that contains details of any agreed compensation or compromise;
  - 3.5.1.2 inform *Unitholders* of how *complaints* may be made and how they may expect these to be responded to;
  - 3.5.1.3 handle *complaints* transparently, competently, diligently, and impartially;
  - 3.5.1.4 provide, in writing, within five business days, unless expressly agreed by the complainant to the contrary, an acknowledgement that their *complaint* has been received, including confirmation that the *complaint* is being considered and providing the information referred to at 3.5.1.2;
  - 3.5.1.5 keep the complainant informed about the progress of their *complaint*, including details of any actions being taken to resolve their *complaint*;
  - 3.5.1.6 advise the complainant in writing when the *complaint* is considered closed and where the *complaint* is not upheld, clearly state the reason(s) for rejecting the *complaint*;
  - 3.5.1.7 consider the *complaints* data for patterns emerging.
- 3.5.2 As soon as it becomes aware, a *Fund* must notify the JFSC in writing:
  - 3.5.2.1 if a *complaint* is not satisfactorily resolved within three months of it being lodged;
  - 3.5.2.2 if a pattern to *complaints* is identified; or
  - 3.5.2.3 if the *Fund* considers it to be in the best interests of the *Unitholders* or complainant; or
  - 3.5.2.4 if a *complaint* or series of *complaints* suggest the *Fund* is failing to meet any of the requirements of the *Code*.

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**Note:**

- 1 *With respect to 3.5.2, “as soon as it becomes aware” applies from the point at which the Fund knows, or has reasonable grounds for believing, that any of the matters stated has occurred or may be about to occur, even where it is outside the control of the Fund.*

### 3.6 Record Keeping

3.6.1 A Fund must:

- 3.6.1.1 maintain a policy and procedures manual that covers the management of the business of the Fund;
- 3.6.1.2 keep adequate, orderly and up-to-date records, not only of business transacted (including all transactions carried out on a Fund’s behalf) but also of its internal organisation and risk management systems;
- 3.6.1.3 document systems and procedures intended to safeguard Fund Assets;
- 3.6.1.4 have a clearly documented policy regarding the retention of records, which includes details of how the Fund will comply with paragraph 3.6.4 in the event that the Fund is wound up.

3.6.2 A Fund must maintain such books and records so that they may be produced in Jersey in a legible form without delay.

3.6.3 A Fund must permit the manager, general partner, trustee, custodian or the Fund’s auditors (as applicable) or any of their duly authorised agents at all reasonable times to inspect the records of transactions carried out by the Fund.

3.6.4 The period for which all records must be kept must be the later of:

- 3.6.4.1 the period required by the Applicable Rules; or
- 3.6.4.2 10 years.

**Note:**

- 1 *For unit trusts and limited partnerships where the trustee or general partner are also fund service providers regulated under the Financial Services (Jersey) Law 1998 as amended, the JFSC accepts that the policy and procedures manual applicable to the fund service provider may also be applied to the Fund for the purposes of paragraph 3.6.1.1.*

### 3.7 Financial statements

3.7.1 Submission of financial statements

- 3.7.1.1 The Certificate Holder must provide to the JFSC one copy of each of the following:
  - › the audited financial statements of the Fund; and
  - › any interim report and accounts of the Fund that may be prepared and provided to Unitholders.

- 3.7.1.2 The audited financial statements must be filed with the *JFSC* within seven months of the end of the *Fund's* financial year or such earlier date specified in the *Applicable Rules* of the *Fund*.
  - 3.7.1.3 Interim reports must be sent to the *JFSC* as soon as they are sent to any person entitled to receive them.
- 3.7.2 Auditors
  - 3.7.2.1 An auditor must be appointed for each *Fund*.
  - 3.7.2.2 The auditor must have the same qualifications as are required under the Companies (Jersey) Law 1991, as amended, unless an officer of the *JFSC* agrees in writing to the appointment of an auditor with different qualifications.
  - 3.7.2.3 There shall be no change in auditor of the *Fund* without the *JFSC's* consent.
- 3.7.3 Accounting standards
  - 3.7.3.1 The financial statements of a *Fund* shall be prepared in accordance with:
    - › International Financial Reporting Standards;
    - › United Kingdom Accounting Standards;
    - › The United States of America Generally Accepted Accounting Principles; or
    - › another standard that is generally recognised and agreed between the *Certificate Holder* and the *JFSC*.
  - 3.7.3.2 In addition, depending on the legal form of the *Fund*, the financial statements shall be prepared in accordance with:
    - › the Companies (Jersey) Law 1991, as amended;
    - › the limited partnership agreement; or
    - › the trust instrument.
- 3.7.4 Auditing standards
  - 3.7.4.1 The audit leading to the auditor's report, and the audit report shall be undertaken in accordance with:
    - › the International Standards on Auditing (UK and Ireland) issued by the Auditing Practices Board;
    - › the International Standards on Auditing issued by the International Federation of Accountants;
    - › the Generally Accepted Auditing Standards and Statements on Auditing Standards issued by the American Institute of Certified Public Accountants; or
    - › another standard that is generally recognised and agreed between the *Certificate Holder* and the *JFSC*.

**Notes:**

- 1 *Where the Fund is a protected cell company, incorporated cell company or an umbrella fund, the requirements of paragraph 3.7 apply to each constituent part of the Fund and to each cell.*
- 2 *Submission of financial statements should be made to the JFSC. Submission to the Companies Registry does **not** constitute submission to the JFSC for the purposes of paragraph 3.7.1.2.*
- 3 *Funds constituted in a form other than a company and existing at the date of implementation of the Code have two years from the date of implementation in which to comply with the revised filing requirement.*
- 4 *With reference to paragraph 3.7.2.3, the JFSC will respond to a request for consent within 10 business days from the date of receipt provided the proposed auditor has already been approved by the JFSC in connection with another fund.*
- 5 *The auditors do not have to declare that the Fund has complied with the Code.*
- 6 *Where the Fund is a unit trust or limited partnership, the audit opinion should refer to the financial statements being prepared in accordance with the trust deed or the partnership agreement. The JFSC expects any departures from the accounting standards set out in paragraph 3.7.3.1 to be clearly stated within the trust deed or partnership agreement.*
- 7 *The requirements in relation to departures from accounting standards will apply to new funds, however the JFSC will follow up on any existing departures on a case by case basis on submission of the Fund's audited financial statements. The JFSC would like to understand the rationale behind any such departures in order to ensure they continue to enable fair and reliable information to be relayed to investors.*

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### 3.8 Valuations

- 3.8.1 Net asset valuations of a *Fund* should be prepared in an appropriate, regular and timely manner in accordance with the *Applicable Rules*.
- 3.8.2 Net asset values of a *Fund* must be made available or published to *Unitholders* in accordance with the *Applicable Rules*.

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## 4 A Fund must be transparent in its business arrangements with Unitholders.

- 4.1 A *Fund* must disclose on its stationery and advertising material that it is regulated by the Jersey Financial Services Commission.
- 4.2 A *Fund* must be open and transparent with *Unitholders* about the fees, charges and any other remuneration or expenses (both initial and recurring) charged to the *Fund*, and any arrangements to amend them.
- 4.3 In the case of any amounts payable directly out of a *Fund's* property, the *JFSC* will regard the obligation in paragraph 4.2 as adequately discharged if such amounts, or the basis for their calculation, are fully disclosed in the *Fund's* prospectus.

**Note:**

- 1 *Stationery and advertising material that were produced prior to the introduction of the Code (2 April 2012) should be amended to ensure compliance with paragraph 4.1 as soon as it is practical to do so.*

## 5 A Fund must maintain, and be able to demonstrate the existence of, both adequate financial resources and adequate insurance.

- 5.1 Adequate resources are those which are, in the opinion of the *Certificate Holder*, sufficient to meet the commitments of the *Fund*.
- 5.2 With regard to insurance, the scope and level of risk shall be assessed by the governing body of the *Fund*.

*Notes:*

- 1 *An example of where insurance may be appropriate for the Fund is title insurance.*
- 2 *With respect to the amount of insurance cover required, the JFSC has no specific levels in mind but expects the Certificate Holder to have considered the matter carefully.*

## 6 A Fund must deal with the JFSC and other authorities in Jersey in an open and co-operative manner.

- 6.1 There is a need for candour and co-operation in a *Fund's* relationship with the JFSC and other authorities in Jersey. This principle extends to the provision of information and notification of significant events concerning non-regulated activities and other members of a corporate group.
- 6.2 The *Fund* must provide the JFSC with such information regarding the *Fund* and any of its Affiliates or *Associates of the Fund* as a duly authorised officer of the JFSC may reasonably request.
- 6.3 In addition to the requirements of the relevant law, a *Fund* must allow, and shall procure that any *fund service provider*, agent or subcontractor of the *Fund* also allows, inspections by or on behalf of the JFSC of any part of the activities they undertake in relation to the *Fund*. The *Fund* must provide all reasonable assistance in connection with any such inspection and shall procure that any such *fund service providers*, agents or subcontractors also provide all reasonable assistance.
- 6.4 Where a *Fund* fails to comply with one or more parts of the *Code*, the observance or non-observance of this principle will be considered relevant to the question of mitigation or aggravation.

**Note:**

- 1 *Paragraph 6.3 replaces the standard fund certificate condition dealing with the appointment of agents and service providers and inspections by the JFSC. The condition was limited to where the agent or service provider was located in Jersey, however paragraph 6.3 applies to agents and service providers located anywhere. By extending the geographical scope in this manner the JFSC does not intend existing Funds to have to seek changes to their existing agency and service provider agreements.*

### Other matters requiring consent of or notification to the JFSC

- 6.5 Where the *Fund* is a company, all changes of beneficial ownership of the management shares of the *Fund* (or management or non-participating shares of the *Fund* where such shares have rights over participating shares) require the prior approval of a duly authorised officer of the JFSC.
- 6.6 In addition to its obligations under the *Applicable Rules*, and notwithstanding the generality of paragraph 6.1, certain amendments to the *Fund* will always require prior approval of a duly authorised officer of the JFSC:
- 6.6.1 a change of name of the *Fund*; and
  - 6.6.2 the adoption of, or a change in, any business name or trading name under which the *Fund* conducts its activities.



- 6.7 In addition to its obligations under the *Applicable Rules*, and notwithstanding the generality of paragraph 6.1, notifications to the JFSC will always be required in writing from a *Fund* in respect of the following and in the timescales indicated in each case:
- 6.7.1 a proposed change in the address of the registered office or principal office of the *Fund* or its nominated contact person (notification to be given within five business days of the proposal being agreed);
  - 6.7.2 at least 28 calendar days prior to the summary winding up or voluntary dissolution of a *Fund*;
  - 6.7.3 a proposed application by the *Fund* for authorisation under the laws and rules of any territory or regulatory authority, and of any refusal of such application or withdrawal of such authorisation or, where the *Fund* is to be listed, a refusal to such listing (notification to be given as soon as the *Fund* becomes aware);
  - 6.7.4 a *Fund* failing to launch within 90 calendar days of the latest of:
    - 6.7.4.1 the JFSC granting a *Certificate*;
    - 6.7.4.2 if the offering document of the *Fund* specifies a first closing date, that date; or
    - 6.7.4.3 such later date as a duly authorised officer of the JFSC may agree in writing;  
(notification to be given no later than seven business days after the 90 calendar day period has expired)
  - 6.7.5 a *Fund* failing to raise the minimum or anticipated amount of investment within the time set out in the *Applicable Rules* (notification to be given as soon as the *Fund* becomes aware);
  - 6.7.6 an error in the pricing of *Units* of the *Fund* greater than 0.5 per cent (notification to be given as soon as the *Fund* becomes aware);
  - 6.7.7 receipt of a notice requisitioning a general meeting of *Unitholders* in the *Fund* together with a copy of the notice (notification to be given within five business days);
  - 6.7.8 an inability to calculate the net asset value of the *Fund* (notification to be given as soon as the *Fund* becomes aware);
  - 6.7.9 a proposal to suspend or defer rights of redemption or trading of *Units* in the *Fund* (notification to be given as soon as the *Fund* becomes aware); and
  - 6.7.10 a suspension of the *Fund* on any exchange on which it is listed (notification to be given as soon as the *Fund* becomes aware).
- 6.8 Prior written notice of any other material changes to *Unitholders'* rights is also required, except where, for a *Jersey Expert Fund*, a *Jersey Listed Fund* or a *Jersey Eligible Investor Fund*, such changes are in accordance with the *Jersey Expert Fund Guide*, the *Jersey Listed Fund Guide* or the *Jersey Eligible Investor Fund Guide* as appropriate.
- 6.9 A *Fund* must also notify the JFSC in writing as soon as it becomes aware of any of the following:
- 6.9.1 the presentation of any application to the court for a declaration of *désastre*, or the winding up of the *Fund* or a company which is a subsidiary or holding company of

- the *Fund*, or the summoning of any meeting to consider a resolution to wind-up the *Fund* or a company which is a subsidiary or holding company of the *Fund*;
- 6.9.2 the application by any person for the commencement of any insolvency proceedings, appointment of any receiver, administrator or provisional liquidator under the law of any country in respect of the *Fund* or any of its subsidiaries;
- 6.9.3 the making or any proposals for the making of a composition or arrangement with creditors of the *Fund*;
- 6.9.4 where the *Fund* is a limited partnership, an application to wind up or dissolve the partnership;
- 6.9.5 the imposition of disciplinary measures or disciplinary sanctions on the *Fund*, or any parent, subsidiary or *Affiliate of the Fund*, in relation to its regulated business by any relevant supervisory authority, or professional body, including any disciplinary action taken against any *principal person* or *key person*;
- 6.9.6 the conviction of the *Fund* or any *principal person*, *key person* or employee of the *Fund* for any offence under the legislation of any country relating to the conduct of financial services business or involving fraud or dishonesty, or the conviction of any parent, subsidiary or *Affiliate of the Fund* for any offence under the legislation of any country;
- 6.9.7 the re-registration of a *Fund* incorporated with unlimited liability as a limited liability company or the issue of limited shares by a *Fund* whose issued share capital consists entirely of unlimited shares;
- 6.9.8 the withdrawal or refusal of any application for, or the revocation of, membership of any professional body in respect of a *principal person* in any jurisdiction;
- 6.9.9 the appointment of inspectors (howsoever named) by a statutory or other regulatory authority to investigate the affairs of:
- 6.9.9.1 the *Fund*;
- 6.9.9.2 an *Affiliate of the Fund*; or
- 6.9.9.3 any parent or subsidiary of the *Fund*;
- 6.9.10 where the *Fund*, subject to any mandatory legal restraints and duties of confidentiality, considers that another person is acting in breach of its duties to the *Fund* or the *Unitholders*;
- 6.9.11 any matter which a *Fund* considers on reasonable grounds to be unauthorised by the constitution of the *Fund* or its material contracts or not disclosed in its offer document and which is likely to cause material harm to the interests of *Unitholders*;
- 6.9.12 any other matter which the *Fund* considers would be material to the requirements placed on the *Fund*, any of its *key persons* or *principal persons*, or any of its employees by the *Law* or the *Code*;
- 6.9.13 failure or likely failure on the part of the *Fund* to comply with deadlines or time limits imposed on it by the *Applicable Rules*; and
- 6.9.14 a decision by the *Fund*'s auditor to qualify its audit report or to raise an emphasis of matter therein.

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### **Notifying or providing information via the JFSC's online portal**

**6.10** Where the JFSC so specifies (whether in the Code or otherwise) a Fund must notify or provide information by means of the JFSC's online portal.

**6.11** If, because of a systems failure of any kind, a Fund is unable to access the online portal to make a relevant notification or provide required information it must notify the JFSC in writing within one business day of the systems failure being identified.

#### **Notes:**

- 1 Notification should be made to the JFSC. Notification to the Companies Registry does **not** constitute notification to the JFSC for the purposes of this principle.
- 2 The JFSC considers that the obligations of a Fund under Principle 6 include the timely provision of data required in connection with a Fund's regulatory fees and the timely payment of fees due.
- 3 With regard to paragraph 6.1, the JFSC only expects information and notification to be made where the Fund is aware of the same or, in the case of subsidiaries of the Fund, the Fund is reasonably able to obtain such information.
- 4 The duties imposed by paragraphs 6.7.3, 6.7.5, 6.7.6, 6.7.8, 6.7.9, 6.7.10, and 6.9.1 to 6.9.14 inclusive arise as soon as the Fund knows, or has reasonable grounds for believing, that any of the matters stated in those paragraphs has occurred or may be about to occur, even where it is outside the control of the Fund. This is particularly important with reference to paragraph 6.9.13 where the JFSC requires prompt notice of the failure or likely failure by the Fund to meet any key deadline set out in the Applicable Rules, such as the failure to produce accounts, late valuations and inability to provide valuations.
- 5 Where a Fund wishes the JFSC to cancel its Certificate in accordance with Article 8B of the Law, it must submit a request to the JFSC in writing. A proforma request is available from the JFSC.
- 6 Notice under paragraphs 6.9.1 to 6.9.3 is not required where a subsidiary of a Fund is created solely to hold assets of the Fund and is the subject of a solvent winding up.

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## 7 A Fund must not make statements that are misleading, false or deceptive.

- 7.1 For the purposes of this principle, the *JFSC* does not consider a *Fund's* prospectus to be an advertisement.
- 7.2 A *Fund* must take reasonable steps to ensure that its advertisements and information provided to *Unitholders* are not misleading, false or deceptive.
- 7.3 Advertisements in respect of the *Fund* (whether issued by the *Fund* or its *fund service providers*) must not contain:
- 7.3.1 a statement, promise or forecast, unless at the time the advertisement is made, the *Fund* has reasonable grounds for believing that it is not misleading, false or deceptive;
  - 7.3.2 a statement of opinion held by any person unless, at the time the advertisement is made, the *Fund* has reasonable grounds for believing that it is the honestly held opinion of that person at that time;
  - 7.3.3 a statement of fact unless, at the time the advertisement is made, the governing body of the *Fund* has reasonable grounds for believing it will continue to be true for so long as the advertisement continues to be made in current publications;
  - 7.3.4 a statement about the scale of activities of, or any of the activities of, or the resources of or available to, the *Fund* or that person's group or affiliation unless the *Fund*, at the time the advertisement is made, has reasonable grounds for believing it is not misleading, false or deceptive;
  - 7.3.5 a statement relating to taxation benefits unless it is properly qualified to show what it means in practice and to whom such benefits apply;
  - 7.3.6 a statement relating to customer confidentiality unless it is properly qualified to show the limits of any confidentiality assurance made;
  - 7.3.7 a statement of comparison with other funds unless the basis of comparison is clearly stated and the comparison is fair;
  - 7.3.8 a statement implying that the service is only available for a limited period or in limited form, if such is not the case; and
  - 7.3.9 a statement implying that the advertisement constitutes an offer to participate in the *Fund*.
- 7.4 An advertisement in respect of the *Fund* (whether issued by the *Fund* or its *fund service providers*) made in a permanent form must not contain:
- 7.4.1 a statement of fact which the *Fund* does not at the time the advertisement is made have reasonable grounds, supported by documentary evidence, for believing to be true; and
  - 7.4.2 a statement of opinion held by any person which the *Fund* does not at the time the advertisement is made have reasonable grounds, supported by documentary evidence, for believing to be the honestly held opinion of that person at that time.

- 7.5 The content and format of any advertisement in respect of the *Fund* (whether issued directly by the *Fund* or its *fund service providers*) must not:
- 7.5.1 be designed so as to be likely to be misunderstood;
  - 7.5.2 be designed so as to disguise the significance of any warning, statement, role to be performed by a *fund service provider* or information which is required to be included under the *Code*; and
  - 7.5.3 signify in any way that the advertisement is approved by the JFSC.
- 7.6 An advertisement in respect of the *Fund* (whether issued directly by the *Fund* or its *fund service providers*) may include a quotation from a statement made by any person provided that:
- 7.6.1 where the person is an employee or *Associate of the Fund*, that fact is disclosed in the advertisement;
  - 7.6.2 the quotation is included with that person's written consent;
  - 7.6.3 the statement is relevant to the subject of the advertisement;
  - 7.6.4 where the whole of the statement is not quoted, what is quoted represents fairly the message contained in the whole of the statement; and
  - 7.6.5 the statement has not become inaccurate or misleading subsequent to it being made.

**Notes:**

- 1 *Under Article 10 of the Law, it is an offence for any person knowingly or recklessly to make a misleading, false or deceptive statement, promise or forecast for the purpose of inducing another person to enter into, or to refrain from entering into, an investment agreement or to exercise, or to refrain from exercising, any rights conferred by Units.*
- 2 *The JFSC will generally decline to consider and comment on advertisements before issue.*
- 3 *The requirements of principle 7 do not apply to advertisements which only contain a business name, trademark or logo.*
- 4 *The requirements of principle 7 are not intended to capture advertising or promotional literature forwarded by the Fund to its Unitholders on behalf of third parties. It should be clearly stated that the literature is not approved by the Fund or the JFSC.*
- 5 *It may not be possible or practicable to list within an advertisement all areas of risk that might apply to a particular product or service. Similarly, it may not be possible or practicable to specify all of the relevant terms and conditions. The necessary extent to which the risk warnings and the terms and conditions are specified in an advertisement will be dependent upon the nature of the products or services being advertised.*
- 6 *Advertisements made in permanent form would comprise all forms of advertisements made in any way other than orally.*
- 7 *The opening paragraphs make clear that the requirements only apply to advertisements by the Fund (i.e. those initiated by the governing body of the Fund) or a fund service provider (i.e. a body that is engaged by the Fund under a Fund Services*

*Business Agreement). It would be unreasonable for the JFSC to expect the Certificate Holder to be responsible for acts of others over which it has no control.*

- 8 For existing advertisements that may not already comply with the Code, the JFSC expects the Certificate Holder to use reasonable efforts to ensure adherence, particularly when the advertisement is reprinted or amended.*
- 9 While interpretation of statutes and subordinate legislation is a matter for the courts, the JFSC does not consider the Financial Services (Advertising) (Jersey) Order 2008 applies to advertisements for Funds. Registered fund service providers should bear in mind, however, that the Code of Practice for Fund Services Business prohibit a registered person from making advertisements that are, among other things, false and misleading. Such advertisements could include statements concerning a Fund.*

## 8 A Fund must at all times comply and be operated in accordance with any applicable Guide.

### 8.1 OCIFs

- 8.1.1 Where the *Fund* is open-ended and available to the general public, it will be a condition on the *Certificate* that the *Fund* adheres to the terms of the *OCIF Guide*. An *OCIF* must comply and be operated at all times in accordance with the *OCIF Guide* as detailed in Schedule 4 to the *Code* unless the prior written consent of a duly authorised officer of the *JFSC* is obtained.
- 8.1.2 Any changes to the *Fund* require the prior written consent of a duly authorised officer of the *JFSC* unless the changes would not materially affect the import of the information previously supplied in connection with the application made to the *JFSC* to establish the *Fund*.
- 8.1.3 The issue of any prospectuses, explanatory memoranda or other documents inviting offers for subscription, sale or exchange of any *Units* in the *Fund* requires the prior written consent of a duly authorised officer of the *JFSC* unless any waiver from this requirement is agreed with the *JFSC* in writing. The requirement does not apply where the invitation is subject to the Collective Investment Funds (Certified Funds - Prospectuses) (Jersey) Order 2012, as amended.
- 8.1.4 Any change of *fund service provider* in connection with the *Fund* requires the prior written consent of a duly authorised officer of the *JFSC*.
- 8.1.5 There shall be no material change to the *Constitutive Documents* or *Fund Services Business Agreements* of the *Fund* without the prior written consent of a duly authorised officer of the *JFSC*.

*Note:*

- 1 The *JFSC* is willing to consider granting variances from the *OCIF Guide* in appropriate cases. Such variations will be set out on the *Certificate* by way of condition.

### 8.2 Jersey Expert Fund

- 8.2.1 A *Jersey Expert Fund* must comply at all times and be operated in accordance with the *Jersey Expert Fund Guide*, as detailed in Schedule 2 to the *Code*. The *Fund* must notify the *JFSC* in writing immediately if it becomes aware, or has reasons to believe that the *Fund* is, or may not be, in compliance with or operated in accordance with the *Guide*.
- 8.2.2 The *Certificate Holder* must provide the *JFSC* with a copy of the *Fund's* prospectus in its final, printed form within 10 business days of its publication.
- 8.2.3 Any changes to the *Fund* that are not in accordance with the *Jersey Expert Fund Guide* will require the prior written consent of a duly authorised officer of the *JFSC*.
- 8.2.4 Any changes to the *Fund* that are in accordance with the *Jersey Expert Fund Guide* but affect the information contained in the *Jersey Expert Fund* application submitted to the *JFSC* require to be notified to the *JFSC* in writing within 28 calendar days of the change taking place.

- 8.2.5 Any change of *fund service provider* in connection with the *Fund* requires the prior written consent of a duly authorised officer of the JFSC.

### 8.3 Jersey Listed Fund

- 8.3.1 A *Jersey Listed Fund* must comply at all times and be operated in accordance with the *Jersey Listed Fund Guide*, as detailed in Schedule 3 to the *Code*. The *Fund* must notify the JFSC in writing immediately that it becomes aware or has reasons to believe that the *Fund* is, or may not be, in compliance with or operated in accordance with the *Guide*.
- 8.3.2 The *Certificate Holder* must provide the JFSC with a copy of the *Fund's* prospectus in its final, printed form within 10 business days of its publication.
- 8.3.3 Any changes to the *Fund* that are not in accordance with the *Jersey Listed Fund Guide* will require the prior written consent of a duly authorised officer of the JFSC.
- 8.3.4 Any changes to the *Fund* that are in accordance with the *Jersey Listed Fund Guide* but affect the information contained in the *Jersey Listed Fund* application submitted to the JFSC require to be notified to the JFSC in writing within 28 calendar days of the change taking place.
- 8.3.5 Any change of *fund service provider* in connection with the *Fund* requires the prior written consent of a duly authorised officer of the JFSC.
- 8.3.6 The *Fund* remains listed at all times on a recognized stock exchange as defined in the *Jersey Listed Fund Guide*. The *Certificate Holder* must notify the JFSC in writing immediately if the *Fund* is refused permission to be listed on a recognized stock exchange or market, if such permission is revoked or amended in a significant way, or if there is any other material event affecting the listing of the *Fund*.

### 8.4 Jersey Eligible Investor Fund

- 8.4.1 A *Jersey Eligible Investor Fund* must comply at all times and be operated in accordance with the *Jersey Eligible Investor Fund Guide*, as detailed in Schedule 5 to the *Code*. The *Fund* must notify the JFSC in writing immediately that it becomes aware, or has reasons to believe that the *Fund* is, or may not be, in compliance with or operated in accordance with the *Guide*.
- 8.4.2 The *Certificate Holder* must provide the JFSC with a copy of the *Fund's* prospectus in its final, printed form within 10 business days of its publication.
- 8.4.3 Any changes to the *Fund* that are not in accordance with the *Jersey Eligible Investor Fund Guide* will require the prior written consent of a duly authorised officer of the JFSC.
- 8.4.4 Any changes to the *Fund* that are in accordance with the *Jersey Eligible Investor Fund Guide* but affect the information contained in the *Jersey Eligible Investor Fund* application submitted to the JFSC require to be notified to the JFSC in writing within 28 calendar days of the change taking place.
- 8.4.5 Any change of *fund service provider* in connection with the *Fund* requires the prior written consent of a duly authorised officer of the JFSC.



## 8.5 Funds which are not an OCIF, Jersey Expert Fund, Jersey Listed Fund or Jersey Eligible Investor Fund

- 8.5.1 Where the *Fund* is aimed at more sophisticated investors, or is closed-ended, there shall be no material change to the *Fund* without the prior written consent of a duly authorised officer of the *JFSC*.
- 8.5.2 Any changes to the *Fund* require the prior written consent of a duly authorised officer of the *JFSC* unless the changes would not materially affect the import of the information previously supplied in connection with the application made to the *JFSC* to establish the *Fund*.
- 8.5.3 The issue of any prospectuses, explanatory memoranda or other documents inviting offers for subscription, sale or exchange of any *Units* in the *Fund* requires the prior written consent of a duly authorised officer of the *JFSC* unless any waiver from this requirement is agreed with the *JFSC* in writing. The requirement does not apply where the invitation is subject to the Collective Investment Funds (Certified Funds - Prospectuses) (Jersey) Order 2012, as amended.
- 8.5.4 Any change of *fund service provider* in connection with the *Fund* requires the prior written consent of a duly authorised officer of the *JFSC*.
- 8.5.5 There shall be no material change to the *Constitutive Documents* or *Fund Services Business Agreements* of the *Fund* without the prior written consent of a duly authorised officer of the *JFSC*.
- 8.5.6 The *JFSC* considers the *OCIF Guide* to be a guide for the *JFSC's* expected level of disclosure for open-ended and closed-ended funds aimed at more sophisticated investors and where a minimum investment is required (but which is below the *Jersey Expert Fund* threshold), other than *Jersey Expert Funds*, *Jersey Listed Funds* and *Jersey Eligible Investor Funds*. Consequently, the *JFSC* expects *Funds* of this nature to be aligned with the *OCIF Guide* so far as possible unless application of the *OCIF Guide* requirements is not feasible or is inappropriate in light of the nature of the *Fund* and its target investors.

## 9 A Fund must comply, where relevant, with the applicable sections of the Code of Practice for Alternative Investment Funds and AIF Services Business

- 9.1 This principle only applies to a *Fund* that is an alternative investment fund, as defined in Regulation 3 of the *AIF Regulations*.
- 9.2 A *Certificate Holder* of a *Fund* which is also an alternative investment fund may seek permission from the *JFSC*, in accordance with Article 2(1)(b) of the Alternative Investment Funds (Jersey) Order 2013, for the alternative investment fund to be marketed in a Member State of the European Union, or other European Economic Area State, to which the AIFM Directive applies. This permission facilitates exemption from the *AIF Regulations*.
- 9.3 With respect to 9.2, permission must be sought from the *JFSC*, by the *Certificate Holder*, prior to any marketing of the alternative investment fund in a Member State of the European Union, or other European Economic Area State, to which the AIFM Directive applies. The *Certificate Holder* must seek the *JFSC*'s permission by completion of the AIF/EXEMPT Form available from the *JFSC* Website.
- 9.4 If permission is granted by the *JFSC*, the *AIF Regulations* do not apply to that *Fund* however, the *Fund* must comply with the applicable sections of the Code of Practice for Alternative Investment Funds and AIF Services Business as it is an alternative investment fund.

**Notes:**

- 1 The "AIFM Directive" means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers.

## Schedule 1 - Table of Notifications and Consents

The following table summarises those trigger events and circumstances which a *Fund* must bring to the attention of the *JFSC* as well as those exceptions which require the *JFSC's* prior written consent.

Corporate Governance		
3.1.4	Consent	Except for temporary periods not exceeding two months (unless a longer period is agreed in writing by a duly authorised officer of the <i>JFSC</i> ), the board of the <i>Fund</i> , where constituted as a company, shall include at least two directors who are resident in Jersey.

Compliance Officer/Money Laundering Reporting Officer/Money Laundering Compliance Officer		
3.4.3.5	Notification	<p>The <i>Fund</i> must ensure that the Compliance Officer is responsible for:</p> <ul style="list-style-type: none"> <li>› immediately notifying the <i>JFSC</i> in writing:</li> <li>› if a breach of <i>Applicable Rules</i> occurs that affects the rights of <i>Unitholders</i> or the operation of the <i>Fund</i> and is not satisfactorily resolved within one month; or</li> <li>› if the <i>Fund</i> considers it to be in the best interests of the <i>Fund</i> or <i>Unitholders</i>; or</li> <li>› of a breach or series of breaches that suggests the <i>Fund</i> is failing to meet any of the requirements of the <i>Code</i>.</li> </ul>
3.4.4	Notification	In the event that a Compliance Officer is temporarily unable to fulfill his or her duties, the <i>Fund</i> must notify the <i>JFSC</i> in writing and designate an appropriately skilled and experienced alternate. The <i>JFSC</i> considers that a period in excess of four weeks would constitute being temporarily unable to fulfill their responsibilities.

Complaints		
3.5.2	Notification	<p>A <i>Fund</i> must establish and maintain an effective <i>complaint</i> handling system and procedures and, in particular, must:</p> <ul style="list-style-type: none"> <li>› As soon as it becomes aware, a <i>Fund</i> <i>must</i> notify the <i>JFSC</i> in writing:</li> <li>› if a <i>complaint</i> is not satisfactorily resolved within three months of it being lodged; or</li> <li>› if a pattern to <i>complaints</i> is identified; or</li> <li>› if the <i>Fund</i> considers it to be in the best interests of the <i>Unitholders</i> or complainant; or</li> </ul>

## Complaints

		› if a <i>complaint</i> or series of <i>complaints</i> suggest the <i>Fund</i> is failing to meet any of the requirements of the <i>Codes</i> .
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## Accounts

3.7.1.1	Notification	The <i>Certificate Holder</i> must provide to the <i>JFSC</i> one copy of each of the following: <ul style="list-style-type: none"> <li>› the audited financial statements of the <i>Fund</i>; and</li> <li>› any interim report and accounts of the <i>Fund</i> that may be prepared and provided to <i>Unitholders</i>.</li> </ul>
3.7.2.3	Consent	There shall be no change in auditor of the <i>Fund</i> without the <i>JFSC</i> 's consent.
3.7.3.1	Consent	The financial statements of a <i>Fund</i> shall be prepared in accordance with: <ul style="list-style-type: none"> <li>› another standard that is generally recognised and agreed between the <i>Certificate Holder</i> and the <i>JFSC</i>.</li> </ul>
3.7.4.1	Consent	The audit leading to the auditor's report, and the audit report shall be undertaken in accordance with: <ul style="list-style-type: none"> <li>› another standard that is generally recognised and agreed between the <i>Certificate Holder</i> and the <i>JFSC</i>.</li> </ul>

## Changes in Details – General Notifications

0 <i>Note 6</i>	Notification	With reference to paragraph 3.2.1.5, the sound business practice policy is primarily concerned with avoiding reputational damage to Jersey. A <i>Fund</i> with an investment focus on one or more of the listed activities in the policy should be brought to the attention of the <i>JFSC</i> by the <i>Certificate Holder</i> unless the focus is clear from the offering documents produced to the <i>JFSC</i> when the <i>Fund</i> is approved.
6.2	Notification	The <i>Fund</i> must provide the <i>JFSC</i> with such information regarding the <i>Fund</i> and any of its <i>Affiliates</i> or <i>Associates of the Fund</i> as a duly authorised officer of the <i>JFSC</i> may reasonably request.
6.5	Consent	Where the <i>Fund</i> is a company, all changes of beneficial ownership of the management shares of the <i>Fund</i> (or management or non-participating shares of the <i>Fund</i> where such shares have rights over participating shares) require the prior approval of a duly authorised officer of the <i>JFSC</i> .

### Changes in Details – General Notifications

6.6	Consent	<p>In addition to its obligations under the <i>Applicable Rules</i>, and notwithstanding the generality of paragraph 6.1, certain amendments to the <i>Fund</i> will always require prior approval of a duly authorised officer of the <i>JFSC</i>:</p> <ul style="list-style-type: none"> <li>› a change of name of the <i>Fund</i>; and</li> <li>› the adoption of, or a change in, any business name or trading name under which the <i>Fund</i> conducts its activities.</li> </ul>
6.7	Notification	<p>In addition to its obligations under the <i>Applicable Rules</i>, and notwithstanding the generality of paragraph 6.1, notifications to the <i>JFSC</i> will always be required in writing from a <i>Fund</i> in respect of the following and in the timescales indicated in each case:</p> <ul style="list-style-type: none"> <li>› a proposed change in the address of the registered office or principal office of the <i>Fund</i> or its nominated contact person (notification to be given within five business days of the proposal being agreed);</li> <li>› at least 28 calendar days prior to the summary winding up or voluntary dissolution of a <i>Fund</i>;</li> <li>› a proposed application by the <i>Fund</i> for authorisation under the laws and rules of any territory or regulatory authority, and of any refusal of such application or withdrawal of such authorisation or, where the <i>Fund</i> is to be listed, a refusal to such listing (notification to be given as soon as the <i>Fund</i> becomes aware);</li> <li>› a <i>Fund</i> failing to launch within 90 calendar days of the latest of: <ul style="list-style-type: none"> <li>› the <i>JFSC</i> granting a <i>Certificate</i>;</li> <li>› if the offering document of the <i>Fund</i> specifies a first closing date, that date; or</li> <li>› such later date as a duly authorised officer of the <i>JFSC</i> may agree in writing;</li> </ul> (notification to be given no later than five business days after the 90 calendar day period has expired);</li> <li>› a <i>Fund</i> failing to raise the minimum or anticipated amount of investment within the time set out in the <i>Applicable Rules</i> (notification to be given as soon as the <i>Fund</i> becomes aware);</li> <li>› an error in the pricing of <i>Units</i> of the <i>Fund</i> greater than 0.5 per cent (notification to be given as soon as the <i>Fund</i> becomes aware);</li> <li>› receipt of a notice requisitioning a general meeting of <i>Unitholders</i> in the <i>Fund</i> together with a copy of the notice (notification to be given within five business days);</li> </ul>

Changes in Details – General Notifications		
		<ul style="list-style-type: none"> <li>› an inability to calculate the net asset value of the <i>Fund</i> (notification to be given as soon as the <i>Fund</i> becomes aware);</li> <li>› a proposal to suspend or defer rights of redemption or trading of <i>Units</i> in the <i>Fund</i> (notification to be given as soon as the <i>Fund</i> becomes aware); and</li> <li>› a suspension of the <i>Fund</i> on any exchange on which it is listed (notification to be given as soon as the <i>Fund</i> becomes aware).</li> </ul>
6.8	Notification	Prior written notice of any other material changes to Unitholders' rights is also required, except where, for a <i>Jersey Expert Fund</i> , a <i>Jersey Listed Fund</i> or a <i>Jersey Eligible Investor Fund</i> , such changes are in accordance with the <i>Jersey Expert Fund Guide</i> , the <i>Jersey Listed Fund Guide</i> or the <i>Jersey Eligible Investor Fund Guide</i> as appropriate.
6.9	Notification	<p>A <i>Fund</i> must also notify the JFSC in writing as soon as it becomes aware of any of the following:</p> <ul style="list-style-type: none"> <li>› the presentation of any application to the court for a declaration of <i>désastre</i>, or the winding up of the <i>Fund</i> or a company which is a subsidiary or holding company of the <i>Fund</i>, or the summoning of any meeting to consider a resolution to wind-up the <i>Fund</i> or a company which is a subsidiary or holding company of the <i>Fund</i>;</li> <li>› the application by any person for the commencement of any insolvency proceedings, appointment of any receiver, administrator or provisional liquidator under the law of any country in respect of the <i>Fund</i> or any of its subsidiaries;</li> <li>› the making or any proposals for the making of a composition or arrangement with creditors of the <i>Fund</i>;</li> <li>› where the <i>Fund</i> is a limited partnership, an application to wind up or dissolve the partnership;</li> <li>› the imposition of disciplinary measures or disciplinary sanctions on the <i>Fund</i>, or any parent, subsidiary or <i>Affiliate of the Fund</i>, in relation to its regulated business by any relevant supervisory authority, or professional body, including any disciplinary action taken against any <i>principal person</i> or <i>key person</i>;</li> <li>› the conviction of the <i>Fund</i> or any <i>principal person</i>, <i>key person</i> or employee of the <i>Fund</i> for any offence under the legislation of any country relating to the conduct of financial services business or involving fraud or dishonesty, or the conviction of any parent, subsidiary or <i>Affiliate of the Fund</i> for any offence under the legislation of any country;</li> </ul>

### Changes in Details – General Notifications

		<ul style="list-style-type: none"> <li>› the re-registration of a <i>Fund</i> incorporated with unlimited liability as a limited liability company or the issue of limited shares by a <i>Fund</i> whose issued share capital consists entirely of unlimited shares;</li> <li>› the withdrawal or refusal of any application for, or the revocation of, membership of any professional body in respect of a <i>principal person</i> in any jurisdiction;</li> <li>› the appointment of inspectors (howsoever named) by a statutory or other regulatory authority to investigate the affairs of: <ul style="list-style-type: none"> <li>› the <i>Fund</i>;</li> <li>› an <i>Affiliate of the Fund</i>; or</li> <li>› any parent or subsidiary of the <i>Fund</i>;</li> </ul> </li> <li>› where the <i>Fund</i>, subject to any mandatory legal restraints and duties of confidentiality, considers that another person is acting in breach of its duties to the <i>Fund</i> or the <i>Unitholders</i>;</li> <li>› any matter which a <i>Fund</i> considers on reasonable grounds to be unauthorised by the constitution of the <i>Fund</i> or its material contracts or not disclosed in its offer document and which is likely to cause material harm to the interests of <i>Unitholders</i>;</li> <li>› any other matter which the <i>Fund</i> considers would be material to the requirements placed on the <i>Fund</i>, any of its <i>key persons</i> or <i>principal persons</i>, or any of its employees by the <i>Law</i> or the <i>Code</i>;</li> <li>› <u>failure or likely failure on the part of the <i>Fund</i> to comply with deadlines or time limits imposed on it by the <i>Applicable Rules</i>; <i>and</i></u></li> <li>› <u>a decision by the <i>Fund's</i> auditor to qualify its audit report or to raise an emphasis of matter therein.</u></li> </ul>
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### Changes in Details – Fund Type Notifications

8.1	Consent	<p><b>OCIFs</b></p> <p>Where the <i>Fund</i> is open-ended and available to the general public, it will be a condition on the <i>Certificate</i> that the <i>Fund</i> adheres to the terms of the <i>OCIF Guide</i>. An <i>OCIF</i> must comply and be operated at all times in accordance with the <i>OCIF Guide</i> as detailed in Schedule 4 to the <i>Code</i> unless the prior written consent of a duly authorised officer of the <i>JFSC</i> is obtained.</p>
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### Changes in Details – Fund Type Notifications

	Consent	Any changes to the <i>Fund</i> require the prior written consent of a duly authorised officer of the JFSC unless the changes would not materially affect the import of the information previously supplied in connection with the application made to the JFSC to establish the <i>Fund</i> .
	Consent	The issue of any prospectuses, explanatory memoranda or other documents inviting offers for subscription, sale or exchange of any <i>Units</i> in the <i>Fund</i> requires the prior written consent of a duly authorised officer of the JFSC unless any waiver from this requirement is agreed with the JFSC in writing. The requirement does not apply where the invitation is subject to the Collective Investment Funds (Certified Funds - Prospectuses) (Jersey) Order 2012, as amended.
	Consent	Any change of <i>fund service provider</i> in connection with the <i>Fund</i> requires the prior written consent of a duly authorised officer of the JFSC.
	Consent	There shall be no material change to the <i>Constitutive Documents</i> or <i>Fund Services Business Agreements</i> of the <i>Fund</i> without the prior written consent of a duly authorised officer of the JFSC.
0	Notification	<b>Jersey Expert Fund</b> <i>A Jersey Expert Fund must comply at all times and be operated in accordance with the Jersey Expert Fund Guide, as detailed in Schedule 2 to the Code. The Fund must notify the JFSC in writing immediately if it becomes aware, or has reasons to believe that the Fund is, or may not be, in compliance with or operated in accordance with the Guide.</i>
	Consent	Any changes to the <i>Fund</i> that are not in accordance with the <i>Jersey Expert Fund Guide</i> will require the prior written consent of a duly authorised officer of the JFSC.
	Notification	Any changes to the <i>Fund</i> that are in accordance with the <i>Jersey Expert Fund Guide</i> but affect the information contained in the <i>Jersey Expert Fund</i> application submitted to the JFSC require to be notified to the JFSC in writing within 28 calendar days of the change taking place.
	Consent	Any change of <i>fund service provider</i> in connection with the <i>Fund</i> requires the prior written consent of a duly authorised officer of the JFSC.



### Changes in Details – Fund Type Notifications

8.3	Notification	<b>Jersey Listed Fund</b> <i>A Jersey Listed Fund must comply at all times and be operated in accordance with the Jersey Listed Fund Guide, as detailed in Schedule 3 to the Code. The Fund must notify the JFSC in writing immediately that it becomes aware or has reasons to believe that the Fund is, or may not be, in compliance with or operated in accordance with the Guide.</i>
	Consent	<i>Any changes to the Fund that are not in accordance with the Jersey Listed Fund Guide will require the prior written consent of a duly authorised officer of the JFSC.</i>
	Notification	<i>Any changes to the Fund that are in accordance with the Jersey Listed Fund Guide but affect the information contained in the Jersey Listed Fund application submitted to the JFSC require to be notified to the JFSC in writing within 28 calendar days of the change taking place.</i>
	Consent	<i>Any change of fund service provider in connection with the Fund requires the prior written consent of a duly authorised officer of the JFSC.</i>
	Notification	<i>The Fund remains listed at all times on a recognized stock exchange as defined in the Jersey Listed Fund Guide. The Certificate Holder must notify the JFSC in writing immediately if the Fund is refused permission to be listed on a recognized stock exchange or market, if such permission is revoked or amended in a significant way, or if there is any other material event affecting the listing of the Fund.</i>
8.4	Notification	<b>Jersey Eligible Investor Fund</b> <i>A Jersey Eligible Investor Fund must comply at all times and be operated in accordance with the Jersey Eligible Investor Fund Guide, as detailed in Schedule 5 to the Code. The Fund must notify the JFSC in writing immediately that it becomes aware, or has reasons to believe that the Fund is, or may not be, in compliance with or operated in accordance with the Guide.</i>
	Consent	<i>Any changes to the Fund that are not in accordance with the Jersey Eligible Investor Fund Guide will require the prior written consent of a duly authorised officer of the JFSC.</i>
	Notification	<i>Any changes to the Fund that are in accordance with the Jersey Eligible Investor Fund Guide but affect the information contained in the Jersey Eligible Investor Fund application submitted to the JFSC require to be notified to the JFSC in writing within 28 calendar days of the change taking place.</i>

Changes in Details – Fund Type Notifications		
	Consent	Any change of <i>fund service provider</i> in connection with the <i>Fund</i> requires the prior written consent of a duly authorised officer of the <i>JFSC</i> .
8.5	Consent	<b>Funds which are not an OCIF, Jersey Expert Fund, Jersey Listed Fund or Jersey Eligible Investor Fund</b> Where the <i>Fund</i> is aimed at more sophisticated investors, or is closed-ended, there shall be no material change to the <i>Fund</i> without the prior written consent of a duly authorised officer of the <i>JFSC</i> .
	Consent	Any changes to the <i>Fund</i> require the prior written consent of a duly authorised officer of the <i>JFSC</i> unless the changes would not materially affect the import of the information previously supplied in connection with the application made to the <i>JFSC</i> to establish the <i>Fund</i> .
	Consent	The issue of any prospectuses, explanatory memoranda or other documents inviting offers for subscription, sale or exchange of any <i>Units</i> in the <i>Fund</i> requires the prior written consent of a duly authorised officer of the <i>JFSC</i> unless any waiver from this requirement is agreed with the <i>JFSC</i> in writing. The requirement does not apply where the invitation is subject to the Collective Investment Funds (Certified Funds - Prospectuses) (Jersey) Order 2012, as amended.
	Consent	Any change of <i>fund service provider</i> in connection with the <i>Fund</i> requires the prior written consent of a duly authorised officer of the <i>JFSC</i> .
	Consent	There shall be no material change to the <i>Constitutive Documents</i> or <i>Fund Services Business Agreements</i> of the <i>Fund</i> without the prior written consent of a duly authorised officer of the <i>JFSC</i> .



Jersey Financial  
Services Commission

## **Schedule 2**

### **Jersey Expert Fund Guide**

Issued: 2 April 2012

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## Objective

The purpose of this guide is to define an Expert Fund and to set out the characteristics that such a fund would usually be expected to have. If an Expert Fund does not meet such requirements, variances and approval may be sought from the *JFSC* on a case-by-case basis.

In all cases, applications for necessary certificates and consents should be accompanied by a completed application form, which can be found at:

[http://www.jerseyfsc.org/funds\\_securities\\_issues/forms/index.asp](http://www.jerseyfsc.org/funds_securities_issues/forms/index.asp)

An Expert Fund meeting the criteria set out in this guide may be established using a streamlined authorisation process, as described in section 4 of this guide.

## Glossary of Terms

The following table provides a glossary of terms used in this guide:

Applicable Rules	has the meaning to be assigned to it in any <i>Codes of Practice</i> .
Application Form	means the application form which can be found at <a href="http://www.jerseyfsc.org/funds_securities_issues/forms/index.asp">http://www.jerseyfsc.org/funds_securities_issues/forms/index.asp</a>
Associate	means, in relation to a company, any company which is a subsidiary or a holding body of that company or a subsidiary of any such holding body and any individual, partnership or other unincorporated association or firm which has direct or indirect control of that company and any company which is directly or indirectly controlled by any such individual, partnership or other unincorporated association, or firm and, in relation to an individual, partnership or other unincorporated association, means any company directly or indirectly controlled by that individual, partnership or other unincorporated association. For these purposes, 'holding body' and 'subsidiary' shall have the meanings set out in the Companies (Jersey) Law 1991, as amended.
CFPO	means the Collective Investment Funds (Certified Funds - Prospectuses) (Jersey) Order 2012, as amended.
Closed Fund	means a fund which is not an <i>Open Fund</i> .
Codes of Practice	means such Codes of Practice for Certified Funds and Fund Services Business as may from time to time be issued by the JFSC and be in force pursuant to Article 15 of the Law and Article 19 of the Financial Services (Jersey) Law 1998, as amended.
Collective investment fund	has the meaning set out in Article 3 of the Law.
Constitutive Documents	means the principal documents constituting the Expert Fund, which may include: <ul style="list-style-type: none"> <li>› the administration agreement;</li> <li>› the Expert Fund rules;</li> <li>› the investment advisory agreement;</li> <li>› the investment management agreement;</li> <li>› the limited partnership agreement, where the Expert Fund is a limited partnership;</li> <li>› the management agreement, if applicable;</li> <li>› the memorandum and articles of association, where the Expert Fund is a company;</li> <li>› the trust deed, where the Expert Fund is a unit trust; and</li> <li>› where the Expert Fund has a custodian in Jersey, the agreement appointing such a custodian.</li> </ul>

**Deleted:** Commission

**Deleted:** means the Jersey Financial Services Commission.

Fund service provider	has the meaning set out in Article 1 of the <i>Law</i> .
Incorporated cell company	has the meaning set out in Article 1 of the Companies (Jersey) Law 1991, as amended.
Investment Manager	includes an investment adviser and may be the <i>Manager</i> if no separate investment manager is to be appointed <sup>3</sup> .
IOSCO	means the International Organisation of Securities Commissions.
<a href="#">JFSC</a>	<a href="#">means the Jersey Financial Services Commission.</a>
Law	means the Collective Investment Funds (Jersey) Law, 1988, as amended.
Manager	shall, in the case of a limited partnership, include the general partner.
OECD	means the Organisation for Economic Co-Operation and Development.
Offer Document	means any prospectus or other offering document offering <i>Units</i> in an Expert Fund for subscription, sale or exchange and includes any listing document.
Open Fund	means a fund that is normally open for both subscriptions and redemptions at the option of <i>Unitholders</i> .
Principal person	has the same meaning set out in the <i>Law</i> .
Protected cell company	has the meaning set out in Article 1 of the Companies (Jersey) Law 1991, as amended.
Umbrella	in relation to structure or fund means there is more than one class of redeemable shares or <i>Units</i> and where the assets are held as a single pool.
Unit	has the same meaning as in the <i>Law</i> .
Unitholder	means a person registered as the holder of a <i>Unit</i> in an Expert Fund.

<sup>3</sup> In a fund of funds, the investment managers of the underlying funds will not be considered Investment Managers for the purpose of this guide.

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## Section 1

### 1 Expert Funds and Expert Investors

- 1.1 An Expert Fund is a *collective investment fund* that falls within Article 3 of the *Law*, is established in Jersey and in which only Expert Investors (as defined at paragraph 1.5 of this guide) may invest.
- 1.2 Only Expert Investors who have acknowledged in writing receipt and acceptance of the investment warning set out at paragraph 3.6 of this guide may invest in an Expert Fund.<sup>4</sup>
- 1.3 An Expert Investor is deemed able:
  - 1.3.1 to evaluate the financial risks of investing in the Expert Fund; and
  - 1.3.2 to bear the economic consequences of investment in the Expert Fund including any possibility of the loss of the entire investment.
- 1.4 In view of the above, an Expert Investor is deemed to require only limited regulatory protection in relation to the manner in which the Expert Fund is structured.
- 1.5 An Expert Investor is:
  - 1.5.1 a person, partnership or other unincorporated association or body corporate, whose ordinary business or professional activity includes, or it is reasonable to expect that it includes, acquiring, underwriting, managing, holding or disposing of investments whether as principal or agent, or the giving of advice on investments; or
  - 1.5.2 an individual who has a net worth, or joint net worth with that person's spouse, greater than US \$1,000,000 (or currency equivalent) excluding that person's principal place of residence; or
  - 1.5.3 a company, partnership, trust or other association of persons which has (or which is a wholly owned subsidiary of a body corporate which has) assets available for investment of not less than US \$1,000,000 (or currency equivalent) or every member, partner or beneficiary of which falls within the definition of Expert Investor; or
  - 1.5.4 a *fund service provider* to the Expert Fund or an *Associate of a fund service provider* to the Expert Fund; or
  - 1.5.5 a person who is an employee, director, consultant or shareholder of or to a *fund service provider* of the Expert Fund or an *Associate of a fund service provider* to the Expert Fund, who is acquiring an investment in the Expert Fund as part of his remuneration or an incentive arrangement or by way of co-investment; or

<sup>4</sup> The acquisition of non-participating shares in an Expert Fund (e.g. non-redeemable founders' shares) does not constitute an investment in the Fund for the purposes of this guide. The same applies to founder or nominal interests in limited partnerships (or the equivalent founder or nominal interests in unit trusts), which are created or issued to facilitate the formation and structuring of the Fund and which are not for genuine investment or participation in the profits of the Fund.

- 1.5.6 any employee, director, partner or consultant to or of any person referred to in paragraph 1.5.1; or
  - 1.5.7 a trustee of a family trust settled by or for the benefit of one or more persons referred to in paragraphs 1.5.5 or 1.5.6; or
  - 1.5.8 a trustee of an employment benefit or executive incentive trust established for the benefit of persons referred to in paragraphs 1.5.5 or 1.5.6 or their dependants; or
  - 1.5.9 a government, local authority, public authority or supra-national body in Jersey or elsewhere; or
  - 1.5.10 an investor who makes a minimum initial investment or commitment of US\$ 100,000 (or currency equivalent) in the Expert Fund, whether through the initial offering or by subsequent acquisition.
- 1.6 The *JFSC* believes that those involved in establishing and providing services to an Expert Fund who wish to invest in that fund should be encouraged to do so. Accordingly, any application made to the *JFSC* to extend the definition of Expert Investor in respect of any other types of “carried interest” investors is likely to be treated sympathetically.
- 1.7 With reference to paragraph 1.5.1, the *JFSC* expects any discretionary investment manager acquiring an interest in the Expert Fund, directly or indirectly, for or on behalf of non-Expert Investors to be satisfied that the investment is suitable for the underlying investors, and that the underlying investors are able to bear the economic consequences of investment in the fund, including the possibility of the loss of the entire investment.<sup>5</sup>

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<sup>5</sup> For the avoidance of doubt, it is not intended that the Jersey based monitoring fund service provider referred to in paragraph 2.14 should procure compliance with this paragraph.

## Section 2

### 2 The Structure of the Expert Fund

#### The Expert Fund

- 2.1 An Expert Fund may take any form recognised under the laws of Jersey. It will be issued with a certificate under the *Law*.
- 2.2 An Expert Fund may be an *Open Fund* or a *Closed Fund*.
- 2.3 If the Expert Fund is established as a fund company in Jersey, at least two Jersey resident directors with appropriate experience must be appointed to the board.
- 2.4 If the Expert Fund is established as a limited partnership, a Jersey entity with at least two Jersey resident directors with appropriate experience should act as the general partner.
- 2.5 If the Expert Fund is established as a unit trust, a Jersey entity with at least two Jersey resident directors with appropriate experience should act as the trustee.
- 2.6 The board of directors of a fund company, or the general partner of a limited partnership, or the trustee or *Manager* of a unit trust, as appropriate, is ultimately responsible for the management and control of the Expert Fund in accordance with and subject to the *Constitutive Documents* and applicable law and this ultimate responsibility cannot be delegated.

#### Investment Manager

- 2.7 The *Investment Manager* should be of good standing and in particular should:
  - 2.7.1 have had no disciplinary sanctions imposed on it by any supervisory authority or professional body in the previous five years;
  - 2.7.2 have no convictions for any offence under the legislation of any country relating to the conduct of financial services business or involving fraud or dishonesty or be the parent, subsidiary or an associated company of any company which has such a conviction;
  - 2.7.3 be able to pay its debts as they fall due;
  - 2.7.4 be established in an *OECD* member state or any other state or jurisdiction with which the *JFSC* has entered into a Memorandum of Understanding (or equivalent) on investment business and *collective investment funds*<sup>6</sup>, and is either:
    - 2.7.4.1 regulated in that state or jurisdiction; or

<sup>6</sup> A list of the *OECD* member states and those countries with which the *Commission* has entered into a Memorandum of Understanding (either on a bilateral basis or through the *IOSCO* Multilateral Memorandum of Understanding) covering investment business and collective investment funds may be obtained on the Commission's website, [www.jerseyfsc.org](http://www.jerseyfsc.org) from the International Co-operation section.

- 2.7.4.2 granted approval to act in relation to the Expert Fund by the *JFSC*, noting that if the *Investment Manager* is not regulated because the activity it proposes to undertake in relation to the Expert Fund is not a regulated activity in its home state or jurisdiction, provided the other requirements set out in paragraphs 2.7 and 2.8 are met, such approval will ordinarily be granted on an expedited basis;
  - 2.7.5 possess relevant experience in relation to managing or advising on investors' funds using similar investment strategies to those to be adopted by the Expert Fund; and
  - 2.7.6 satisfy the *JFSC's* general principles of corporate governance in relation to the span of control over a business as set out in Appendix 1, meeting the four-eyes principle if the *Investment Manager* cannot handle client monies, and the six-eyes principle if it can handle such monies.
- 2.8 In addition, no principal person of the Investment Manager shall:
- 2.8.1 have had any disciplinary sanctions imposed on him by any supervisory authority or professional body in the previous five years; or
  - 2.8.2 have been convicted for any offence under the legislation of any country relating to the conduct of financial services business or involving fraud or dishonesty.
- 2.9 As part of the application process for establishing an Expert Fund, the *Investment Manager* should confirm in writing to the *JFSC* that it satisfies the requirements set out in paragraphs 2.7 and 2.8, and provide documentary evidence in relation to the requirement at paragraph 2.7.4. In addition, the administrator, *Manager* or trustee<sup>7</sup> (as applicable) must counter-sign such confirmation, stating that it has carried out its own general due diligence against the *Investment Manager* and has no reason to believe that the statement of the *Investment Manager* is incorrect<sup>8</sup>.
- 2.10 In the event that the *Investment Manager* does not fulfil these criteria (for example, a global institution may have committed a number of regulatory breaches in different jurisdictions), prior clearance should be sought from the *JFSC*. An *Investment Manager* that has previously been granted consent to establish an Expert Fund may, in satisfaction of the requirement set out at paragraph 2.9, confirm in writing to the *JFSC* that there have been no material changes to the information most recently provided to the *JFSC* in that regard.
- 2.11 Where the administrator, *Manager* or trustee (as applicable) becomes aware of any other issue, in addition to those mentioned in paragraphs 2.7 and 2.8, which might cast doubt on the good standing of the *Investment Manager* (or any of its *principal persons*), they should bring the matter to the attention of the *JFSC*. Relevant issues might, for example, include knowledge that the *Investment Manager* (or any of its *principal persons*) has been the subject of a formal investigation by a supervisory authority or professional body, even if this did not result in a disciplinary sanction.

<sup>7</sup> In relation to a *Closed Fund* that is a unit trust, there is no requirement for a separate administrator or *Manager*, provided that the trustee carries out the administration or management role, including the monitoring function described in paragraphs 2.14 and 2.15.

<sup>8</sup> In the *Commission's* view, it is implicit that an administrator's/*Manager's*/trustee's due diligence enquiries can only extend to sources of enquiry available to it, and not to those beyond its reach.

**Note:**

- 1 *If a distributor of an Expert Fund is not the Investment Manager or one of its associates, and it falls within one of the following definitions, the provisions of paragraphs 2.7 – 2.11 inclusive (with the exception of paragraph 2.7.5) shall apply to the distributor as if it were an Investment Manager:*
  - a. *The distributor is the driving force behind the Expert Fund such that, if the distributor were to withdraw from the proposal, the Expert Fund would not go ahead. Evidence of this would be, for example, the name of the Expert Fund being linked with the distributor.*
  - b. *The majority of investors going into the Expert Fund are put into the Expert Fund by the distributor or its agents.*

### Administration/Management

2.12 Every Expert Fund shall appoint:

- 2.12.1 an administrator; or
- 2.12.2 a *Manager*; and/or, in relation to a *Closed Fund* that is a unit trust<sup>9</sup>,
- 2.12.3 a trustee
- 2.12.4 which has at least two Jersey resident directors with appropriate experience together with staff and a physical presence in the Island.

2.13 Any outsourcing by the administrator, *Manager* or trustee (as applicable) must comply with the JFSC's policy on outsourcing as may be updated from time to time.

**Note:**

- 1 *It may be possible to establish an Expert Fund with the responsibility set out in paragraphs 2.14 and 2.15 being assumed by an entity other than an administrator, Manager or trustee: for example, a general partner or the fund company itself. In such circumstances the JFSC should be approached in advance on a case by case basis.*

### Monitoring of the Investment Manager

2.14 The responsibility of the administrator, *Manager* or trustee (as applicable) in relation to the actions of the *Investment Manager* shall be to take reasonable measures to satisfy itself that such actions do not breach the investment and borrowing restrictions applicable to the Expert Fund, as set out in the *Offer Document* and the *Constitutive Documents*, and to promptly notify the entity that appointed the *Investment Manager* of any concerns it has in that regard so that appropriate action may be taken.

<sup>9</sup> See footnote 6 to paragraph 2.9.

- 2.15 The administrator, *Manager* or trustee (as applicable) must maintain in Jersey sufficient records (in electronic or documentary form) to enable it to fulfil its monitoring functions, and should be able to obtain other relevant records on demand.

### Custody Arrangements

- 2.16 Every Expert Fund shall have adequate arrangements for the safe custody of the property of the fund including, if applicable, prime brokerage arrangements. Such arrangements should be fully disclosed in the *Offer Document*.
- 2.17 Where the Expert Fund is an *Open Fund*, custody arrangements must be sourced from a separate custodian/trustee with staff and a physical presence in the Island that is subject to any applicable *Codes of Practice*. Prior clearance for any deviation from this requirement should be obtained from the *JFSC* unless the Expert Fund satisfies paragraph 2.18.
- 2.18 If the Expert Fund is a hedge fund, the requirement for a custodian will be waived provided a prime broker that is part of a group with a minimum credit rating of A1/P1 or long term equivalent is appointed. Prior clearance will only be required for any prime broker with a rating below this level.
- 2.19 If in doubt, application should be made to the *JFSC* on a case-by-case basis.

### The Name of the Expert Fund

- 2.20 The name of the Expert Fund must not be undesirable or misleading. If the name of the Expert Fund indicates a particular objective, geographic region or market, this should be reflected in its investment policy and in the manner in which the Expert Fund maintains the majority of its non-cash assets.

### The Auditor

- 2.21 An auditor is to be appointed for an Expert Fund.
- 2.22 The auditor is to have the same qualifications as are required under the Companies (Jersey) Law 1991, as amended.

### Fund service providers

- 2.23 Any Jersey entity acting as a *fund service provider* to an Expert Fund must be registered as a fund services business under the Financial Services (Jersey) Law 1998, as amended, to conduct fund services business and be managed and operated in accordance with any applicable *Codes of Practice*.

### Borrowing and Gearing

- 2.24 There are no restrictions imposed upon the level of borrowing or gearing adopted by an Expert Fund, provided that the approach to borrowing or gearing is clearly disclosed in the *Offer Document*. If the fund is permitted to borrow money in excess of 200% of the net asset value of the fund, full details of the manner in which the risk posed by such borrowing is to be managed must be set out in the *Application Form* submitted to the *JFSC*. In such a case, the *JFSC* reserves the right to undertake additional scrutiny.

### Transfers of Interests

- 2.25 The *JFSC* is concerned that only persons who satisfy the criteria for Expert Investors set out in paragraphs 1.3 and 1.5 are able to participate in an Expert Fund. Where the Expert Fund is not listed on a stock exchange, and subject to paragraphs 1.5.1 and 1.7, reasonable steps should be taken in order to ensure that any person who is not an Expert Investor does not become a registered holder of an interest in the Expert Fund.
- 2.26 Where a transfer of interest occurs involuntarily, such as on the death or bankruptcy of a registered holder, in the absence of provision in the *Constitutive Documents*, the personal representatives or trustee in bankruptcy will be regarded as complying with the criteria for Expert Investors. The *JFSC* expects, however, the criteria to apply on a transfer to the new beneficial owner once the administration is complete.

### Stock Exchange Listings

- 2.27 Where listing is intended on a stock exchange, certain exchanges allow restrictions to be imposed on who may invest in a listed fund. For instance, as a special condition of listing an exchange may permit limits on the categories of investors that are allowed to invest, and the minimum transaction size of lots which may be traded. The *JFSC* will consider confirming that it does not object to a listing on those exchanges that permit the imposition of restrictions of this nature and where such restrictions mirror the requirements for an Expert Fund. In not objecting to the listing, the *JFSC* requires confirmation of the following:
- 2.27.1 that the relevant exchange permits restrictions on transfers of interests in order to ensure, so far as reasonably possible, that no one other than an Expert Investor is allowed to participate in the fund and that suitable mechanisms are in place to prevent a non-qualifying investor from becoming a registered holder of the securities; and
- 2.27.2 that the Expert Fund requires each new investor to confirm in writing that he has received and accepts the investment warning set out in paragraph 3.7, and has seen the statement on Expert Funds at paragraph 3.3.18 referring to the *JFSC*'s website.

## Section 3

### 3 The Offer Document of the Expert Fund

#### General

- 3.1 The *Offer Document* issued by an Expert Fund must comply with the legislation applicable to such document. In particular the *CFPO*.
- 3.2 Any variations from the requirements imposed by the *CFPO* must be set out in the *Application Form*.
- 3.3 In addition to the specific requirements stated in the *CFPO*, Article 18 of the schedule of the *CFPO* provides that the *Offer Document* must contain any other material information that investors would reasonably require to enable investors to make an informed judgement about: (i) the merits of participating in the Expert Fund; and (ii) the nature and levels of the risks accepted by making such a purchase. The *JFSC* considers the following additional information to be material:
- 3.3.1 the structure of the Expert Fund, including brief particulars of all documents constituting the Expert Fund and details of how to obtain complete copies of such documents;
  - 3.3.2 the *fund service providers* to the Expert Fund, including details such as their registered office, place and date of incorporation, details of share capital and the manner in which *fund service providers* may be appointed and replaced;
  - 3.3.3 the name and address of the auditor of the Expert Fund and the legal adviser(s) to the Expert Fund;
  - 3.3.4 any conflicts of interest that may exist in relation to the Expert Fund;
  - 3.3.5 the investment objective and investment management strategies to be employed by the Expert Fund (including the Expert Fund's approach to borrowing and gearing) and any investment or borrowing restrictions applicable to the Expert Fund;
  - 3.3.6 the manner in which changes likely to have a material effect on investors may be made to the Expert Fund (noting that any changes that would be contrary to the terms of this guide or contrary to any of the *JFSC*'s published policies applicable to Expert Funds will require the prior consent of the *JFSC*);
  - 3.3.7 the basis upon which dealing in the Expert Fund is to take place, if applicable;
  - 3.3.8 in the case of a *Closed Fund*, the basis upon which any subsequent offerings in the Expert Fund may be made;
  - 3.3.9 the basis upon which the value of the Expert Fund is to be calculated and (in the case of an *Open Fund*) how the value of *Units* in the Expert Fund is to be determined;
  - 3.3.10 the manner in which *Units* in the Expert Fund are to be created, issued and paid for and (in the case of an *Open Fund*) cancelled and redeemed;
  - 3.3.11 the manner in which votes to be held by *Unitholders* are conducted, and the manner in which meetings of *Unitholders* are to be convened and managed generally;
  - 3.3.12 the fees, charges and expenses payable from the property of the Expert Fund;



- 3.3.13 the address at which the most recent audited annual report and accounts of the Expert Fund may be inspected;
- 3.3.14 the address, if any, where the register of *Unitholders* can be inspected;
- 3.3.15 the manner in which any voting rights in underlying assets held by the Expert Fund will be exercised;
- 3.3.16 the safe custody arrangements for the property of the Expert Fund including disclosure, if applicable, of prime broker arrangements;
- 3.3.17 in the case of *Umbrella* structures, details of the “ring-fencing” of assets within sub-funds, or, if there is no such arrangement, a statement to the effect that “in the event of the Expert Fund being unable to meet liabilities attributable to any particular sub-fund out of the assets attributable to such sub-fund, the excess liabilities may be met out of the assets attributable to the other sub-funds” and an explanation of the manner in which such liabilities may be apportioned; and
- 3.3.18 a statement to the effect that:  

“Further information in relation to the regulatory treatment of Expert Funds in Jersey may be found on the website of the Jersey Financial Services Commission at [www.jerseyfsc.org](http://www.jerseyfsc.org).”

- 3.4 A statement to the following effect shall be included in the *Offer Document*:  

“The [directors of the company/general partner/manager/trustee] have/has taken all reasonable care to ensure that the facts stated in this document are true and accurate in all material respects, and that there are no other facts the omission of which would make misleading any statement in the document, whether of fact or of opinion. The [directors/general partner/manager/trustee] accept responsibility accordingly.”
- 3.5 Nothing in any of the *Constitutive Documents* of an Expert Fund may exclude the jurisdiction of the courts of Jersey to entertain an action concerning the Expert Fund.
- 3.6 In the event that an *Offer Document* is issued in a language other than English, a copy of an English language version of the document must be lodged with the JFSC. A statement should be included in both the original *Offer Document* and the translation stating which version will take precedence in the event of a dispute.

### Investment Warning

- 3.7 All Expert Funds must contain an investment warning in a prominent position in the *Offer Document* in substantially the following terms:  

“[This fund] has been established in Jersey as an expert fund. It is suitable only for those who fall within the definition of “expert investors” published by the Jersey Financial Services Commission.

Requirements which may be deemed necessary for the protection of retail or non-expert investors, do not apply to expert funds. By acknowledging this statement you are expressly agreeing that you fall within the definition of an “expert investor” and accept the reduced requirements accordingly.

If you are an investment manager acquiring an interest in [this fund], directly or indirectly, for or on behalf of non-expert investors, the Jersey Financial Services Commission expects you to be satisfied that the investment is suitable for the underlying investors and that the

underlying investors are able to bear the economic consequences of investment in the fund, including the possibility of the loss of the entire investment.

You are wholly responsible for ensuring that all aspects of [this fund] are acceptable to you. Investment in expert funds may involve special risks that could lead to a loss of all or a substantial portion of such investment. Unless you fully understand and accept the nature of [this fund] and the potential risks inherent in [this fund] you should not invest in [this fund].”

The investor or his duly authorised agent must acknowledge in writing that he has received and accepted this investment warning.

### Ongoing Requirements

- 3.8 All material changes to information provided to the *JFSC* in connection with an Expert Fund should be notified to the *JFSC* as soon as possible and, in any event, within 28 days of such change taking place.
- 3.9 Any change to an Expert Fund that would not meet the criteria set out in this guide or that would breach any certificate condition applicable to that Expert Fund will require the prior consent of a duly authorised officer of the *JFSC*.

## Section 4

### 4 Authorisation of the Expert Fund

- 4.1 In order to authorise an Expert Fund, the *JFSC* must receive a completed copy of the *Application Form*.
- 4.2 The administrator, *Manager* or trustee (as applicable) shall:
  - 4.2.1 complete and sign a copy of the *Application Form*;
  - 4.2.2 arrange for such form to be countersigned on behalf of the board of the fund company, the general partner of a limited partnership or the *Manager* or trustee of a unit trust, as applicable; and
  - 4.2.3 forward a copy of the completed *Application Form* and the stated supporting documentation to the *JFSC*.
- 4.3 Upon receipt of a completed *Application Form*, the *JFSC* will take steps to authorise the Expert Fund and/or its *fund service providers* as the case requires. In the event that the *Application Form* states that the Expert Fund complies with the terms of this guide, or that any deviation from the terms of this guide has previously been agreed in writing by a duly authorised officer of the *JFSC*, the *JFSC* will authorise the Expert Fund in reliance upon the *Application Form*. In other cases the *JFSC* will discuss with the applicant those deviations that have not been previously agreed.
- 4.4 The relevant certificate application forms and fees shall be submitted at the time the application is made and prior to the issue of any certificate and other consents.
- 4.5 For an *Umbrella* Expert Fund, an *incorporated cell company*, or a *protected cell company*, which has already been granted a certificate under the *Law*, a sub-fund, incorporated cell or protected cell certificate application and fee will need to be submitted for each additional sub-fund, incorporated cell or protected cell that is added prior to an amended certificate being issued. In the case of an *incorporated cell company*, the incorporated cell certificate application form is to be used.

## Appendix 1

### 1 Span of Control Requirements

- 1.1 This appendix expands on the general principles of corporate governance in relation to “span of control” principle as referred to at paragraph 2.7.6.
- 1.2 All *Investment Managers* are advised to read the following and to discuss the contents with their Jersey legal adviser in order to ensure that they satisfy the principle.
- 1.3 In the context of the *Investment Manager*, the principle requires that the *Investment Manager* be able to demonstrate that its business is actively managed by two or three skilled, experienced individuals: two persons if the *Investment Manager* cannot handle client monies, three if it can.
- 1.4 The “four eyes” or “six eyes” are the *principal persons* of the business, who must be able to exercise executive power on behalf of the *Investment Manager*. These individuals must be actively involved in the day-to-day management of the business and able to exercise executive powers on behalf of the *Investment Manager*. Normally, such persons will be directors of the *Investment Manager*.
- 1.5 **They must be able to demonstrate independence, competence, experience and integrity and be able to effectively exercise management control over the *Investment Manager*. Together, the persons providing the “four or six eyes” should be able to demonstrate a balance of appropriate qualifications, skills and experience. As part of the independence requirement care must be taken where members of the same family are *principal persons* of the *Investment Manager*.**
- 1.6 Although the individuals making up the span of control do not need to be involved in the day-to-day execution of the *Investment Manager’s* policy, they should have day-to-day involvement in general management as well as knowledge of and influence upon the way in which the company’s strategy is being implemented through day-to-day policy.
- 1.7 The *JFSC* acknowledges there may be exceptional circumstances for allowing some degree of relaxation of the principles outlined above. Each request for a relaxation will be considered on its merits and on a case-by-case basis, however, it must be borne in mind that requests of this nature will not be granted lightly and that, once granted, are not to be treated as setting a precedent notwithstanding any similarity of circumstances. Furthermore, consideration of such requests may increase the time taken to process an application.
- 1.8 With respect to 1.5, where close family are eligible to form part of the span of control only one member may be counted. In this respect close family comprises spouses (including co-habitees), civil partners, children, dependants, parents, brothers and sisters.



Jersey Financial  
Services Commission

## **Schedule 3**

### **Jersey Listed Fund Guide**

Issued: 2 April 2012

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## Objective

The purpose of this guide is to define a Listed Fund and to set out the characteristics that such a fund would usually be expected to have. An essential feature of a Listed Fund for the purposes of this guide is that it must be closed ended.

In all cases, applications for necessary certificate and consents should be accompanied by a completed application form, a copy of which can be found at:

[http://www.jerseyfsc.org/funds\\_securities\\_issues/forms/index.asp](http://www.jerseyfsc.org/funds_securities_issues/forms/index.asp)

A Listed Fund meeting the criteria set out in this guide may be established using a streamlined authorisation process, as described in Section 3 of this guide. The *JFSC* aims to authorise Listed Funds within 3 working days of receipt of an application provided the requirements set out in this guide are complied with. If a Listed Fund does not meet such requirements, variances and approval may be sought from the *JFSC* on a case-by-case basis, however in such cases it may not be possible to authorise the fund within the stated time frame.

## Glossary of Terms

The following table provides a glossary of terms used in this guide:

Applicable Rules	has the meaning to be assigned to it in any <i>Codes of Practice</i> .
Application Form	means the application form which can be found on <a href="http://www.jerseyfsc.org/funds_securities_issues/forms/index.asp">http://www.jerseyfsc.org/funds_securities_issues/forms/index.asp</a>
Associate	means, in relation to a company, any company which is a subsidiary or a holding body of that company or a subsidiary of any such holding body and any individual, partnership or other unincorporated association or firm which has direct or indirect control of that company and any company which is directly or indirectly controlled by any such individual, partnership or other unincorporated association, or firm and, in relation to an individual, partnership or other unincorporated association, means any company directly or indirectly controlled by that individual, partnership or other unincorporated association. For these purposes, 'holding body' and 'subsidiary' shall have the meanings set out in the Companies (Jersey) Law 1991, as amended.
CFPO	means the Collective Investment Funds (Certified Funds - Prospectuses) (Jersey) Order 2012, as amended.
Closed-ended Fund	means a fund which is not open for redemptions at the option of holders of securities.
Codes of Practice	means such Codes of Practice for Certified Funds and Fund Services Business as may from time to time be issued by the JFSC and be in force pursuant to Article 15 of the Law and Article 19 of the Financial Services (Jersey) Law 1998, as amended.
collective investment fund	has the same meaning as in Article 3 of the Law.
Constitutive Documents	means the principal documents constituting the Listed Fund, which may include: <ul style="list-style-type: none"> <li>› the memorandum and articles of association;</li> <li>› the fund rules;</li> <li>› the administration agreement;</li> <li>› the investment management agreement;</li> <li>› the investment advisory agreement;</li> <li>› the management agreement, if applicable; and</li> <li>› where the fund has a custodian in Jersey, the agreement appointing such a custodian.</li> </ul>
fund service provider	has the same meaning as in Article 1 of the Law.

**Deleted:** Commission

**Deleted:** means the Jersey Financial Services Commission.



Holder of Securities	means a person registered as the holder of securities in a Listed Fund.
incorporated cell company	has the meaning set out in the Companies (Jersey) Law 1991, as amended.
Investment Manager	includes an investment adviser and may be the <i>Manager</i> if no separate investment manager is to be appointed <sup>10</sup> .
IOSCO	means the International Organisation of Securities Commissions.
<u>JFSC</u>	<u>means the Jersey Financial Services Commission.</u>
Law	means the Collective Investment Funds (Jersey) Law 1988, as amended from time to time.
Manager	means any <i>fund service provider</i> to whom the board of directors has delegated overall responsibility for the executive management of the fund.
OECD	means the Organisation for Economic Co-operation and Development.
Offer Document	means any prospectus or other offering document offering <i>securities</i> in a Listed Fund for subscription, sale or exchange and includes any listing document.
principal person	has the meaning set out in the <i>Law</i> .
pProtected cell company	has the meaning set out in the Companies (Jersey) Law 1991, as amended.
Recognised Stock Exchange or Market	means an exchange or market listed in Appendix 1, as amended from time to time.
securities	refers to those securities issued by the Listed Fund representing the rights of holders with regard to the assets of the Listed Fund and which are Units within the meaning of the <i>Law</i> .
Umbrella	in relation to a structure or a fund means there is more than one class of redeemable shares or Units and where the assets are held as a single pool.

<sup>10</sup> In a fund of funds, the investment managers of the underlying funds will not be considered *Investment Managers* for the purpose of this guide.

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## Section 1

### 1 The Structure of the Fund

#### The Fund

- 1.1 A Listed Fund is a *collective investment fund* that falls within Article 3 of the *Law* and is incorporated as a company in Jersey<sup>11</sup>. It will be issued with a certificate under the *Law*.
- 1.2 A Listed Fund must:
  - 1.2.1 have a listing on a *Recognised Stock Exchange or Market*<sup>12</sup>; and
  - 1.2.2 be a *Closed-ended Fund*.
- 1.3 The board of directors of the fund company is ultimately responsible for the management and control of the Listed Fund in accordance with and subject to the *Constitutive Documents* and applicable law and this ultimate responsibility cannot be delegated.
- 1.4 At least two Jersey resident directors with appropriate experience must be appointed to the board of the fund company.
- 1.5 A majority of the directors of the board of the fund company (including the chairman) must be independent. It will be a matter for the board to determine whether a director meets the independence requirements established by the listing authority of the exchange or market where the fund company is listed, and whether there are relationships or circumstances (including financial dependence on a director's relationships with the *Manager* or *Investment Manager* of the fund) which are likely to affect, or could appear to affect, the director's judgement<sup>13</sup>. As a minimum condition of independence, the director should not be a past (within the last five years) or present employee of the *Manager* or *Investment Manager* or any of their *Associates* even if permitted by the relevant listing authority.

#### Investment Manager

- 1.6 The *Investment Manager* should be of good standing and in particular should:
  - 1.6.1 have had no disciplinary sanctions imposed on it by any supervisory authority or professional body in the previous five years;
  - 1.6.2 have no convictions for any offence under the legislation of any country relating to the conduct of financial service business or involving fraud or dishonesty or be the parent, subsidiary or an associated company of any company which has such a conviction;

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<sup>11</sup> The *Commission* will consider including other types of investment vehicle such as limited partnerships and unit trusts in a revised version of this guide.

<sup>12</sup> The list of Recognised Stock Exchanges or Markets is given in Appendix 1. It will be a condition of the certificate issued by the *Commission* that the fund is approved for admission to a Recognised Stock Exchange or Market prior to its launch.

<sup>13</sup> Where the rules of the exchange or market are silent on the matter of directors and independence, the directors should have regard to the principles set out in paragraph 1.5.

## Section 1: The Structure of the Fund

- 1.6.3 be able to pay its debts as they fall due;
- 1.6.4 be established in an *OECD* state or jurisdiction or any other state or jurisdiction with which the *JFSC* has entered into a Memorandum of Understanding (or equivalent) on investment business and *collective investment funds*<sup>14</sup>;
- 1.6.5 be regulated in that state or jurisdiction in relation to managing or advising on funds, subject to paragraph 1.6.6;
- 1.6.6 where it is proposed that the *Investment Manager* should act in relation to a property fund, or other type of fund in relation to which the activity of the investment manager is not a regulated activity in its home state or jurisdiction, and the requirement in paragraph 1.6.5 is not otherwise met by the *Investment Manager*, be either:
  - 1.6.6.1 a subsidiary of a company that is regulated in relation to managing or advising on investors' funds in its home state or jurisdiction;
  - 1.6.6.2 a listed company with a minimum market capitalisation of at least US\$500 million (or its currency equivalent) or a subsidiary of a company with such capitalisation;
  - 1.6.6.3 a company or partnership with a trading record of at least five years, or whose *principal persons*, who form its span of control, can demonstrate relevant business experience for this period or possess relevant professional qualifications; or
  - 1.6.6.4 in any other case, be granted approval to act in relation to the Listed Fund by the *JFSC*, provided that the other requirements in paragraphs 1.6 and 1.7 are met;
- 1.6.7 subject to paragraph 1.6.6.3, possess relevant experience in relation to managing or advising on investors' funds using similar strategies to those to be adopted by the Listed Fund; and
- 1.6.8 satisfy the *JFSC's* general principles of corporate governance in relation to the span of control over a business as set out in Appendix 2, meeting the four-eyes principle if the *Investment Manager* cannot handle client monies, and the six-eyes principle if it can handle such monies.
- 1.7 In addition, no *principal person* of the *Investment Manager* shall:
  - 1.7.1 have had any disciplinary sanctions imposed on him by any supervisory authority or professional body in the previous five years; or
  - 1.7.2 have been convicted for any offence under the legislation of any country relating to the conduct of financial services business or involving fraud or dishonesty.
- 1.8 As part of the application process for establishing a Listed Fund, the *Investment Manager* should confirm in writing to the *JFSC* that it satisfies the requirements set out in paragraphs 1.6 and 1.7, and provide documentary evidence in relation to the requirements at

<sup>14</sup> A list of the *OECD* member states and those countries with which the *Commission* has entered into a Memorandum of Understanding (either on a bilateral basis or through the *IOSCO* Multilateral Memorandum of Understanding) covering investment business and collective investment funds may be obtained on the *Commission's* website, [www.jerseyfsc.org](http://www.jerseyfsc.org), from the International Co-operation section.

paragraphs 1.6.4 and 1.6.5 (and if applicable paragraph 1.6.6). In addition, the administrator or *Manager* (as applicable) appointed in accordance with paragraph 1.11 must counter-sign such confirmation, stating that it has carried out its own general due diligence on the *Investment Manager* and has no reason to believe that the statement of the *Investment Manager* is incorrect<sup>15</sup>.

- 1.9 In the event that the *Investment Manager* does not fulfil these criteria (for example, a global institution may have committed a number of regulatory breaches in different jurisdictions) prior clearance should be sought from the JFSC. An *Investment Manager* that has previously been granted consent to establish a Listed Fund may, in satisfaction of the requirement set out at paragraph 1.8, confirm in writing to the JFSC that there have been no material changes to the information most recently provided to the JFSC in that regard.
- 1.10 Where the administrator or *Manager* (as applicable) become aware of any other issue, in addition to those mentioned in paragraphs 1.6 and 1.7, which might cast doubt on the good standing of the *Investment Manager* (or any of its *principal persons*), they should bring the matter to the attention of the JFSC. Relevant issues might for example include knowledge that the *Investment Manager* (or any of its *principal persons*) has been the subject of a formal investigation by a supervisory authority or professional body, even if this did not result in a disciplinary sanction.

**Note:**

- 1 *If a distributor of a Listed Fund is not the Investment Manager or one of its Associates and it falls within one of the following definitions, the provisions of paragraphs 1.6 – 1.10 inclusive (with the exception of paragraph 1.6.7) shall apply to the distributor as if it were an Investment Manager:*
  - a. *The distributor is the driving force behind the Listed Fund such that, if the distributor were to withdraw from the proposal, the Listed Fund would not go ahead. Evidence of this would be, for example, the name of the Listed Fund being linked with the distributor.*
  - b. *The majority of investors going into the Listed Fund are put into the fund by the distributor or its agents.*

## Administration/Management

- 1.11 Every Listed Fund shall appoint an administrator and/or a *Manager* which has at least two Jersey resident directors with appropriate experience together with staff and a physical presence in the Island.
- 1.12 Unless alternative arrangements are put in place by the board of directors of the fund company, the duties of the administrator or *Manager* (as applicable) shall include the responsibility for monitoring the *Investment Manager* set out in paragraphs 1.14 and 1.15. Where such alternative arrangements are to be put in place, the JFSC should be approached in advance on a case by case basis.

<sup>15</sup> In the *Commission's* view, it is implicit that an administrator's or *Manager's* due diligence enquiries can only extend to sources of enquiry available to it, and not to those beyond it.

- 1.13 Any outsourcing by the administrator or *Manager* (as applicable) must comply with the *JFSC's* policy on outsourcing as may be updated from time to time.

#### Monitoring of the Investment Manager

- 1.14 The responsibility of the administrator or *Manager* (as applicable) in relation to the actions of the *Investment Manager* shall be to take reasonable measures to satisfy itself that such actions do not breach the investment and borrowing restrictions applicable to the Listed Fund as set out in the *Offer Document* and the *Constitutive Documents*, and to promptly notify the board of directors of the fund company of any concerns it has in that regard so that appropriate action may be taken.
- 1.15 The administrator or *Manager* (as applicable) must maintain in Jersey sufficient records (in electronic or documentary form) to enable it to fulfil its monitoring functions, and should be able to obtain other relevant records on demand.

#### Review by the Board of Directors of the Fund Company

- 1.16 In addition to the monitoring function in paragraphs 1.14 and 1.15, the board of directors of the fund company must undertake regular reviews of the investment strategy and risk profile of the fund and the investment performance of the *Investment Manager*. In addition, the board shall regularly consider associated matters such as gearing, asset allocation, marketing/investor relations, peer group information and general industry issues.

#### Custody Arrangements

- 1.17 Every Listed Fund must have adequate arrangements for the safe custody of the property of the fund including, if applicable, prime brokerage arrangements. Such arrangements shall be fully disclosed in the *Offer Document*.
- 1.18 Where a hedge fund appoints a prime broker, the prime broker must be part of a group with a minimum credit rating of A1/P1 or long term equivalent. Prior clearance will be required for any prime broker with a rating below this level.

#### The Name of the Fund

- 1.19 The name of the Listed Fund must not be undesirable or misleading. If the name of the Listed Fund indicates a particular objective, geographic region or market, this should be reflected in its investment policy and in the manner in which the Listed Fund maintains the majority of its non-cash assets.

#### The Auditor

- 1.20 An auditor must be appointed for a Listed Fund.
- 1.21 The auditor must have the same qualifications as are required under the Companies (Jersey) Law 1991, as amended.
- 1.22 The audited accounts must be filed with the *JFSC* within seven months of the end of the Listed Fund's financial year.

### Fund service providers

- 1.23 Any Jersey entity acting as a *fund service provider* to a Listed Fund must be registered under the Financial Services (Jersey) Law 1998, as amended, to conduct fund services business and be managed and operated in accordance with any applicable *Codes of Practice*.

### Borrowing and Gearing

- 1.24 There are no restrictions imposed upon the level of borrowing or gearing adopted by a Listed Fund, provided that the approach to borrowing or gearing is clearly disclosed in the *Offer Document*. If the fund is permitted to borrow money in excess of 200% of the net asset value of the fund, full details of the manner in which the risk posed by such borrowing is to be managed must be set out in the *Application Form* submitted to the JFSC. In such a case, the JFSC reserves the right to undertake additional scrutiny.

## Section 2

### 2 The Offer Document of the Fund

#### General

- 2.1 The *Offer Document* must comply with the requirements set out in the *CFPO* and confirmation of this should be provided in the *Application Form*. In addition to the specific requirements stated in the *CFPO*, Article 18 of the schedule of the *CFPO* provides that the *Offer Document* must contain any other material information that investors would reasonably require to enable investors to make an informed judgement about: (i) the merits of participating in the Listed Fund; and (ii) the nature and levels of the risks accepted by making such a purchase. The *JFSC* considers the following additional information to be material:
- 2.1.1 the structure of the Listed Fund, including brief particulars of all documents constituting the Listed Fund and details of how to obtain complete copies of such documents;
  - 2.1.2 the *fund service providers* to the Listed Fund, including details such as their registered office, place and date of incorporation, details of share capital and the manner in which *fund service providers* may be appointed and replaced;
  - 2.1.3 biographical and other relevant information of directors, including current employment and relevant experience, other directorships, including of fund companies managed by the same *Manager* or *Investment Manager*, current or past employment or other material connections with the *Manager* or *Investment Manager*, length of service, qualifications and significant shareholdings;
  - 2.1.4 the identity of the independent directors (including the Chairman) determined in accordance with paragraph 1.5 and, if relevant, the reasons why the board has determined a director to be independent notwithstanding factors that might appear to impair that status;
  - 2.1.5 the policies and procedures for the appointment and replacement of directors (including the Chairman);
  - 2.1.6 the manner in which the board of directors will operate, including how it will review the investment strategy and the risk profile of the fund and its investment performance, delegate or allocate operational responsibilities to the various *fund service providers*, including particularly the *Manager*, *Investment Manager* or administrator, and will exercise oversight of the way in which these responsibilities are fulfilled;
  - 2.1.7 the structure, composition and summary terms of reference of board committees;
  - 2.1.8 any conflicts of interest that may exist in relation to the Listed Fund;
  - 2.1.9 the investment objective and investment management strategies to be employed by the Listed Fund (including the Listed Fund's approach to borrowing and gearing), and any investment or borrowing restrictions applicable to the Listed Fund;



- 2.1.10 the manner in which changes likely to have a material effect on investors may be made to the Listed Fund, noting that any changes that would be contrary to the terms of this guide or contrary to any of the *JFSC's* published policies applicable to Listed Funds will require the prior consent of the *JFSC*;
- 2.1.11 the basis upon which dealing on the secondary market is to take place, including the expected level of activity;
- 2.1.12 the basis upon which any subsequent offerings in the Listed Fund may be made;
- 2.1.13 the basis upon which the value of the assets of the Listed Fund is to be calculated;
- 2.1.14 the manner in which *securities* of the Listed Fund are to be created, issued and paid for;
- 2.1.15 the manner in which votes to be held by *Holders of Securities* will be conducted, and the manner in which meetings of *Holders of Securities* are to be convened and managed generally;
- 2.1.16 the fees, charges and expenses payable from the property of the Listed Fund;
- 2.1.17 the address at which the most recent audited annual report and accounts of the Listed Fund may be inspected;
- 2.1.18 the manner in which any voting rights in underlying assets held by the Listed Fund will be exercised;
- 2.1.19 the safe custody arrangements for the property of the Listed Fund including disclosure, if applicable, of prime broker arrangements;
- 2.1.20 in the case of *Umbrella* structures, details of the "ring-fencing" of assets within sub-funds, or, if there is no such arrangement, a statement to the effect that "in the event of the Listed Fund being unable to meet liabilities attributable to any particular sub-fund out of the assets attributable to such sub-fund, the excess liabilities may be met out of the assets attributable to the other sub-funds" and an explanation of the manner in which such liabilities may be apportioned; and
- 2.1.21 statements to the effect that:
 

"Further information in relation to the regulatory treatment of Listed Funds domiciled in Jersey may be found on the website of the Jersey Financial Services Commission at [www.jerseyfsc.org](http://www.jerseyfsc.org).

"The directors of the company have taken all reasonable care to ensure that the facts stated in this document are true and accurate in all material respects, and that there are no other facts the omission of which would make misleading any statement in the document, whether of fact or of opinion. The directors accept responsibility accordingly."
- 2.2 Nothing in any of the *Constitutive Documents* of a Listed Fund may exclude the jurisdiction of the courts of Jersey to entertain an action concerning the Listed Fund.
- 2.3 In the event that an *Offer Document* is issued in a language other than English, a copy of an English language version of the document must be lodged with the *JFSC*. A statement shall be included in both the original *Offer Document* and the translation stating which version will take precedence in the event of a dispute.
- 2.4 Any variations from the requirements imposed by the *CFPO* must be set out in the *Application Form*.

### Investment Warning

- 2.5 All Listed Funds must contain an investment warning in a prominent position in the *Offer Document* in substantially the following terms:

“This fund has been established in Jersey as a listed fund under a fast-track authorisation process. It is suitable therefore only for professional or experienced investors, or those who have taken appropriate professional advice.

Regulatory requirements which may be deemed necessary for the protection of retail or inexperienced investors, do not apply to listed funds. By investing in this fund you will be deemed to be acknowledging that you are a professional or experienced investor, or have taken appropriate professional advice, and accept the reduced requirements accordingly.

You are wholly responsible for ensuring that all aspects of this fund are acceptable to you. Investment in listed funds may involve special risks that could lead to a loss of all or a substantial portion of such investment. Unless you fully understand and accept the nature of this fund and the potential risks inherent in this fund you should not invest in this fund.”

### Ongoing Requirements

- 2.6 All material changes to information provided to the *JFSC* in connection with a Listed Fund shall be notified to the *JFSC* as soon as possible and in any event within 28 days of such change taking place.
- 2.7 The *JFSC* must be informed immediately if a Listed Fund is refused permission to be listed on a *Recognised Stock Exchange or Market*, or if such permission is revoked or if there is any other material event such as a suspension of trading in the *securities* of the Listed Fund or any investigation into the Listed Fund or any of its *fund service providers*.
- 2.8 Any change to a Listed Fund that would not meet the criteria set out in this guide or that would breach any certificate condition applicable to that Listed Fund will require the prior consent of a duly authorised officer of the *JFSC*.

## Section 3

### 3 Authorisation of the Fund

- 3.1 In order to authorise a Listed Fund, the *JFSC* must receive a completed copy of the *Application Form*.
- 3.2 The administrator or *Manager* (as applicable) shall:
  - 3.2.1 complete and sign a copy of the *Application Form*;
  - 3.2.2 arrange for such form to be countersigned on behalf of the board of the fund company; and
  - 3.2.3 forward a copy of the completed *Application Form* and the stated supporting documentation to the *JFSC*.
- 3.3 Upon receipt of a completed *Application Form*, the *JFSC* will take steps to authorise the Listed Fund and/or its *fund service providers* as the case requires.
- 3.4 Applications will normally be processed within three working days except in cases where variances are being sought. In the event that the *Application Form* states that the Listed Fund complies with the terms of this guide, or that any deviation from the terms of this guide has previously been agreed in writing by a duly authorised officer of the *JFSC*, the *JFSC* will authorise the Listed Fund in reliance upon the *Application Form*. In other cases the *JFSC* will discuss with the applicant those deviations that have not been previously agreed, however in those cases it may not be possible to meet the stated time frame.
- 3.5 The relevant certificate application forms and fees shall be submitted at the time the application is made and prior to the issue of any certificate and other consents.
- 3.6 For an *Umbrella Fund*, an *incorporated cell company*, or a *protected cell company* which has already been granted a certificate under the *Law*, a sub-fund, incorporated cell or protected cell certificate application and fee will need to be submitted for each additional sub-fund, incorporated cell or protected cell that is added prior to an amended certificate being issued. In the case of an *incorporated cell company*, the incorporated cell certificate application form is to be used.

## Appendix 1

### 1 Recognised Stock Exchanges or Markets

1.1 The list of Stock Exchanges or Markets recognised by the JFSC for the purposes of the Listed Fund Guide will be based on the following criteria:

1.1.1 Stock Exchanges of EU Countries and members of the European Free Trade Association who have ratified the European Economic Area Agreement (Iceland, Liechtenstein and Norway);

1.1.2 Stock Exchanges recognised by the UK Financial Services Authority as:

1.1.2.1 Recognised Investment Exchanges:

[London Stock Exchange plc.](#)

1.1.2.2 Recognised Overseas Investment Exchanges:

[National Association of Securities Dealers Automated Quotations; and](#)  
[The Swiss Stock Exchange.](#)

or;

1.1.2.3 Designated Investment Exchanges (includes The International Stock Exchange, previously called the Channel Islands Stock Exchange):

American Stock Exchange

Australian Stock Exchange

Bermuda Stock Exchange

Bolsa Mexicana de Valores

Bourse de Montreal Inc

Chicago Stock Exchange

Hong Kong Exchanges and Clearing Limited

The International Stock Exchange (previously called the Channel Islands Stock Exchange)

Johannesburg Stock Exchange

Korea Stock Exchange

New York Stock Exchange

New Zealand Stock Exchange

Osaka Securities Exchange

Pacific Exchange

Philadelphia Stock Exchange

Singapore Exchange

Tokyo Stock Exchange

Toronto Stock Exchange

1.1.3 Any other Stock Exchange or Market recognised by the *JFSC* (whether nominated by Jersey Finance Limited or otherwise) for the purposes of this guide.

1.1.3.1 the following markets are recognised:

Alternative Investment Market (AIM)

Mauritius Stock Exchange (Official Market)<sup>16</sup>

Specialist Fund Market

1.2 For the purposes of paragraph 1.1.1, the relevant Stock Exchanges are as follows:

Country	Stock Exchange
Austria:	Wiener Bourse
Belgium:	Euronext
Bulgaria	Bulgarian Stock Exchange
Cyprus:	Cyprus Stock Exchange
Czech Republic:	Prague Stock Exchange
Denmark:	Copenhagen Stock Exchange
Estonia	Tallin Stock Exchange
Finland:	Helsinki Stock Exchange
France:	Euronext
Germany:	Deutsche Bourse
Greece:	Athens Stock Exchange
Hungary:	Budapest Stock Exchange
Iceland:	Iceland Stock Exchange
Ireland:	Irish Stock Exchange
Italy:	Borsa Italiana
Latvia:	Riga Stock Exchange
Lithuania:	National Stock Exchange of Lithuania
Luxembourg:	Bourse de Luxembourg
Malta:	Malta Stock Exchange
Netherlands:	Euronext
Norway:	Oslo Bors

<sup>16</sup> Added 5 April 2017

<b>Country</b>	<b>Stock Exchange</b>
Poland:	Warsaw Stock Exchange
Portugal:	Lisbon Stock Exchange
Romania:	Bucharest Stock Exchange
Slovakia:	Bratislava Stock Exchange
Slovenia:	Ljubljana Stock Exchange, Inc
Spain:	Bolsas y Mercados Espanoles
Sweden:	Stockholmborsen
United Kingdom:	London Stock Exchange

## Appendix 2

### 2 Span of Control Requirements

- 2.1 This appendix expands on the general principles of corporate governance in relation to “span of control” as referred to at paragraph 1.6.8.
- 2.2 All *Investment Managers* are advised to read the following and to discuss the contents with their Jersey legal adviser in order to ensure that they satisfy the principle.
- 2.3 In the context of the *Investment Manager*, the principle requires that the *Investment Manager* be able to demonstrate that its business is actively managed by two or three skilled, experienced individuals: two persons if the *Investment Manager* cannot handle client monies, three if it can.
- 2.4 The “four eyes” or “six eyes” are the *principal persons* of the business, who must be able to exercise executive power on behalf of the *Investment Manager*. These individuals must be actively involved in the day-to-day management of the business and able to exercise executive powers on behalf of the *Investment Manager*. Normally, such persons will be directors of the *Investment Manager*.
- 2.5 **They must be able to demonstrate independence, competence, experience and integrity and be able to effectively exercise management control over the *Investment Manager*. Together, the persons providing the “four or six eyes” should be able to demonstrate a balance of appropriate qualifications, skills and experience. As part of the independence requirement care must be taken where members of the same family are *principal persons* of the *Investment Manager*.**
- 2.6 Although the individuals making up the span of control do not need to be involved in the day-to-day execution of the *Investment Manager’s* policy, they should have day-to-day involvement in general management as well as knowledge of and influence upon the way in which the company’s strategy is being implemented through day-to-day policy.
- 2.7 The JFSC acknowledges there may be exceptional circumstances for allowing some degree of relaxation of the principles outlined above. Each request for a relaxation will be considered on its merits and on a case-by-case basis, however, it must be borne in mind that requests of this nature will not be granted lightly and that, once granted, are not to be treated as setting a precedent notwithstanding any similarity of circumstances. Furthermore, consideration of such requests may increase the time taken to process an application.
- 2.8 With respect to 2.5, where close family are eligible to form part of the span of control only one member may be counted. In this respect close family comprises spouses (including co-habitees), civil partners, children, dependants, parents, brothers, and sisters.







Jersey Financial  
Services Commission

**Schedule 4**  
**Guide to Jersey Open-Ended Unclassified**  
**Collective Investment Funds offered to the**  
**general public**  
**(OCIF Guide)**

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## Glossary of Terms

The following table sets out a glossary of terms used in this guide. The definitions contained in this Glossary are not necessarily applicable other than to the use of the terms in this guide.

Approved Bank	<p>means any corporate body or un-incorporate partnership or association being a deposit-taking institution which:</p> <ul style="list-style-type: none"> <li>i) has capital which is shareholders' funds of an amount, as most recently quoted in "The Banker" magazine published by Financial Times Information Limited of US\$ 300,000,000 or more;</li> <li>ii) whose bills are eligible for discount at the central bank of the country where the principal place of business of such body is situate and which is a member of the <i>OECD</i>; or,</li> </ul> <p>which is registered under the Banking Business (Jersey) Law 1991, as amended; or</p> <p>which is a subsidiary as defined in the <i>Law</i> of any body which fulfils the conditions in (i) or (ii) above.</p>
cancellation price	means the amount in the base currency of the <i>OCIF</i> paid out of the property of the <i>OCIF</i> as a result of the redemption by the <i>OCIF</i> of one <i>Unit</i> .
capital market scheme	means an <i>OCIF</i> , the primary objective of which is to invest in <i>debt securities</i> which have a remaining term to maturity of one year or more.
connected person	<p>in relation to a company means:</p> <ul style="list-style-type: none"> <li>i) any person or company beneficially owning, directly or indirectly, 20 per cent or more of the ordinary share capital of that company or able to exercise, directly or indirectly, 20 per cent or more of the total votes in that company;</li> <li>ii) any person or company controlled by a person who or which meets one or both of the descriptions given in (i);</li> <li>iii) any member of the group of which that company forms part; or</li> <li>iv) any director or officer of that company or of any of its connected persons as defined in (i), (ii) or (iii).</li> </ul>
Constitutive Documents	means the principal documents governing the formation of the <i>OCIF</i> , and includes the trust deed in the case of a <i>Unit</i> trust and the Articles of Association, of a <i>Fund company</i> , the Fund Rules (if any), and all material agreements and other documents.

**Deleted:** Commission

**Deleted:** means the Jersey Financial Services Commission.

creation price	means the amount in the base currency of the <i>OCIF</i> added to the property of the <i>OCIF</i> as a result of one <i>Unit</i> of the <i>OCIF</i> being created or issued and sold to a <i>Holder</i> .
debt securities	includes but is not limited to treasury bills, certificates of deposit, bankers acceptances, promissory notes, loan stocks, bonds (including bonds convertible into shares), commercial paper and negotiable instruments.
Derivative Transactions	includes forward foreign exchange contracts, futures contracts, contracts for difference, warrants and put or call options whether written or purchased.
Fund company	means an <i>OCIF</i> which is constituted as a corporate entity in accordance with the Companies (Jersey) Law 1991, as amended.
government and other public securities	<p>means an investment issued by, or the payment of principal and interest on which is guaranteed by, the government of any member state of the <i>OECD</i> or any fixed interest investment issued in any <i>OECD</i> country by a public or local authority or nationalised industry of any <i>OECD</i> country or anywhere in the world by any other body which is in the opinion of the <i>trustee/custodian</i> of similar standing.</p> <p><i>Note: Government and other public securities shall be regarded as being of a different issue if notwithstanding that they are issued by the same person, they are issued on different terms whether as to repayment dates, interest rates, the identity of the guarantor, or otherwise.</i></p>
Holder	in relation to a <i>Unit</i> in an <i>OCIF</i> means the person who is entered in the register as the Holder of that <i>Unit</i> or the bearer of a bearer certificate representing that <i>Unit</i> .
<u>JFSC</u>	<u>means the Jersey Financial Services Commission.</u>
Law	means the Collective Investment Funds (Jersey) Law 1988, as amended.
net asset value or NAV	means the aggregate value of the assets of the <i>OCIF</i> , including accrued income, less accrued expenditure. The NAV will not include any allowance for brokerage or other dealing charges, nor the initial or redemption charges, if any, payable by an investor, nor any equalisation payments.
OCIF	means an Open-ended collective investment fund in respect of which any fund service provider is required to hold a certificate pursuant to the <i>Law</i> , other than a collective investment fund which is included in any class designated under the <i>Law</i> .

OECD	means the Organisation for Economic Co-operation and Development.
open-ended	means a collective investment fund that is normally open for both subscriptions and redemptions at the option of Unitholders.
Prospectus Order	means the Collective Investment Funds (Certified Funds - Prospectuses) (Jersey) Order 2012.
Recognised Market	means any stock exchange, over the counter market or other organized securities market that operates regularly and is open to the international public and on which such securities are regularly traded.
redemption price	means the amount in the base currency of the OCIF which a <i>Holder</i> receives on the sale of one <i>Unit</i> to the OCIF, the manager or an agent of either.  <i>Note: the redemption price may also be referred to as the bid price or the repurchase price.</i>
selling price	means the amount in the base currency of the OCIF payable to the OCIF, the manager or an agent of either when one <i>Unit</i> is purchased.  <i>Note: the selling price may also be referred to as the offer price or the issue price</i>
single pricing	means a system of valuation and pricing such that a common price is determined for both the <i>creation price</i> and the <i>cancellation price</i> and therefore the <i>selling price</i> is the same as the <i>redemption price</i> .
trustee/custodian	means, in the case of an OCIF which takes the form of an unit trust, the trustee and in the case of any other OCIF, the custodian.
Unit	means any material representation of the rights of participants with regard to the assets of an OCIF.

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## Section 1

### 1 Introduction

#### Applicability

- 1.1 This guide is applicable to the structure, operation and documentation of an *OCIF* in respect of which a certificate under the *Law* is to be issued.

#### Scope

- 1.2 This guide seeks to define a set of notionally ideal characteristics for an *OCIF* which is to be marketed to members of the general public who might be regarded as inexperienced in matters of investment and least able to bear the consequences of any loss of their investments.

*Note: This guide does not purport to be a comprehensive statement of all the criteria the JFSC would expect to see met in every case. Each application will be considered on its merits. In some cases additional criteria might be applied, in others, less.*

#### Purpose

- 1.3 The purposes of this guide are to:
- 1.3.1 explain the review process of applications for a certificate;
  - 1.3.2 facilitate the review process by enabling variations from the notionally ideal characteristics to be more easily identified so that, in aggregate, they may be considered on their merits; and
  - 1.3.3 provide to promoters of a certified fund, an aide memoire of the features and characteristics to be considered.

#### Requirement of the Law

- 1.4 Article 8B(7) of the *Law* sets out the matters to be considered by the *JFSC*, when considering an application for a certificate.
- 1.5 These include:
- 1.5.1 the nature of the collective investment fund to which the applicant's role relates;
  - 1.5.2 the role to be performed by the applicant in relation to the collective investment fund;
  - 1.5.3 the reputation of the applicant;
  - 1.5.4 any other fund service providers there are or may be in respect of the collective investment fund to which the application relates;
  - 1.5.5 for the protection of the public or of existing or potential participants in the collective investment fund, whether the applicant should not be granted a certificate;

- 1.5.6 the protection of the reputation and integrity of Jersey in financial and commercial matters; and
- 1.5.7 whether it is in the best economic interests of Jersey that the applicant should not be granted a certificate.

### Policy on Regulation of OCIFs under the Law

- 1.6 When considering any application for a certificate under the *Law* the *JFSC* seeks to ensure that the responsibilities and obligations of the *Law*, including those mentioned above, are fulfilled by examination of the detail of the structure of the fund to which the certificate relates.
- 1.7 It is a requirement of the *JFSC* that *OCIFs* are regulated to an extent and in a manner commensurate with their nature.
- 1.8 For an *OCIF* being established in Jersey, this involves negotiation with the promoter and/or their professional adviser, following scrutiny of all the documentation and other information associated with the *OCIF*.
- 1.9 In particular, the investment restrictions and borrowing powers given for each of the different fund types are prescribed for guidance purposes. Variations may be accepted, even where these give rise to an increase of investment risk, providing an explanation of the risks and health warnings are given in the offering documentation, commensurate with the perceived level of experience of the prospective investors.
- 1.10 These requirements have been maintained and developed over the years in order to facilitate innovation by the finance industry in Jersey and to enable the *JFSC* to be responsive to it whilst still protecting the Island's reputation as an international finance centre.

### Review Procedures

- 1.11 The nature and extent of the review process prior to the granting of a certificate depends upon a number of variables, including whether the *OCIF* is, or is to be, established in Jersey or in some other jurisdiction. The following paragraphs give a general indication of the stages involved.

### OCIF which is to be established in Jersey

- 1.12 **Preliminary** - the *JFSC* welcomes promoters or their professional advisers who wish to discuss informally proposals for a new fund. During such discussions it is usually possible to give an indication of whether or not the proposals may be acceptable. This can be particularly helpful where there are novel features or significant variations from the characteristics presented in this guide.
- 1.13 **Initial Review** - at this stage a written submission is made to the *JFSC*. The Initial Review Checklist for Funds, which is to be submitted, requires information regarding the promoter(s) and the fund service providers and an outline of the key features of the *OCIF*. At the conclusion of this stage, the *JFSC* will indicate in writing whether or not it is thought likely that formal application(s) will result in the necessary consents and certificate being issued. This provisional indication will always be subject to the *JFSC* being satisfied with the detail of the structure and documentation of the *OCIF* when it is submitted.

- 1.14 **Document Review** - this stage commences with the submission to the *JFSC* of a package of documents, comprising:
- 1.14.1 a CIF/UCF Application Form, completed by or on behalf of any fund service provider who is required to hold a certificate, together with the fee prescribed by the CIF Fees Notice;
  - 1.14.2 draft copies of all *Constitutive Documents*, the prospectus and any other information specified in the *JFSC's* response to the Initial Review; and
  - 1.14.3 a completed pro forma, available on request, which is based on this guide and which is designed to highlight areas where the characteristics of the *OCIF* are different from those contained in this guide.
- Once these have been considered, any comments the *JFSC* may have are discussed with the promoter or their representative.
- 1.15 **Formal Licensing** - this stage involves the issue of the relevant consents and certificate. During this stage certified true copies of each of the *Constitutive Documents* must be lodged with the *JFSC*, together with a lawyer's certificate/confirmation that each is substantially the same as the corresponding latest draft previously agreed with the *JFSC*.
- 1.16 On the granting of a certificate, the certificate holder will also become liable for payment of a further fee, and will so be liable on an annual basis for as long as the certificate is held.
- 1.17 When issued, a certificate may be subject to one or more conditions appropriate to the particular fund.

## Section 2

### 2 Structure of an OCIF

#### The Promoter(s)

- 2.1 In order to determine the acceptability of any promoter of an *OCIF* consideration will be given to the following:
- 2.1.1 the track record and relevant experience of the promoting group;
  - 2.1.2 the reputation of the promoting group;
  - 2.1.3 the financial resources of the promoting group;
  - 2.1.4 the spread of ultimate ownership of the promoting group; and
  - 2.1.5 the type of investor to whom the fund/scheme will be offered.
- 2.2 There is no particular significance in the sequence in which the above aspects are listed. The final decision of the *JFSC* will take into account the appropriate balance of all aspects. If there is a deficiency against any one aspect, it may be that this could be compensated for by strengths in relation to another. In general, it will be for the applicant to show why the promoter should be regarded as acceptable and to furnish documentary evidence in support. The *JFSC* may also seek such evidence independently.
- 2.3 The *JFSC*'s Policy Statement on Promoters of Public and Private Collective Investment Funds includes information on how it is determined, who is the promoter and also explains the practical application of the policy.

#### Appointment of a Manager and Trustee/Custodian.

- 2.4 Every *OCIF* shall appoint a *trustee/custodian* acceptable to the *JFSC*.
- 2.5 Every *OCIF* shall appoint a manager acceptable to the *JFSC*.
- 2.6 The *trustee/custodian* and manager must be persons who are independent of each other.
- 2.7 Notwithstanding the generality of paragraph 2.6, if the *trustee/custodian* and the manager are bodies corporate having the same ultimate holding company, they are deemed to be independent of each other if:
- 2.7.1 neither is a subsidiary of the other, except where each is either the holding company or one of its subsidiaries in a very substantial banking or insurance group of companies;
  - 2.7.2 no person is a director of both; and
  - 2.7.3 the *JFSC* is satisfied that there is adequate functional separation.
- In addition, the *JFSC* may require either or both, or the ultimate parent company, to provide an undertaking that they will act independently of each other in their dealings with the *OCIF*.
- 2.8 No person who is a director of the *trustee/custodian* shall be a director of the *Fund company*.

*Note: For other matters concerning the trustee/custodian and the manager, see Sections 3 and 4 of this guide respectively.*

### The Name of the OCIF

- 2.9 The name of the *OCIF* must not be undesirable or misleading. If the name of the *OCIF* indicates a particular objective, geographic region or market, this should be reflected in its investment policy and in the manner in which the *OCIF* maintains the majority of its non-cash assets.

### The Fund Company

- 2.10 A body corporate shall be prohibited from being a director of a *Fund company*.
- 2.11 If the *Fund company* is or is to be established in Jersey, at least two directors must be Jersey residents, acceptable to the *JFSC*.
- 2.12 The fees paid to directors of a *Fund company*, either individually or collectively, shall be determined by the *Holders* at a general meeting.
- 2.13 Fees paid to directors in connection with appointments held as the direct result of investments made by the *Fund company* shall be the subject of account to the *Fund company* and *Holders* unless suitable disclosure arrangements have been made.
- 2.14 The directors of a *Fund company* shall be subject to removal by a simple majority vote of the *Holders*.

### The Investment Adviser/Investment Manager

- 2.15 If an investment adviser or investment manager is appointed, the *JFSC* may require evidence that it is appropriately qualified for the performance of its function.

### The Administrator

- 2.16 The appointment of an administrator shall be subject to the approval of the *JFSC*.
- 2.17 An administrator shall have the same qualifications as are prescribed in Section 4 for a manager and, to the extent that the functions of the manager are subcontracted to the administrator under the terms of its appointment, it shall fulfil all the obligations of a manager set out in this guide.
- 2.18 If an administrator is appointed to perform some or all of a manager's administrative functions in respect of an *OCIF*, the *trustee/custodian* and the administrator must be persons who are independent of each other.
- 2.19 Notwithstanding the generality of paragraph 2.18, the provisions of paragraph 2.7 above apply *mutatis mutandis* to determining independence between the *trustee/custodian* and any administrator if both are bodies corporate having the same ultimate holding company.

### The Auditor

- 2.20 An auditor is to be appointed for the *OCIF*.

- 2.21 The auditor must be independent of the manager, the *trustee/custodian*, the administrator and, in the case of an *OCIF* which is a corporate body, the directors.
- 2.22 The auditor must have the same qualifications as are required under the Companies (Jersey) Law 1991, as amended, unless an officer of the *JFSC* agrees in writing to the appointment of an auditor with different qualifications.
- 2.23 The *Constitutive Documents* shall provide for the directors of the *Fund company* or of the manager to ensure that the annual accounts of the *OCIF* are to be prepared in accordance with the accounting standards described in paragraph 3.7 of the Codes of Practice for Certified Funds as amended from time to time.

*Note Reference may be made to Appendix A for guidance on the information to be included in the annual report and accounts of an OCIF.*

#### All Fund Service Providers

- 2.24 If any duties of a Jersey resident fund service provider of an *OCIF* are to be delegated to a person or body who is not a fund service provider registered by the *JFSC* to conduct fund services business (the **Agent**), the terms of such delegation must provide that information, papers, records, accounts, as necessary, are available in Jersey and maintained so as to:
  - 2.24.1 enable the fund service provider to fulfil its obligations to monitor the performance of the functions delegated;
  - 2.24.2 enable the fund service provider to continue its function in the event that the Agent ceases or communication between the fund service provider and the Agent is interrupted; and
  - 2.24.3 permit the *JFSC* or its agents at any time to supervise the operation of the *OCIF* and the functions performed in relation to it by the fund service provider.

## Section 3

### 3 Concerning the Trustee/Custodian

#### Qualifications

- 3.1 A trustee/custodian shall be:
- 3.1.1 a company which is a member of a major banking or insurance group of companies; or
  - 3.1.2 any other institution which is acceptable to the JFSC.
- 3.2 If the OCIF is or is to be established in Jersey, the *trustee/custodian* shall be a company incorporated and resident in Jersey and with an established place of business in the Island, or the Jersey branch of a non-Jersey bank.
- 3.3 A *trustee/custodian* must be independently audited and be in compliance with the financial resource requirements of the Codes of Practice for Fund Services Business published by the JFSC.

#### Custodial Duties

- 3.4 The *trustee/custodian* shall take into its custody or under its control all the property of the OCIF and hold it in trust for the *Holders*.
- 3.5 The *Constitutive Documents* may authorise the *trustee/custodian* to appoint any entity (other than the manager or a *connected person* of the manager) as a sub-custodian to perform any of the functions of the custodian, including the safe keeping of the property of the OCIF.
- 3.6 If the *trustee/custodian* delegates any function to any sub-custodian which is not a branch or *connected person*, the relevant agreement may provide that the *trustee/custodian* shall not be responsible for any act or omission of the sub-custodian, provided that the *trustee/custodian* is able to show:
- 3.6.1 that it was reasonable for the sub-custodian to be employed for the function in question;
  - 3.6.2 that it was reasonable for the *trustee/custodian* to believe that the sub-custodian was and remained competent to undertake the function in question; and
  - 3.6.3 that the *trustee/custodian* had taken reasonable care to ensure that the function in question was undertaken by the sub-custodian in a competent manner.
- 3.7 If the *trustee/custodian* delegates any function to any branch or *connected person*, the *trustee/custodian* shall remain responsible for all acts and omissions of the sub-custodian as if they were the acts or omissions of the *trustee/custodian*, whether or not the *trustee/custodian* is able to satisfy all of the conditions in paragraph 3.6.
- 3.8 The *trustee/custodian* and any sub-custodian may deposit securities with, and hold securities in any securities depository on such terms as it customarily operates.



### Duties to Monitor Management Functions

- 3.9 The *trustee/custodian* shall take reasonable care to ensure that the methods adopted by the manager for the creation, cancellation, sale, and redemption of *Units* effected by an *OCIF* are carried out in accordance with the provisions of the *Constitutive Documents*.
- 3.10 The *trustee/custodian* shall take reasonable care to ensure that the methods adopted by the manager in determining the value of assets of the *OCIF* and of the prices at which transactions in the *Units* are conducted by or on behalf of the *OCIF* are adequate to ensure that the calculations are made in accordance with the provisions of the *Constitutive Documents*.
- 3.11 The *trustee/custodian* should have the right (but may be not obliged) to be satisfied that the investment and borrowing limitations set out in the *Constitutive Documents* and the prospectus are complied with. In the absence of reasonable cause for believing that instructions in respect of the investments will give rise to non-compliance, the *trustee/custodian* may be required to carry out all such instructions.

### Duties in Representing Investors

- 3.12 The *trustee/custodian* must have the right to call for a meeting of *Holders* to consider any matter which it considers appropriate and also to speak at any meeting of *Holders*.
- 3.13 The *Constitutive Documents* must provide that no printed matter issued to prospective buyers (e.g. prospectus, application forms, sales literature) and no announcements addressed to the general body of *Holders* or to the public or to the press shall be issued or published without the *trustee/custodian* having received a copy of it.

### Removal and Retirement

- 3.14 The trustee of an *OCIF* which is an unit trust must not be able to retire unless a new trustee takes up office at the same time and the trustee shall have power to wind up the fund if no replacement can be found.
- 3.15 In the case of an *OCIF* which is not an unit trust, the *Constitutive Documents* shall specify the arrangements applicable to the removal or replacement of the *trustee/custodian* which inter alia shall provide for:
- 3.15.1 the circumstances under which the *trustee/custodian* may retire or be removed without notice;
  - 3.15.2 removal or retirement under notice to be subject to the prior appointment of a replacement;
  - 3.15.3 the responsibility for finding and appointing a replacement *trustee/custodian* within a specified period; and
  - 3.15.4 safe custody of the assets if at any time there is no replacement available, and pending a decision being taken by *Holders* in a general meeting to wind up the *OCIF*.

## Section 4

### 4 Concerning the Manager

#### Qualifications

- 4.1 A manager shall:
- 4.1.1 be engaged primarily in the business of fund management; and
  - 4.1.2 have sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities; in particular, it must be in compliance with the financial resource requirements of the Codes of Practice for Fund Services Business published by the JFSC.
- 4.2 If the OCIF is or is to be established in Jersey, the manager shall be a company incorporated and resident in Jersey. It is not, however, essential for the manager to have staff and premises in the Island if a Jersey incorporated company which does have staff and premises in the Island is appointed as administrator.

#### Delegation of Management Functions

- 4.3 In the case of an OCIF which is, or is to be, established in Jersey, any outsourcing of management functions must have regard to the requirement for the OCIF to be managed in Jersey. To this end, control over all aspects of the OCIF must be exercised from Jersey and decisions concerning the policy and direction of the OCIF must be taken by those responsible for the OCIF and be effected from Jersey. In addition to the requirements of paragraph 2.24, consideration should be given to the JFSC's policy on outsourcing as may be updated from time to time.

#### Retirement, Removal and Dismissal

- 4.4 The *Constitutive Documents* shall include provisions for the removal of the manager from office. Such provisions shall include:
- 4.4.1 removal without notice if the manager goes into liquidation, becomes bankrupt, is subject to a *désastre* declaration or has a receiver appointed over its assets;
  - 4.4.2 removal subject to notice, if *Holders* representing at least two-thirds by value of the *Units* outstanding request it in an appropriate manner (e.g. in the case of a *Fund company*, by passing a resolution); and
  - 4.4.3 removal subject to notice, if the manager is in breach of any agreement, trust deed, etc., and, if capable of being remedied, the manager fails to do so within a specified period.
- 4.5 Upon the retirement, removal or dismissal of the manager, a new manager shall be appointed as soon as possible. The appointment, which is subject to the approval of an officer of the JFSC, may, in the case of a *Fund company*, be made by the directors and in all other cases by the *trustee/custodian*.
- 4.6 In the case of a *Fund company*, the appointment of a new manager shall be subject to ratification by *Holders* unless:

- 4.6.1 the terms do not differ materially from those previously applicable; and
- 4.6.2 the *Fund company*, the manager and the *trustee/custodian* confirm in writing to the *JFSC* that the interests of the *Holders* are not adversely affected.

## Section 5

### 5 OCIF Documents

#### Marketing and the Prospectus

- 5.1 The prospectus must contain all the information necessary for investors to be able to make an informed judgement about the merits of, and the extent of the risks associated with participating in the *OCIF*.
- 5.2 To the extent that the *Prospectus Order* applies to the *OCIF*, the prospectus must comply with all the provisions of that Order. When the *JFSC*'s approval is required (e.g. under a condition of a certificate), for the circulation of any other prospectus, the review leading to the grant of such approval will be based upon the requirements of the Schedule to the *Prospectus Order*.

#### Constitutive Documents

- 5.3 Provision may be made in the *Constitutive Documents* for the *Fund company*, the *trustee/custodian* or the manager of an *OCIF* or the directors of any of them (the **executives**), to be exempted from any liability to *Holders*, howsoever caused, other than:
- 5.3.1 any liability which would be imposed by any law applicable to the *OCIF* or to the executive (an **applicable law**); and
  - 5.3.2 a liability arising from fraud, negligence or a breach of duty or trust by the executive or the failure of the executive to exercise due care and diligence.
- 5.4 In the case of an *OCIF* which is or is to be established in Jersey, all the contracts and agreements should be expressed to be subject to Jersey law. The parties to the contracts and agreements must be subject to the non-exclusive jurisdiction of the Jersey courts and, if not resident in Jersey, should appoint a Jersey agent for the serving of process.
- 5.5 Nothing in any of the *OCIF* documentation may exclude the jurisdiction of the courts of Jersey to entertain an action concerning the *OCIF*.
- 5.6 The *Constitutive Documents* may, subject to the requirements of law and any relevant certificate condition, be altered by the manager and *trustee/custodian* without consulting *Holders*, provided that the *trustee/custodian* certifies in writing that in its opinion the proposed alteration:
- 5.6.1 is necessary to make possible compliance with fiscal or other statutory or official requirements;
  - 5.6.2 does not materially prejudice *Holders'* interests, does not to any material extent release the *trustee/custodian*, manager or any other person from any liability to *Holders* and does not increase the costs and charges payable from the *OCIF* property; or
  - 5.6.3 is necessary to correct a manifest error.

In all other cases no alteration may be made except by a special or extraordinary resolution of *Holders*.

## Section 6

### 6 Pricing, Issue and Redemption of Units

#### Valuation & Pricing

- 6.1 The *Constitutive Documents* shall state the methods to be used to determine the value of each of the different kinds of assets held by the *OCIF* in order to calculate the *net asset value* of the *OCIF*, including:
  - 6.1.1 securities listed on a recognised market; whether the values are to be determined on the basis of published offer price, bid price, mid-market price or some other and, if sometimes one and sometimes another, the applicable circumstances;
  - 6.1.2 options written by the *OCIF* on the property of the *OCIF*;
  - 6.1.3 options, warrants, futures and any other derivative contract;
  - 6.1.4 *Units* in another *OCIF*; and
  - 6.1.5 investments not listed or quoted on a recognised market.
- 6.2 The value of investments not listed or quoted on a recognised market shall be determined on a regular basis by a professional person or firm approved by the *trustee/custodian* as qualified to value such investments. Such professional person may, with the approval of the *trustee/custodian*, be the manager or any *connected person* of the manager, or the directors of the *Fund company*.
- 6.3 Other than in the case of an initial or fixed price offer (see paragraph 6.12), the *creation price*, *cancellation price*, *selling price* and *redemption price* of *Units* of an *OCIF* should be calculated on the basis of the *NAV* of the *OCIF* divided by the number of *Units* in issue or deemed to be in issue.
- 6.4 In the case of an *OCIF* which has, or has provision for, class funds, a reduction in the *NAV* of any class fund must not materially affect the *NAV* of any other class fund.

#### Single Pricing

- 6.5 The *Constitutive Documents* of an *OCIF* which operates or is permitted to operate a system of *single pricing* shall provide:
  - 6.5.1 that a dilution levy may be imposed to the extent necessary to avoid any dilution of the *NAV* of the *OCIF* as a consequence of *single pricing*; and
  - 6.5.2 for the amount of any such levy to be determined so that, so far as practicable, it is fair to all *Holders* and potential *Holders*.

*Note: Under single pricing, the NAV of the OCIF might be diluted, for example, when there are a significant number of net redemptions or net purchases of Units in the OCIF on a dealing day; or as a result of the combined effect of the bid/offer spread on underlying investments and the costs associated with trading by the OCIF in underlying investments.*

- 6.6 The manager of an *OCIF* which operates or is permitted to operate a system of *single pricing* shall have the power under the *Constitutive Documents* to require either or both:
- 6.6.1 the payment of a dilution levy in respect of the creation or sale of *Units* or any class of *Units*; and
  - 6.6.2 the deduction of a dilution levy in respect of the redemption or cancellation of *Units* or any class of *Units*.
- The benefit of any such dilution levy is to be added to the property of the *OCIF*.
- 6.7 When an *OCIF* is operating a system of *single pricing*, any asset of the *OCIF* for which different prices are quoted, according to whether that asset is being bought or sold, shall be valued at its mid-market price for the purpose of determining the *NAV* of the *OCIF*.
- 6.8 The ability for a dilution levy to be imposed must be disclosed in the prospectus, together with appropriate explanations of the circumstances when it may be levied and the manner in which it will be determined.

#### Issue and Creation of Units

- 6.9 *Units* should not be created or sold by or on behalf of the *OCIF* until the *trustee/custodian* has confirmed receipt of the purchase price in cleared funds.
- 6.10 An *OCIF* may not issue warrants, rights or options entitling *Holders* to purchase *Units* in the *Fund company*.
- 6.11 Where there are provisions enabling the issue of *Units* in exchange for assets other than cash, the following safeguards shall be applied:
- 6.11.1 the assets to be exchanged for *Units* in the *OCIF* are to be valued on the same basis as if they comprised part of the property of the *OCIF*; and
  - 6.11.2 only assets which are consistent with the investment objectives and restrictions of the *OCIF* may be exchanged for *Units* and then only to the extent that none of the limits for investment is breached.

#### Initial and other Fixed Price Offers

- 6.12 If an initial offer is made, there shall be a prohibition on any of the proceeds being invested by the *OCIF* until the conclusion of the offer period.
- 6.13 The *Constitutive Documents* may allow that at any time after the initial offer, *Units* may be sold at a fixed price for a period not exceeding 30 days (including the date on which the offer opens), providing:
- 6.13.1 if at any time the *net asset value* of the *OCIF* exceeds or falls short by more than 2.5 per cent, the value of the assets at the time when the fixed price was determined, the manager shall defer dealing and calculate a new price as soon as possible;
  - 6.13.2 no member of the promoting group is permitted to purchase or redeem *Units* during the fixed price period; and
  - 6.13.3 where the manager is permitted to make a market in *Units* of the *OCIF*, it shall be prohibited from purchasing from or redeeming *Units* to the *OCIF* for its own account during the fixed price period.

## Redemptions

- 6.14 Except whilst a suspension of dealings is in force (see paragraph 6.23), the *Holder* shall have the right to require the *OCIF* to redeem any *Units* he holds.
- 6.15 The *Constitutive Documents* may include provision for compulsory redemption of *Units*:
- 6.15.1 if all but not some of the *Units* are to be compulsorily redeemed; or
  - 6.15.2 if by being the *Holder*, a *Holder* causes the *OCIF* to be in breach of any law or to suffer fiscal or other penalties.
- 6.16 Redemption charges will not usually be permitted if the *Units* were subject to an initial charge when issued.
- 6.17 Payment of redemption proceeds must be made in cash, except:
- 6.17.1 where each *Holder* agrees to payment in specie for the *Units* he is redeeming; and
  - 6.17.2 in the case of a scheme of amalgamation involving an exchange of *Units* in the *OCIF* for *Units* in another.
- 6.18 If payment is to be made in any currency other than that in which the *OCIF* (or class, as the case may be) is denominated, the *OCIF* (or class, as the case may be) shall not bear any of the costs associated with the currency exchange.
- 6.19 The interval between the relevant dealing day and the payment of the redemption proceeds should not normally exceed one calendar week, providing that the *Holder* has complied with all the stated conditions of the redemption procedure (e.g. submission of any certificate).

## Frequency of Dealing

- 6.20 There must be at least one regular dealing day per month. The dealing price(s) quoted or published must be the *selling price* and/or the *redemption price* together with a clear indication of which price(s) is given.
- 6.21 A permanent change in the method, frequency or timing of dealing may only be made after notice has been given to *Holders*. The period of notice should be not less than one month or such as would allow for two dealing days, whichever is the greater.
- 6.22 A temporary change may only be made:
- 6.22.1 in exceptional circumstances, having regard to the interests of *Holders*;
  - 6.22.2 if the possibility of a change and the circumstances in which it can be made have been fully disclosed in the prospectus; and
  - 6.22.3 with the approval of the *trustee/custodian*.

## Suspension and Deferral of Dealing

- 6.23 Suspension of dealings may be provided for only in exceptional circumstances, having regard to the interests of *Holders*.
- 6.24 The manager must immediately notify the *JFSC* if dealing in *Units* ceases or is suspended. The fact that dealing is suspended must be published immediately following such decision and at

least once per month during the period of suspension, in the newspaper in which the *OCIF's* prices are normally published.

### Manager's Box

- 6.25 If the manager is permitted to make a market in the *Units* of the *OCIF*, it shall not sell *Units* at higher than the current *selling price* or purchase *Units* at lower than the current *redemption price*.
- 6.26 The manager shall keep a daily record of *Units* held by it, including the class of such *Units*, which have been acquired or disposed of, and of the balance of any acquisitions and disposals.
- 6.27 The manager shall make the daily record of *Units* available for inspection by the *trustee/custodian* free of charge at all times during ordinary office hours and shall supply the *trustee/custodian* with a copy of the record or any part of it on request free of charge.

### Minimum Holding

- 6.28 If there is provision in the *Constitutive Documents* for the minimum holding to be altered then such provisions must ensure that any change does not adversely affect any *Holders* registered prior to the change becoming effective, for as long as that *Holder* does not alter the level of his holding.

### Meetings

- 6.29 The arrangements for convening and conducting meetings of *Holders* (including class meetings) shall be prescribed by the *Constitutive Documents* and shall include provision for:
  - 6.29.1 the period and form of notice;
  - 6.29.2 the ability of *Holders* to appoint proxies;
  - 6.29.3 the quorum for meetings (including class meetings and adjourned meetings);
  - 6.29.4 the adjournment of a meeting;
  - 6.29.5 how voting is to be conducted, including what voting rights a *Holder* will have for each method which may be used: on a poll, the votes of a *Holder* should be proportionate to the number of *Units* held or, where there are accumulation *Units*, to the value of *Units* held.
  - 6.29.6 the proportion of votes cast which must be in favour of the resolution for it to be adopted: this proportion should be not less than two thirds of the votes cast by those present in person or by proxy if the resolution is:
    - 6.29.6.1 to modify, alter or add to the *Constitutive Documents*, except as provided in paragraph 5.6;
    - 6.29.6.2 to terminate the *OCIF*, unless the means of termination of the *OCIF* are stipulated in the *Constitutive Documents*;
    - 6.29.6.3 to increase the maximum fees paid to the manager, *trustee/custodian* or directors of the *Fund company*; or
    - 6.29.6.4 for the *OCIF* to accept liability for any fees or charges not disclosed in the prospectus; otherwise, the decision may be determined by a simple majority of the votes cast.



the rights of the *trustee/custodian* to require a meeting to be convened and to speak at any meeting (see paragraph 3.12).

- 6.30 Where bearer *Units* are in issue, proper provision must be made for notification to bearer *Holder*s of the timing and agenda of forthcoming meetings and voting arrangements.
- 6.31 The directors of the *Fund company*, the *trustee/custodian*, the manager, investment adviser and their *connected persons* should be prohibited from voting their beneficially owned shares at, or counted in the quorum for, a meeting at which they have a material interest in the business to be contracted.

### Register of Holders

- 6.32 A register of *Holder*s is to be maintained for each *OCIF*.

### Reporting Requirements

- 6.33 At least two reports must be published and distributed to *Holder*s in respect of each financial year, although only the accounts prepared as at the end of the financial year must be audited (see paragraph 2.23).
- 6.34 Notification to *Holder*s must be made in respect of any changes to the offering or *Constitutive Documents*, unless the *trustee/custodian* certifies in writing that in its opinion the changes will not prejudice the *Holder*s' interests. A copy of any such certification shall be filed with the *JFSC*.
- 6.35 The latest available *selling and redemption prices* or *net asset value* must be available to all *Holder*s.

### Charges and Fees Payable by an OCIF

- 6.36 The level of all fees and charges (including management fees, *trustee/custodian* fees and start-up expenses), payable from the property of the *OCIF* must be clearly stated, with percentages expressed on a per annum basis. In the case of indeterminable fees and charges, the basis of calculation or the estimated ranges should be disclosed.
- 6.37 If a performance fee is levied, the fee should only be payable no more frequently than annually and only if the *net asset value* per *Unit* exceeds the *net asset value* per *Unit* on which the performance fee was last calculated and paid.
- 6.38 In respect of any increase of the management fee up to the maximum permitted level, at least three months prior notice must be given to all *Holder*s.

### Investment Limits and Borrowing Powers

- 6.39 Investment limits and borrowing powers shall be established for each *OCIF* and shall be:
  - 6.39.1 defined in the *Constitutive Documents* or by a resolution of the board of directors of the *Fund company* or of the manager;
  - 6.39.2 agreed with the *JFSC*;
  - 6.39.3 fully disclosed in the Prospectus which must also contain a full clear and prominent statement of the investment risks with appropriate explanations and health warnings; and

- 6.39.4 subsequently changed only with the prior approval of the *JFSC* and after notice has been given to *Holders*.
- 6.40 The investment limits and borrowing powers of an *OCIF* shall be determined in relation to the stated investment objective and policies, with a view to:
- 6.40.1 identifying the type of investments to be made by the *OCIF*;
  - 6.40.2 ensuring an adequate spread of investment in terms of type of security, geographical sector, technology sector, etc.;
  - 6.40.3 safeguarding against investments being used for other purposes (e.g. to acquire an influential stake in a corporate body);
  - 6.40.4 establishing the limits of investment risk associated with the *OCIF*;
  - 6.40.5 the purposes for which borrowings are to be used; and
  - 6.40.6 the nature and extent of the use of efficient portfolio management techniques.
- 6.41 If any of the limits regarding investment and borrowing is breached, the manager should take as a priority objective all steps as are necessary within a reasonable time to remedy the situation, taking due account of the interests of the *Holders*.
- 6.42 An example is given in Appendix 1 of investment restrictions and borrowing powers which the *JFSC* considers might be applied to an *OCIF* which is a General Securities Fund, seeking to offer a low investment risk profile. Separate examples of investment restrictions and borrowing powers, together with other special provisions are given in Appendices 2 to 9 inclusive for certain particular fund types, each designated on the basis of its primary investment objective.
- 6.43 The specific fund types covered by Appendices 2 to 9 are:
- 6.43.1 **Fund of Funds** - an *OCIF* which invests all of its assets in other collective investment schemes, although it may hold cash for ancillary purposes and enter into financial futures contracts for hedging purposes or efficient portfolio management.
  - 6.43.2 **Feeder Fund** - an *OCIF* which invests all of its assets in a single, specified, collective investment scheme, or one constituent part of an umbrella fund, although it may hold cash for ancillary purposes and enter into financial futures contracts for hedging purposes or efficient portfolio management.
  - 6.43.3 **Money Market Fund** - an *OCIF*, the sole objective of which is to invest in short-term deposits and *debt securities*.
  - 6.43.4 **Warrant Fund** - an *OCIF*, the principal objective of which is investment in warrants.
  - 6.43.5 **Real Property Fund** - an *OCIF*, the principle objective of which is to invest directly or indirectly in to real property.
  - 6.43.6 **Futures and Options Fund** - an *OCIF*, principal objective of which is investments in futures contracts (including commodities and financial futures) and/or options.
  - 6.43.7 **Guaranteed Fund** - an *OCIF* which has a structure which includes security arrangements intended to ensure that investors will receive payments totalling a stated proportion of the amount invested.

- 6.43.8 **Leveraged Fund** - an OCIF which utilizes a borrowing capacity or other form of leverage greater than that permitted by Appendix 1 or, in the case of one of the other specific fund types, the corresponding schedule.

*Note: The investment restrictions and borrowing powers given in each of the Schedules are for guidance purposes ONLY. They do not set requirements to be met by any particular OCIF; rather they provide an artificial baseline against which each OCIF may be compared to assess whether:*

- a. the requirements of Article 8(B)7 of the Law will be satisfied (see paragraph 1.4);*
- b. an adequately comprehensive set of limits has been declared; and*
- c. the nature and extent of risk explanations and health warnings commensurate with the perceived experience of the prospective investors have been provided in the offer documentation.*

#### Transactions with connected persons

- 6.44 No person shall be allowed to enter on behalf of the OCIF into underwriting or sub-underwriting contracts without the prior consent of the *trustee/custodian* and unless the OCIF or the manager provides in writing that all commissions and fees payable to the manager under such contracts and all investments acquired pursuant to such contracts shall form part of the assets of the OCIF.
- 6.45 If cash forming part of the assets of the OCIF is deposited with the *trustee/custodian*, the manager, the investment adviser or with any connected company of either (being an institution licensed to accept deposits), interest must be received on the deposit at a rate not lower than the prevailing commercial rate for a deposit of that size and term.
- 6.46 All transactions carried out by or on behalf of the OCIF must be at arm's length. In particular, any transactions between the OCIF and the manager, investment manager, investment adviser, the directors of the *Fund company* or any of their *connected persons* as principal may only be made with the prior written consent of the *trustee/custodian*. All such transactions must be disclosed in the annual report of the OCIF.

## Appendix 1

### Investment Limits and Borrowing Powers (See paragraphs 6.39 – 6.42)

#### 1 General Securities Fund

##### Applicability of restrictions to Umbrella Funds

- 1.1 Unless the contrary is provided, the provisions of this Appendix shall not apply to an umbrella fund as if it were a single *OCIF*, but shall apply to each sub-fund of the umbrella as if each such separate part were a single *OCIF*. An exception to this rule is 1.3 of this Appendix, where the combined investment by all the sub-funds of an umbrella fund in any class of security issued by any one issuer shall not exceed 10 per cent of that class.

##### Spread of Investments

- 1.2 The value of an *OCIF*'s holding of securities issued by any single issuer may not exceed 10 per cent of its total *net asset value*.
- 1.3 An *OCIF* may not hold more than 10 per cent of any class of security issued by any single issuer.

##### Unlisted Securities

- 1.4 The value of an *OCIF*'s holding of securities not listed or quoted on a recognised market may not exceed 15 per cent of its total *net asset value*.

##### Government and other public securities

- 1.5 Notwithstanding 1.2 and 1.3 of this Appendix up to 30 per cent of the total *net asset value* of the *OCIF* may be invested in *government and other public securities* of the same issue.
- 1.6 Subject to 1.5 of this Appendix, an *OCIF* may invest all of its assets in *government and other public securities* in at least six different issues.

##### Debentures

- 1.7 The investment limits set by the *OCIF* for debentures should include a clear statement of any credit rating of the issuer(s) and the maturity of the instruments.

##### Bank Deposits

- 1.8 Not more than 10 per cent of the *NAV*, or US\$1,000,000, or the equivalent in the base currency of the *OCIF*, whichever is the greater, should be kept on deposit with or on loan to any one person, or any connected company of that person unless that person is an *Approved Bank*, in which case the maximum may be 20 per cent of the *NAV* of the *OCIF*.

## Derivative Transactions

- 1.9 An OCIF may enter into any *Derivative Transactions* without limit for the purposes of hedging the currency and price of investments or to close out other *Derivative Transactions*.
- 1.10 *Derivative Transactions* utilised other than for hedging purposes should be only those which are traded on or under the rules of a recognised market and have been so traded for a period of not less than six months.
- 1.11 For the purposes of this Appendix, the percentages referred to in 1.15 and 1.16 of this Appendix shall include the total of all cash or other property transferred or deposited by way of premium or initial margin and all other acquisition costs of any *Derivative Transaction* together with the amount liable to be paid or, as the case may be, the value of the securities which must be sold or surrendered, on the expiry or completion of the contract, whichever is the greater.
- 1.12 For the purposes of this Appendix:
  - 1.12.1 Cover for *Derivative Transactions* under which the OCIF is or may be liable to deliver property may comprise property, or rights or obligations to acquire property of the same kind, which is sufficient to enable the discharge of the obligation under the contract.
  - 1.12.2 Cover for *Derivative Transactions* under which the OCIF is or may be liable to acquire property may comprise cash or near cash which is not to be taken into account for any other purpose and which is sufficient to discharge the obligation, or rights or obligations to dispose of property, should the obligation to acquire it arise.
- 1.13 Cover for *Derivative Transaction* which is a contract for differences may comprise property or rights to acquire property which is reasonably considered to be sufficiently similar to that which is the basis for determining amounts payable under the contract to enable any obligation to be discharged.
- 1.14 If an OCIF enters into any *Derivative Transaction* under which additional premia or margin payments may arise, its assets should include cash or near cash which is not taken onto account for other purposes and which is sufficient to meet all such payments.
- 1.15 The value of all *Derivative Transactions* entered into by the OCIF should not exceed 25 per cent of the *net asset value* of the OCIF. Within this limit, the OCIF shall not invest in warrants or options, the aggregate value of which is more than 15 per cent of the *net asset value* of the OCIF.
- 1.16 An OCIF may write call options on portfolio investments or put options, providing that:
  - 1.16.1 the total value of all such options does not exceed 25 per cent of the *net asset value* of the OCIF;
  - 1.16.2 cover is maintained throughout the period of the contract; and
  - 1.16.3 in the case of put options, the property which the OCIF is obliged to purchase if the option is exercised may be acquired without contravening the investment limits of the OCIF.
- 1.17 The writing of uncovered options is to be prohibited.

### Investment in other schemes

- 1.18 The value of an *OCIF's* holding of *Units* or shares in other collective investment schemes may not in aggregate exceed 10 per cent of its total *net asset value*. In addition, the objective of such collective investment schemes may not be to invest primarily in any investment prohibited by this Appendix and where such scheme's objective is to invest primarily in investments restricted by this Appendix, such holdings may not be in contravention of the relevant limitation.
- 1.19 Where an *OCIF* invests in any collective scheme managed by the manager or any connected company, the following provisions shall apply:
- 1.19.1 initial charges should not be levied on both investment in the *OCIF* and on investments made by the *OCIF* in the underlying scheme;
  - 1.19.2 the *Constitutive Documents* of the *OCIF* shall prohibit any other collective investment scheme, or any person as nominee of such a scheme, being the *Holder of Units* in the *OCIF*; and
  - 1.19.3 the potential conflict of interest of the manager must be declared to the *trustee/custodian* who shall approve the use of any voting power which results from the underlying investment in the scheme concerned.

### Real Estate Investments

- 1.20 An *OCIF* which is not a Real Property Fund (see Appendix 6), may not invest in any type of real estate (including buildings) or interests in real estate (including options or rights but excluding shares in real estate companies).

### Commodities

- 1.21 Investment in commodities must be limited to gold, silver, platinum or other bullion and the value of an *OCIF's* holding of such physical commodities and commodity based investments (other than shares in companies engaged in producing, processing or trading in commodities), may not exceed 20 per cent of the total *net asset value* of the *OCIF*.

### Short Selling

- 1.22 No short sale or purchases on margin may be made except for hedging purposes.

### Unlimited Liability Investments

- 1.23 An *OCIF* may not acquire any asset which involves the assumption of any liability which is unlimited.

### Investment in Securities in which Directors/Officers have interests

- 1.24 An *OCIF* may not invest in any security of any class in any company or body if any director or officer of the manager owns more than 0.5 per cent of the total nominal amount of all the issued securities of that class, or, collectively the directors and officers of the manager own more than 5 per cent of those securities.

### Investment in Nil-Paid/Partly Paid Securities

- 1.25 The portfolio of an *OCIF* may not include any security where a call is to be made for any sum unpaid on that security unless that call could be met in full out of cash or near cash by the

OCIF's portfolio, the amount of which has not already been taken into account for the purposes of providing cover for any financial instrument.

#### Making Loans

- 1.26 An OCIF may not lend, assume, guarantee, endorse or otherwise become directly or contingently liable for, or in connection with, any obligation or indebtedness of any persons without the prior written consent of the *trustee/custodian*.

#### Limitations on Borrowing

- 1.27 The maximum borrowing of an OCIF must not exceed 25 per cent of its total *net asset value*. For the purposes of this requirement, back-to-back loans may be not counted as borrowing.

## Appendix 2

### Investment Limits and Borrowing Powers (See paragraphs 6.39 – 6.42)

#### 2 Fund of Funds

##### Definition

- 2.1 A Fund of Funds (**FF**) is an *OCIF* which invests all of its assets in other collective investment schemes or in the various constituent parts of an umbrella fund. A FF may hold cash for ancillary purposes and enter into financial futures contracts for the purposes of hedging or efficient portfolio management.

##### Investment and Borrowing Limits

- 2.2 A FF may not invest more than a total of 10 per cent of its *net asset value* in collective investment schemes which are not *OCIF* or recognised jurisdiction schemes or otherwise approved by the *JFSC*.
- 2.3 Notwithstanding 2.2 of this Appendix, no investment may be made in any scheme whose objective is to invest primarily in any investment prohibited by Appendix 1, and, in the case of investments limited by Appendix 1, such holdings may not be in contravention of the relevant limitation.
- 2.4 A FF must invest in at least five schemes, and not more than 35 per cent of its total *net asset value* may be invested in any one scheme.
- 2.5 A FF may not invest in another FF or into a Feeder Fund.
- 2.6 A FF should not hold more than 10 per cent of any class of security issued by any single issuer.
- 2.7 A FF should not invest more than 5 per cent of its total *net asset value* in a warrant fund, a leveraged fund, a futures and options fund, a geared futures and options fund or a real property fund, unless:
- 2.7.1 its primary objective, as disclosed in the prospectus, is to invest in any such fund (an **underlying fund**);
  - 2.7.2 the prospectus clearly explains the nature of investments of the underlying fund and the risks to which the underlying fund will be exposed; and
  - 2.7.3 the prospectus and any advertising material includes appropriate warnings, of the potential consequences to investors with particular regard to price volatility, redemption restrictions and loss of capital.
- 2.8 No short sale may be made.



- 2.9 A FF may not lend, assume, guarantee, endorse or otherwise become directly or contingently liable for or in connection with any obligation or indebtedness of any person without the prior written consent of the *trustee/custodian*.
- 2.10 A FF may not acquire any asset which involves the assumption of any liability which is unlimited.
- 2.11 A FF may borrow up to 10 per cent of its total *net asset value* but only on a temporary basis for the purposes of meeting redemption requests or defraying operating expenses.
- 2.12 Where a FF invests in any collective scheme managed by the manager or any connected company, the following provisions shall apply:
  - 2.12.1 initial charges not be levied on both investment in the FF and on investments made by the FF in the underlying scheme; and
  - 2.12.2 the *Constitutive Documents* of the FF shall prohibit any other collective investment scheme, or any person as nominee of such a scheme, being the *Holder of Units* in the FF; and
  - 2.12.3 the potential conflict of interest of the manager must be declared to the *trustee/custodian* who shall approve the use of any voting power which results from the underlying investment in the scheme concerned.
- 2.13 The manager of a FF may obtain a rebate on any fees or charges levied by an underlying scheme or its manager provided such rebates are paid into the fund.

## Appendix 3

### Investment Limits and Borrowing Powers (See paragraphs 6.39 – 6.42)

#### 3 Feeder Fund

##### Definition

- 3.1 A Feeder Fund (**FeF**) is an *OCIF* which invests all of its assets in a single, specified, collective investment scheme or in one constituent part of an umbrella fund. A FeF may hold cash for ancillary purposes and enter into financial futures contracts for the purposes of hedging or efficient portfolio management.

##### Investment and Borrowing Limits

- 3.2 The scheme into which a FeF invests should be one whose objective and investment limits are generally consistent with one of the Appendices to this guide.
- 3.3 A FeF may not invest in another FeF or into a FF.
- 3.4 If the underlying fund into which the FeF invests is a warrant fund, a leveraged fund, a futures and options fund, a geared futures and options fund or a real property fund, the following provisions will apply:
- 3.4.1 the prospectus must clearly explain the nature of investments of the underlying fund and give a detailed description of the risks inherent in such investments to which the underlying fund will be exposed; and
  - 3.4.2 the prospectus and any advertising material must include appropriate warnings, of the potential consequences to investors with particular regard to price volatility, redemption restrictions and loss of capital.
- 3.5 No short sale may be made.
- 3.6 A FeF may not lend, assume, guarantee, endorse or otherwise become directly or contingently liable for or in connection with any obligation or indebtedness of any person without the prior written consent of the *trustee/custodian*.
- 3.7 A FeF may not acquire any asset which involves the assumption of any liability which is unlimited.
- 3.8 A FeF may borrow up to 10 per cent of its total *net asset value* but only on a temporary basis for the purposes of meeting redemption requests or defraying operating expenses.
- 3.9 Where a FeF invests in any collective scheme managed by the manager or any connected company, the following provisions shall apply:
- 3.9.1 initial charges not be levied on both investment in the FeF and on investments made by the FeF in the underlying scheme;

- 3.9.2 the *Constitutive Documents* of the FeF shall prohibit any other collective investment scheme, or any person as nominee of such a scheme, being the *Holder of Units* in the FeF; and
  - 3.9.3 the potential conflict of interest of the manager must be declared to the *trustee/custodian* who shall approve the use of any voting power which results from the underlying investment in the scheme concerned.
- 3.10 The manager of a FeF may obtain a rebate on any fees or charges levied by an underlying scheme or its manager provided such rebates are paid into the fund.

#### Disclosure

- 3.11 The prospectus must provide all the material information regarding the scheme into which the FeF invests which a prudent investor and their professional adviser (if any) would reasonably expect to find and to have brought fairly to their attention for the purposes of making an informed judgement about the merits of participating and the extent of the risks accepted by so participating. If this requirement is met by appending a copy of the prospectus for the underlying scheme to the prospectus for the FeF, then there must be a clear and prominent notice of that fact included in the prospectus for the FeF. If the requirement above is met by reproducing any part of the prospectus for the underlying scheme or any summary of such information then the manager of the FeF and, if applicable, the directors of the *Fund company* shall acknowledge that they accept responsibility for the selection of such information and for its reproduction or the summary, as appropriate

## Appendix 4

### Investment Limits and Borrowing Powers (See paragraphs 6.39 – 6.42)

#### 4 Money Market Fund

##### Definition

- 4.1 A Money Market Fund (**MMF**) is an *OCIF*, the sole objective of which is to invest in short-term deposits and *debt securities*.

##### Prospectus and Advertising

- 4.2 The prospectus and all advertising material must clearly highlight that the purchase of a Unit in the MMF is not the same as placing funds on deposit with a bank, and that the manager has no obligation to redeem *Units* at the offer value.

##### Name of Scheme

- 4.3 The name of the MMF must not appear to draw a parallel between the MMF and the placement of cash on deposit.

##### Investment limitations

- 4.4 Subject to the provisions below, a MMF may only invest in deposits and *debt securities*.
- 4.5 A MMF should maintain an average portfolio maturity not exceeding 90 days and must not purchase an instrument with a remaining maturity of more than one year, or two years in the case of *government and other public securities*.
- 4.6 The value of a MMF's holding of instruments issued by a single issuer, together with any deposits held with that same issuer may not exceed 10 per cent of the total *net asset value* of the MMF and may not exceed 10 per cent of the issuer's issued capital and published reserves. The first of these limits may be increased to 20 per cent of the *net asset value* of the MMF if the issuer is an *Approved Bank*.
- 4.7 Notwithstanding the provisions of 4.6 of this Appendix, up to 30 per cent of the total *net asset value* of the *OCIF* may be invested in *government and other public securities* of the same issue.
- 4.8 The provisions of 4.6 of this Appendix above shall not apply in respect of any deposit of up to US Dollars 1,000,000 or its equivalent in the base currency of the MMF.
- 4.9 The value of MMF's holding of securities not listed or quoted on a recognised market may not exceed 15 per cent of its total *net asset value*.
- 4.10 No short sale may be made.

- 4.11 A MMF may enter into financial futures contracts and forward currency contracts for hedging purposes and for efficient portfolio management.

**Limitations on Borrowing**

- 4.12 The MMF may borrow up to 10 per cent of its total *net asset value* but only on a temporary basis for the purpose of meeting redemption requests or defraying operating expenses

## Appendix 5

### Investment Limits and Borrowing Powers (See paragraphs 6.39 – 6.42)

#### 5 Warrant Fund

##### Definition

5.1 A Warrant Fund (**WF**) is an *OCIF*, the principal objective of which is investment in warrants.

##### Investment and Borrowing Limits

- 5.2 Not less than 90 per cent of warrants held by the WF must carry the right to acquire securities listed on a recognised market.
- 5.3 Investment in options, forward currency contracts and financial futures contracts is permissible for hedging purposes only and for efficient portfolio management
- 5.4 Investment in physical commodities, including bullion, options on commodities and commodity based investments (other than shares in companies engaged in producing, processing or trading in commodities) is prohibited.
- 5.5 The value of a WF's holding of securities issued by a single issuer may not exceed 10 per cent of its total *net asset value* at the time of purchase.
- 5.6 A WF may not hold more than 10 per cent of any class of security issued by any single issuer.
- 5.7 Notwithstanding 5.5 and 5.6 of this Appendix, up to 30 per cent of a WF's total *net asset value* may be invested in *government and other public securities* of the same issue.
- 5.8 Subject to 5.7 of this Appendix, an *OCIF* may invest all of its assets in *government and other public securities* in at least six different issues.
- 5.9 The writing of uncovered options is prohibited.
- 5.10 The writing of call options on portfolio investments may not exceed 25 per cent of a WF's total *net asset value* in terms of exercise price.
- 5.11 The value of a WF's holding of *Units* or shares in other collective investment schemes may not in aggregate exceed 10 per cent of its total *net asset value*. In addition, the objectives and investment limits of such collective investment schemes should be consistent with those of this Appendix.
- 5.12 Where a WF invests in any collective scheme managed by the manager or any connected company, the following provisions shall apply:
- 5.12.1 initial charges should not be levied on both investment in the WF and on investments made by the WF in the underlying scheme;

- 5.12.2 the *Constitutive Documents* of the WF shall prohibit any other collective investment scheme, or any person as nominee of such a scheme, being the *Holder of Units* in the WF; and
- 5.12.3 the potential conflict of interest of the manager must be declared to the *trustee/custodian* who shall approve the use of any voting power which results from the underlying investment in the scheme concerned.

#### Real Estate Investments

- 5.13 A WF may not invest in any type of real estate (including buildings) or interests in real estate (including options or rights but excluding shares in real estate companies).

#### Short Selling

- 5.14 No short sale may be made except for hedging purposes.

#### Making Loans

- 5.15 A WF may not lend, assume, guarantee, endorse or otherwise become directly or contingently liable for or in connection with any obligation or indebtedness of any person without the prior written consent of the *trustee/custodian*.

#### Unlimited Liability

- 5.16 A WF may not acquire any asset which involves the assumption of any liability which is unlimited.

#### Investments in Securities in which Directors/Officers have Interest

- 5.17 A WF may not invest in any security of any class in any company or body if any director or officer of the manager owns more than 0.5 per cent of the total nominal amount of all the issued securities of that class, or, collectively the directors and officers of the manager own more than 5 per cent of those securities.

#### Nil-Paid/Partly Paid Securities

- 5.18 The portfolio of a WF may not include any security where a call is to be made for any sum unpaid on that security unless that call could be met in full out of cash or near cash by the WF's portfolio, the amount of which has not already been taken into account for the purposes of providing cover for any financial instrument.

#### Limitations on Borrowing

- 5.19 A WF may borrow up to 10 per cent of its total NAV but only on a temporary basis for the purpose of meeting redemption requests or defraying operating expenses.

#### Applicability of restrictions to Umbrella Funds

- 5.20 Unless the contrary is provided, the provisions of this Appendix shall not apply to an umbrella fund as if it were a single WF, but shall apply to each sub-fund of the umbrella as if each such separate part were a single *OCIF*. An exception to this rule is 5.6 of this Appendix, where the combined investment by all the sub-funds of an umbrella fund in any class of security issued by any one issuer shall not exceed 10 per cent of that class.

### Name of Scheme

- 5.21 The word “Warrant” must appear in the name of the WF.
- 5.22 If the name of the WF indicates a particular objective (other than investing in warrants), geographic region or market, the WF should invest at least 70 per cent of its non-cash assets in securities and other investments to reflect the particular objective or geographic region or market the WF represents.

### Prospectus

- 5.23 The prospectus must explain the nature of warrants as an investment and contain a detailed description of the risks inherent in investment in warrants.
- 5.24 The prospectus and any advertising material must contain clear warnings, including to the effect:
- 5.24.1 that prices of warrants may fall in value as rapidly as they may rise and it may not always be possible to dispose of them during such falls;
  - 5.24.2 that the scheme therefore carries a significant risk of loss of capital;
  - 5.24.3 that the right to redeem *Units* may also be suspended in certain circumstances;
  - 5.24.4 that it is suitable only for those investors who can afford the risks involved and can accept that they may not get back the value of their original investment; and
  - 5.24.5 if a substantial proportion of the assets of the *OCIF* are comprised of warrants then, notwithstanding any diversification as to the type etc., of warrants, the investor should regard his investment as a single risk.



## Appendix 6

### Investment Limits and Borrowing Powers (See paragraphs 6.39 – 6.42)

#### 6 Real Property Fund

##### Definition

- 6.1 A Real Property Fund (**RPF**) is an *OCIF*, the principal objective of which is to invest directly or indirectly in to real property. The investments of a RPF may comprise:
- 6.1.1 freehold real property;
  - 6.1.2 leasehold real property which has an unexpired term of 20 years or more;
  - 6.1.3 transferable securities issued by a company, the principal object of which is to invest in, deal in, develop, redevelop or refurbish property, whether directly or indirectly;
  - 6.1.4 *Units* in a collective investment scheme which would qualify as a Real Property Fund under the provisions of this Appendix;
  - 6.1.5 government and other public securities; and
  - 6.1.6 a RPF may also hold cash or near cash.

##### Acquisition of Real Property

- 6.2 The RPF should acquire an interest in any real property only:
- 6.2.1 if the real property is the subject of a report by a professionally qualified property valuer who is independent of the manager and the *trustee/custodian* of the RPF and who is also not connected with the property or with any transaction relating to the property within the previous two months, or with any person who holds an interest in the property;
  - 6.2.2 if, in addition to stating the value of the property, the valuation report (see 6.2.1 of this Appendix) includes the valuer's professional opinion that if acquired for the RPF, the interest in the property would be capable of being disposed of reasonably expeditiously at the valuation;
  - 6.2.3 the acquisition is completed within a reasonable period of time, this being (other than for exceptional reason) usually within 6 months of the date of the valuation report;
  - 6.2.4 the acquisition price is not more than 105 per cent of the value stated in the valuation report;
  - 6.2.5 if the RPF is a limited company, the directors of the *Fund company*, or otherwise the manager of the RPF, are satisfied that there is reasonable right of access to the property; and
  - 6.2.6 the unexpired term of a lease, if any, which has been granted to a third party in respect of the property, or any part of it, is not less than seven years.

- 6.3 Not more than 90 per cent of the NAV of the RPF may comprise direct investment in real property, whether leasehold or freehold.
- 6.4 Not more than 15 per cent of the NAV of the RPF may be invested in any single property, whether leasehold or freehold.
- 6.5 The value of leasehold property which has an unexpired term of less than 60 years should not exceed 10 per cent NAV.
- 6.6 The aggregate value of property which is unoccupied, and non-income producing or in the course of substantial development, redevelopment or refurbishment should not exceed 15 per cent of the NAV of the RPF.
- 6.7 No real property should be acquired by the RPF if it is subject to any mortgage, charge or other security interest unless it is a mortgage:
- 6.7.1 where the total outstanding sums do not exceed 50 per cent of the unmortgaged value of the property;
  - 6.7.2 which may be discharged on demand or within 28 days by repayment of all outstanding sums; and
  - 6.7.3 is not secured either immediately or contingently in any other property.
- 6.8 The aggregate value of real property subject to any mortgage should not exceed 15 per cent of the NAV of the RPF.
- 6.9 The RPF shall not grant any option or other right over any real property or any part of any real property held by the RPF.
- 6.10 The value of any transferable securities not listed or quoted on a recognised market may not exceed 10 per cent of the NAV of the RPF.
- 6.11 The value of the RPF's holding in transferable securities issued by any single issuer may not exceed 10 per cent of the NAV of the RPF.
- 6.12 Not more than 10 per cent of the NAV of the OCIF may comprise *Units* in a collective investment scheme.
- 6.13 Not more than 35 per cent of the NAV of the OCIF may comprise *government and other public securities*.
- 6.14 Not more than 20 per cent of the income receivable by the RPF should be derived from the members of one group. This limit does not apply to income derived from *government and other public securities*.

### Borrowing

- 6.15 The RPF may borrow for the purposes of purchasing real property and for short term purposes to defray expenses or facilitate redemption. The maximum aggregate amount which may be borrowed is 35 per cent NAV. Borrowing for the purpose of purchasing real property must not exceed 50 per cent of the purchase price of the real property.

- 6.16 Relaxation on some limits for RPF with NAV less than £5m and during the early life of an RPF may be permitted.

#### Disclosure

- 6.17 If the name of the RPF indicates a particular objective, sector or geographic region, the RPF should invest at least 70 per cent of its non-cash assets in investments which reflect that objective, sector or geographic region.
- 6.18 The prospectus should include an appropriate warning as to any delays which could arise in meeting redemption requests which exceed the amount of its cash or near-cash assets.

#### Dealing

- 6.19 The assets of a RPF which comprise real property should be fully revalued at least once each year in conjunction with the preparation of audited report and accounts and should be periodically reviewed for the purposes of calculating the NAV in order to determine the *redemption and selling prices* on each dealing day. Both the revaluation and the reviews should be performed by a property valuer who is qualified in accordance with 6.2.1 of this Appendix.
- 6.20 *Redemption and selling prices* should be determined on a forward pricing basis only.

## Appendix 7

### Investment Limits and Borrowing Powers (See paragraphs 6.39 – 6.42)

#### 7 Futures and Options Fund

##### Definition

- 7.1 A Futures and Options Fund (**FOF**) is an *OCIF*, the principal objective of which is investment in futures contracts (including commodities and financial futures) and/or options.

##### Detailed Provisions

- 7.2 To be defined by later amendment.

## Appendix 8

### Investment Limits and Borrowing Powers (See paragraphs 6.39 – 6.42)

#### 8 Guaranteed Fund

##### Definition

- 8.1 A Guaranteed Fund (**GF**) is an *OCIF* which has a structure whereby a guaranteed amount will be paid to *Holders* at a specific date in the future.

##### Detailed Provisions

- 8.2 To be defined by later amendment

## Appendix 9

### Investment Limits and Borrowing Powers (See paragraphs 6.39 – 6.42)

#### 9 Leveraged Fund

##### Definition

- 9.1 A Leveraged Fund (LF) is an *OCIF* which utilises a borrowing capacity or other form of leverage greater than that permitted by Appendix 1 or, in the case of one of the specialist funds, the corresponding other Appendix.

##### Limited Liability

- 9.2 The liability of *Holders* must be limited to their investment in the LF.

##### Detailed Provisions

- 9.3 To be defined by later amendment.

## Appendix 10

### 10 A Guide to the contents of Financial Reports for OCIF

#### General

- 10.1 Annual reports must contain all the information required in this appendix; interim reports must at least contain the Statement of Assets and Liabilities and the Investment Portfolio. Where the *OCIF* has paid or proposes to pay an interim dividend, the amount of dividend should be disclosed.
- 10.2 All reports must contain comparative figures for the previous period except for the Investment Portfolio.
- 10.3 The items listed under the Statement of Assets and Liabilities, Revenue Statement, Distribution Statement, Statement of Movements in Capital Account and the Notes to the Accounts, where applicable, must be disclosed. It is however, not mandatory to adopt the format as shown or to disclose the items in the same order.

#### Statement of Assets and Liabilities

- 10.4 The following must be separately disclosed:
  - 10.4.1 total value of investments;
  - 10.4.2 bank balances;
  - 10.4.3 formation costs;
  - 10.4.4 dividends and other receivables;
  - 10.4.5 amounts received and due, if any, in respect of *Units* purchased;
  - 10.4.6 bank loans and overdrafts or other forms of borrowings;
  - 10.4.7 amounts payable on redemption;
  - 10.4.8 distributions payable;
  - 10.4.9 total value of all assets;
  - 10.4.10 total value of all liabilities;
  - 10.4.11 *net asset value*;
  - 10.4.12 number of *Units* in issue; and
  - 10.4.13 net asset value per Unit.

#### Revenue Statement

- 10.5 Total investment income net of withholding tax, broken down by category.
- 10.6 Total other income, broken down by category.
- 10.7 Equalization on issue and cancellation of *Units*.
- 10.8 An itemized list of various costs which have been debited to the *OCIF* including:

- 10.8.1 fees paid to the manager;
- 10.8.2 remuneration of the *trustee/custodian*;
- 10.8.3 amortization of formation costs;
- 10.8.4 directors' fees and remuneration;
- 10.8.5 safe custody and bank charges;
- 10.8.6 auditors' remuneration;
- 10.8.7 interest on borrowings;
- 10.8.8 fees paid to investment adviser, if any;
- 10.8.9 other amounts paid to any *connected persons* of the OCIF;
- 10.8.10 legal and other professional fees;
- 10.8.11 any other expenses borne by the OCIF;
- 10.8.12 taxes;
- 10.8.13 amounts transferred to and from the capital account; and
- 10.8.14 net income to be carried forward for distribution.

#### Distribution Statement

- 10.9 Amount brought forward at the beginning of the period.
- 10.10 Net income for the period.
- 10.11 Interim distribution per *Unit* and date of distribution.
- 10.12 Final distribution per *Unit* and date of distribution.
- 10.13 Undistributed income carried forward.

#### Statement of Movements in Capital Account

- 10.14 Value of the OCIF as at the beginning of the period.
- 10.15 Number of *Units* issued and the amounts received upon such issuance (after equalization if applicable).
- 10.16 Number of *Units* redeemed and the amount paid on redemption (after equalization if applicable).
- 10.17 Any items resulting in an increase/decrease in value of the OCIF including:
  - 10.17.1 surplus/loss on sale of investments;
  - 10.17.2 exchange gain/loss;
  - 10.17.3 unrealised appreciation/diminution in value of investments;
  - 10.17.4 net income for the period less distribution;
  - 10.17.5 amounts transferred to and from the revenue account; and
  - 10.17.6 value of the OCIF as at the end of the period.



## Notes to the Accounts

The following matters shall be set out in the notes to the accounts:

- 10.18 Principal accounting policies:
  - 10.18.1 the basis of valuation of the assets of the *OCIF* including the basis of valuation of unquoted and unlisted securities;
  - 10.18.2 the revenue recognition policy regarding dividend income and other income;
  - 10.18.3 foreign currency translation;
  - 10.18.4 the basis of valuation of forward foreign exchange and futures contracts;
  - 10.18.5 the basis of amortization of formation costs;
  - 10.18.6 taxation; and
  - 10.18.7 any other accounting policy adopted to deal with items which are judged material or critical in determining the transactions and in stating the disposition of the scheme.
- 10.19 Any changes to the above accounting policies and their financial effects upon the accounts should also be disclosed.

## Transactions with Connected Persons

- 10.20 The following transactions should be disclosed:
  - 10.20.1 details of all transactions entered into during the period between the *OCIF* and the manager, investment adviser, the directors of the *Fund company* and any entity in which these parties or their *connected persons* have a material interest; and
  - 10.20.2 name of any director of the *Fund company* or any *connected person* of such a director if any such person becomes entitled to profits from transactions in shares or from management of the *OCIF* and the amount of profits to which such person becomes entitled.

## Borrowings

- 10.21 State whether the borrowings are secured or unsecured and the duration of the borrowings.
- 10.22 Details of any contingent liabilities and commitments of the *OCIF*.
- 10.23 If the free negotiability of any asset is restricted by statutory or contractual requirements, this must be stated.

## Contents of the Auditors' Report

- 10.24 The report of the Auditor should state:
  - 10.24.1 whether in the auditor's opinion, the accounts prepared for that period have been properly prepared in accordance with the relevant provisions of the principal Constitutive Document of the *OCIF* (i.e. Articles of Association, in the case of a *Fund company*; trust deed, in the case of an unit trust; etc.) and of this guide;
  - 10.24.2 without prejudice to the foregoing, whether in the auditor's opinion, a true and fair view is given of the disposition of the *OCIF* at the end of the period and of the transactions of the *OCIF* for the period then ended;

- 10.24.3 if the auditor is of the opinion that proper books and records have not been kept by the OCIF and/or the accounts prepared are not in agreement with the OCIF's books and records, that opinion;
- 10.24.4 if the auditor has failed to obtain all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of the audit, that fact; and
- 10.24.5 in the case of an OCIF established in Jersey, the auditor should also confirm that the audit has been carried out in accordance with auditing standards and any other relevant requirements (e.g. the Companies (Jersey) Law 1991; the Articles of Association).

### Investment Portfolio

- 10.25 Number or quantity of each holding together with the description and market value: distinguish between listed and unlisted and categorized by country. For a FF, list the schemes in which it invests, the country where each scheme is established, the number of *Units* held and market value.
- 10.26 The total investment stated at cost.
- 10.27 The value of each holding as a percentage of the total *net asset value* of the OCIF.
- 10.28 Statement of movements in portfolio holdings since the end of the preceding accounting period.

### Performance Table

- 10.29 A comparative table covering the last three financial years and including, for each financial year, at the end of the financial year:
  - 10.29.1 total net asset value; and
  - 10.29.2 *net asset value per Unit*.
- 10.30 A performance record over the last ten financial years; or if the OCIF has not been in existence during the whole of that period, over the whole period in which it has been in existence, showing the highest issue price and the lowest *redemption price* of the *Units* during each of those years.



Jersey Financial  
Services Commission

## **Schedule 5**

### **Jersey Eligible Investor Fund Guide**

Issued: 22 July 2013



## Objective

The purpose of this document is to define a Jersey Eligible Investor Fund and to set out the characteristics that such a collective investment fund would usually be expected to have. If a Jersey Eligible Investor Fund does not meet such requirements, variances and approval may be sought from the JFSC on a case-by-case basis.

In all cases, applications for necessary certificates and consents should be accompanied by a completed application form, which can be found at:

[http://www.jerseyfsc.org/funds\\_securities\\_issues/forms/index.asp](http://www.jerseyfsc.org/funds_securities_issues/forms/index.asp)

A Jersey Eligible Investor Fund meeting the criteria set out in this document may be established using a streamlined authorisation process, as described in section 4 of this document.

## Glossary of Terms

The following table provides a glossary of terms used in this *Guide*:

Alternative Investment Fund Manager (AIFM)	means a legal person whose regular business is managing one or more Alternative Investment Funds (AIFs) in accordance with the Directive.
Application Form	means the application form which can be found at <a href="http://www.jerseyfsc.org/funds_securities_issues/forms/index.asp">http://www.jerseyfsc.org/funds_securities_issues/forms/index.asp</a>
CFPO	means the Collective Investment Funds (Certified Funds - Prospectuses) (Jersey) Order 2012, as amended.
Closed Fund	means a collective investment fund which is not an <i>Open Fund</i> .
Codes of Practice	means such codes of practice as may from time to time be issued by the JFSC and be in force pursuant to one or more of: Article 15 of the <i>Law</i> , Article 19 of the <i>FS(J)L</i> and Regulation 22 of the Alternative Investment Funds (Jersey) Regulations 2012, specifically the <ul style="list-style-type: none"> <li>› Codes of Practice for Certified Funds;</li> <li>› Codes of Practice for Fund Services Business; and</li> <li>› Codes of Practice for Alternative Investment Funds and AIF Services Business.</li> </ul>
collective investment fund	has the meaning set out in Article 3 of the <i>Law</i> .
Constitutive Documents	means the principal documents constituting the Jersey Eligible Investor Fund, which may include: <ul style="list-style-type: none"> <li>› the administration agreement;</li> <li>› the Jersey Eligible Investor Fund rules;</li> <li>› the investment advisory agreement;</li> <li>› the investment management agreement;</li> <li>› the limited partnership agreement, where the Jersey Eligible Investor Fund is a limited partnership;</li> <li>› the management agreement, if applicable;</li> <li>› the memorandum and articles of association, where the Jersey Eligible Investor Fund is a company;</li> <li>› the trust deed, where the Jersey Eligible Investor Fund is a unit trust; and</li> <li>› where the Jersey Eligible Investor Fund has a custodian in Jersey, the agreement appointing such a custodian.</li> </ul>
Directive	means Directive 2011/61/EU of the European Parliament and of the Council of 8 June, 2011 on Alternative Investment Fund Managers.

**Deleted:** Commission

**Deleted:** means the Jersey Financial Services Commission.

Eligible Investor	has the meaning set out in paragraph 3 of Schedule 2 of the <i>CFPO</i> .
EEA State	means a State which is a <i>Member State</i> or any other State which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2 May, 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993 (currently Iceland, Liechtenstein and Norway) or a state which becomes a contracting party to these arrangements in the future.
European Union/EU	means 28 sovereign <i>Member States</i> (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and United Kingdom).
FS(J)L	means the Financial Services (Jersey) Law 1998, as amended
fund service provider	has the meaning set out in Article 1 of the <i>Law</i> .
Guide	means this Jersey Eligible Investor Fund Guide.
incorporated cell company	has the meaning set out in Article 1 of the Companies (Jersey) Law 1991, as amended.
Investment Manager	includes an investment adviser and may be the <i>Manager</i> if no separate investment manager is to be appointed <sup>17</sup> .
IOSCO	means the International Organisation of Securities Commissions.
<u>JFSC</u>	<u>means the Jersey Financial Services Commission.</u>
Law	means the Collective Investment Funds (Jersey) Law 1988, as amended.
Level 2 AIFMD Regulation	means the European Commission Delegated Regulation of 19 December 2012 supplementing Directive with regard to exemptions, general operating conditions, depositaries, leverage, transparency, and supervision.
Manager	shall, in the case of a limited partnership, include the general partner.
Member State	means a Member State of the <i>European Union</i> or other <i>EEA State</i> to which the <i>Directive</i> applies.
OECD	means the Organisation for Economic Co-Operation and Development.
Offer Document	means any prospectus or other offering document offering <i>Units</i> in a Jersey Eligible Investor Fund for subscription, sale or exchange and includes any listing document.

<sup>17</sup> In a fund of funds, the investment managers of the underlying funds will not be considered *Investment Managers* for the purpose of this *Guide*.

Open Fund	means a <i>collective investment fund</i> that is normally open for both subscriptions and redemptions at the option of <i>Unitholders</i> .
Principal Person	has the same meaning set out in the <i>Law</i> .
protected cell company	has the meaning set out in Article 1 of the Companies (Jersey) Law 1991, as amended.
Umbrella	in relation to a <i>collective investment fund</i> , means there is more than one class of redeemable shares or <i>Units</i> and where the assets are held as a single pool.
Unit	has the same meaning as in the <i>Law</i> .
Unitholder	means a person registered as the holder of a <i>Unit</i> in a Jersey Eligible Investor Fund.



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## Section 1

### 1 Jersey Eligible Investor Funds and Eligible Investors

- 1.1 A Jersey Eligible Investor Fund is an Alternative Investment Fund (AIF) as defined by the Alternative Investment Funds (Jersey) Regulations 2012 and is a collective investment fund that falls within Article 3 of the *Law* and which is established in Jersey.
- 1.2 The units of a Jersey Eligible Investor Fund are available for subscription, purchase, or exchange, otherwise than by trade on a stock exchange or stock market, and which may be acquired by subscription, purchase, or exchange only if:
- 1.2.1 the acquisition is by an *Eligible Investor* (as defined at paragraph 3 of Schedule 2 of the *CFPO*);
  - 1.2.2 the *Eligible Investor* signs a declaration that he or she has received the warning set out in paragraph 5 of Schedule 2 of the *CFPO* and understands and accepts its terms in relation to the subscription, purchase or exchange; and
  - 1.2.3 the declaration referred to in paragraph 1.2.2 is given to the certificate holder of the fund under the *Law* before the subscription, purchase or exchange is completed.
- 1.3 An *Eligible Investor* is deemed able:
- 1.3.1 to evaluate the financial risks of investing in the Jersey Eligible Investor Fund; and
  - 1.3.2 to bear the economic consequences of investment in the Jersey Eligible Investor Fund including any possibility of the loss of the entire investment.
- In view of the above, an *Eligible Investor* is deemed to require only limited regulatory protection in relation to the manner in which the Jersey Eligible Investor Fund is structured.
- 1.4 In the case where units in the Jersey Eligible Investor Fund are traded on a stock exchange or stock market the units may be acquired pursuant to that trade only if:
- 1.4.1 no market makers have been appointed by a fund company or by another person on behalf of the Jersey Eligible Investor Fund;
  - 1.4.2 the certificate holder of the fund under the *Law*, so far as reasonably possible, restricts transfers of the units in order to ensure that no person other than an *Eligible Investor* can acquire units in the Jersey Eligible Investor Fund through that trade;
  - 1.4.3 a person who acquires units in the Jersey Eligible Investor Fund on the stock exchange or stock market signs a declaration that he or she has received the warning set out in paragraph 5 of Schedule 2 of the *CFPO* and understands and accepts its terms in relation to his or her acquisition of the units;
  - 1.4.4 the declaration is given to the certificate holder of the fund under the *Law* before the subscription, purchase, or exchange, is completed; and
  - 1.4.5 the stock exchange or stock market is conducted in such a way as not to prevent the restriction referred to in 1.4.2 from operating.

1.5 In paragraph 1.4:

“market maker” means a person who:

- (a) holds himself or herself out at all normal times in compliance with the rules of a securities market as willing to acquire or dispose of securities; and
- (b) is recognized as doing so under those rules.

In this paragraph:

“securities” has the same meaning as in the Companies (Jersey) Law 1991;

“securities market” means any securities market that is established by or under, or is regulated by or under, a legislative instrument made by the country or territory, or the part of a country or territory, that hosts the securities market.

1.6 Investment manager who invests in a Jersey Eligible Investor Fund on behalf of investors who are not *Eligible Investors*:

1.6.1 This paragraph applies in the case where a person:

- 1.6.1.1 applies for the subscription, purchase, or exchange, of units in the Jersey Eligible Investor Fund as an investment that is, directly or indirectly, for or on behalf of investors who are not *Eligible Investors*; or
- 1.6.1.2 acquires units in the Jersey Eligible Investor Fund on a stock exchange or stock market as an investment that is, directly or indirectly, for or on behalf of investors who are not *Eligible Investors*.

1.6.2 In that case, a declaration referred to in paragraph 1.2.2 in relation to the subscription, purchase or exchange, or a declaration referred to in paragraph 1.4.3 in relation to the acquisition, being a declaration that is signed by the person referred to in paragraph 1.6.1, is not complete unless it contains an additional declaration signed by the person that he or she is satisfied:

- 1.6.2.1 that the investment is suitable for the investors referred to in paragraph 1.6.1.1 or 1.6.1.2, as the case requires; and
- 1.6.2.2 that they are able to bear the economic consequences of the investment, including the possibility of the loss of the entire investment.

1.7 The *JFSC* believes that those involved in establishing and providing services to a Jersey Eligible Investor Fund who wish to invest in that fund should be encouraged to do so. Accordingly, any application made to the *JFSC* to extend the definition of *Eligible Investor* in respect of any other types of “carried interest” investors is likely to be treated sympathetically.

1.8 The *JFSC* expects any discretionary investment manager acquiring an interest in the Jersey Eligible Investor Fund, directly or indirectly, for or on behalf of investors who are not *Eligible Investors* to be satisfied that the investment is suitable for the underlying investors, and that the underlying investors are able to bear the economic consequences of investment in the Jersey Eligible Investor Fund, including the possibility of the loss of the entire investment.<sup>18</sup>

<sup>18</sup> For the avoidance of doubt, it is not intended that the Jersey based monitoring fund service provider referred to in paragraph 2.13 should procure compliance with this paragraph.

## Section 2

### 2 The Structure of the Jersey Eligible Investor Fund

#### The Jersey Eligible Investor Fund

- 2.1 A Jersey Eligible Investor Fund may take any form recognised under the laws of Jersey. It will be issued with a certificate under the *Law*.
- 2.2 A Jersey Eligible Investor Fund may be an *Open Fund* or a *Closed Fund*.
- 2.3 If the Jersey Eligible Investor Fund is established as a fund company in Jersey, at least two Jersey resident directors with appropriate experience should be appointed to the board.
- 2.4 If the Jersey Eligible Investor Fund is established as a limited partnership, a Jersey entity with at least two Jersey resident directors with appropriate experience should act as the general partner.
- 2.5 If the Jersey Eligible Investor Fund is established as a unit trust, a Jersey entity with at least two Jersey resident directors with appropriate experience should act as the trustee.
- 2.6 The board of directors of a fund company, or the general partner of a limited partnership, or the trustee or *Manager* of a unit trust, as appropriate, is ultimately responsible for the management and control of the Jersey Eligible Investor Fund in accordance with and subject to the *Constitutive Documents* and applicable law and this ultimate responsibility cannot be delegated.

#### Investment Manager

- 2.7 The *Investment Manager* should be of good standing and in particular should:
  - 2.7.1 have had no regulatory or disciplinary sanctions imposed on it by any supervisory authority or professional body in the previous five years;
  - 2.7.2 have no convictions for any offence under the legislation of any country or territory relating to the conduct of financial services business or involving fraud or dishonesty or be the parent, subsidiary or an associated company of any company which has such a conviction;
  - 2.7.3 have no convictions for any offence under the anti-money laundering or combating financial terrorism legislation of any country or territory, or be the parent, subsidiary or an associated company of any company which has such a conviction;
  - 2.7.4 be able to pay its debts as they fall due;
  - 2.7.5 be established in an *OECD* member state or any other state or jurisdiction in relation to which the *JFSC* has entered into a Memorandum of Understanding (or equivalent) on investment business and *collective investment funds*<sup>19</sup>, and is either:

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<sup>19</sup> A list of the *OECD* member states and those states or jurisdictions in relation to which the *Commission* has entered into a Memorandum of Understanding (either on a bilateral basis or through the *IOSCO* Multilateral

- 2.7.5.1 regulated in that state or jurisdiction; or
- 2.7.5.2 possesses amongst its *Principal Persons* relevant experience in relation to managing or advising on investors' funds using similar investment strategies to those to be adopted by the Jersey Eligible Investor Fund.

2.8 In addition, no Principal Person of the Investment Manager shall:

- 2.8.1 have had any regulatory or disciplinary sanctions imposed on him by any supervisory authority or professional body in the previous five years; or
- 2.8.2 have been convicted for any offence under the legislation of any country or territory relating to the conduct of financial services business or involving fraud or dishonesty; or
- 2.8.3 have been convicted for any offence under the anti-money laundering or combating financial terrorism legislation of any country or territory.

2.9 As part of the application process for establishing a Jersey Eligible Investor Fund, the *Investment Manager* should confirm in writing to the JFSC that it satisfies the requirements set out in paragraphs 2.7 and 2.8, and provide documentary evidence in relation to the requirement at paragraph 2.7.5.1. In addition, the administrator, *Manager* or trustee<sup>20</sup> (as applicable) must counter-sign such confirmation, stating that it has carried out its own general due diligence against the *Investment Manager* and has no reason to believe that the statement of the *Investment Manager* is incorrect<sup>21</sup>. The administrator, *Manager* or trustee<sup>20</sup> (as applicable) is required to retain in Jersey documents relating to such due diligence enquiries and to make such documents available to the JFSC upon request.

2.10 Where the administrator, *Manager* or trustee (as applicable) becomes aware of any other issue, in addition to those mentioned in paragraphs 2.7 and 2.8, which might cast doubt on the good standing of the *Investment Manager* (or any of its *Principal Persons*), they should bring the matter to the attention of the JFSC. Relevant issues might, for example, include knowledge that the *Investment Manager* (or any of its *Principal Persons*) has been the subject of a formal investigation by a supervisory authority or professional body, even if this did not result in a disciplinary sanction.

**Note:**

- 1 *If a distributor of a Jersey Eligible Investor Fund is not the Investment Manager or one of its associates (has the same meaning as provided by Companies (Jersey) Law 1991), and it falls within one of the following definitions, the provisions of paragraphs 2.7 – 2.9 inclusive (with the exception of paragraph 2.7.5.2) shall apply to the distributor as if it were an Investment Manager:*

Memorandum of Understanding) covering investment business and collective investment funds may be obtained on the Commission's website, [www.jerseyfsc.org](http://www.jerseyfsc.org), from the International Co-operation section.

<sup>20</sup> In relation to a *Closed Fund* that is a unit trust, there is no requirement for a separate administrator or Manager, provided that the trustee carries out the administration or management role, including the monitoring function described in paragraphs 2.13 and 2.14.

<sup>21</sup> In the *Commission's* view, it is implicit that an administrator's/Manager's/trustee's due diligence enquiries can only extend to sources of enquiry available to it, and not to those beyond its reach.

- a. *The distributor is the driving force behind the Jersey Eligible Investor Fund such that, if the distributor were to withdraw from the proposal, the Jersey Eligible Investor Fund would not go ahead. Evidence of this would be, for example, the name of the Jersey Eligible Investor Fund being linked with the distributor.*
- b. *The majority of investors going into the Jersey Eligible Investor Fund are put into the Jersey Eligible Investor Fund by the distributor or its agents.*

### Administration/Management

- 2.11 Every Jersey Eligible Investor Fund shall appoint:
- 2.11.1 an administrator; or
  - 2.11.2 a *Manager*; and/or,
  - 2.11.3 in relation to a *Closed Fund* that is a unit trust<sup>20</sup>, a trustee
- which has at least two Jersey resident directors with appropriate experience together with staff and a physical presence in the Island.
- 2.12 Any outsourcing by the administrator, *Manager* or trustee (as applicable) must comply with the JFSC's policy on outsourcing as may be updated from time to time.

### Monitoring of the Investment Manager

- 2.13 The responsibility of the administrator, *Manager* or trustee (as applicable) in relation to the actions of the *Investment Manager* shall be to take reasonable measures to satisfy itself that such actions do not breach the investment and borrowing restrictions applicable to the Jersey Eligible Investor Fund, as set out in the *Offer Document* and the *Constitutive Documents*, and to promptly notify the entity that appointed the *Investment Manager* of any concerns it has in that regard so that appropriate action may be taken.
- 2.14 The administrator, *Manager* or trustee (as applicable) must maintain in Jersey sufficient records (in electronic or documentary form) to enable it to fulfil its monitoring functions, and should be able to obtain other relevant records on demand.

#### Note:

- 1 *It may be possible to establish a Jersey Eligible Investor Fund with the responsibility set out in paragraphs 2.13 and 2.14 being assumed by an entity other than an administrator, Manager or trustee: for example, a general partner or the fund company itself. In such circumstances, the JFSC should be approached in advance on a case by case basis.*

### Custody Arrangements

- 2.15 Every Jersey Eligible Investor Fund shall have adequate arrangements for the safe custody of the property of the fund including, if applicable, prime brokerage arrangements. Such arrangements should be fully disclosed in the *Offer Document*.

- 2.16 Where the Jersey Eligible Investor Fund is an *Open Fund*, custody arrangements must be sourced from a separate custodian/trustee with staff and a physical presence in the Island that is subject to any applicable *Codes of Practice*. Prior clearance for any deviation from this requirement should be obtained from the *JFSC* unless the Jersey Eligible Investor Fund satisfies paragraph 2.17. Where the Jersey Eligible Investor Fund has an *EU/EEA AIFM* in accordance with the *Directive*, no prior clearance is required for the appointment of a depository in the home *Member State* of the relevant *EU/EEA AIFM*, where such depository is subject to the requirements of the *Directive*.
- 2.17 If the Jersey Eligible Investor Fund is a hedge fund, the requirement for a custodian will be waived provided a prime broker that is part of a group with a minimum credit rating of A1/P1 or long term equivalent is appointed. Prior clearance will only be required for any prime broker with a rating below this level.
- 2.18 If in doubt, application should be made to the *JFSC* on a case-by-case basis.

#### The Name of the Jersey Eligible Investor Fund

- 2.19 The name of the Jersey Eligible Investor Fund must not be undesirable or misleading. If the name of the Jersey Eligible Investor Fund indicates a particular objective, geographic region or market, this should be reflected in its investment policy and in the manner in which the Jersey Eligible Investor Fund maintains the majority of its non-cash assets.

#### The External Auditor

- 2.20 An external auditor is to be appointed for a Jersey Eligible Investor Fund.
- 2.21 The external auditor is qualified to conduct an audit under the Companies (Jersey) Law 1991, as amended.

#### Fund service providers

- 2.22 Any Jersey entity acting as a *fund service provider* to a Jersey Eligible Investor Fund must be registered as a fund services business under the *FS(J)L* to conduct fund services business and be managed and operated in accordance with any applicable *Codes of Practice*.

#### Borrowing and Gearing

- 2.23 There are no restrictions imposed upon the level of borrowing or gearing adopted by a Jersey Eligible Investor Fund, provided that the approach to borrowing or gearing is clearly disclosed in the *Offer Document*.

## Section 3

### 3 The Offer Document of the Jersey Eligible Investor Fund

#### General

- 3.1 The *Offer Document* issued by a Jersey Eligible Investor Fund must comply with the legislation applicable to such document. In particular the disclosure requirements of the *Directive*, its *Level 2 AIFMD Regulation* and any applicable *Codes of Practice* published by the *JFSC*.
- 3.2 The *Offer Document* must contain any other material information that investors would reasonably require to enable investors to make an informed judgement about: (i) the merits of participating in the Jersey Eligible Investor Fund; and (ii) the nature and levels of the risk accepted by making such a purchase. The *JFSC* considers the following additional information to be material:
- 3.2.1 the structure of the Jersey Eligible Investor Fund, including brief particulars of all documents constituting the Jersey Eligible Investor Fund and details of how to obtain complete copies of such documents;
  - 3.2.2 the names, business background and addresses of the directors or proposed directors of the certificate holder of the Jersey Eligible Investor Fund under the *Law*;
  - 3.2.3 The *fund service providers* to the Jersey Eligible Investor Fund, including details such as their registered office, place and date of incorporation, details of share capital and the manner in which *fund service providers* may be appointed and replaced;
  - 3.2.4 the name and address of the external auditor of the Jersey Eligible Investor Fund and the legal adviser(s) to the Jersey Eligible Investor Fund;
  - 3.2.5 any conflicts of interest that may exist in relation to the Jersey Eligible Investor Fund;
  - 3.2.6 the investment objective and investment management strategies to be employed by the Jersey Eligible Investor Fund (including the Jersey Eligible Investor Fund's approach to borrowing and gearing) and any investment or borrowing restrictions applicable to the Jersey Eligible Investor Fund;
  - 3.2.7 the manner in which changes likely to have a material effect on investors may be made to the Jersey Eligible Investor Fund (noting that any changes that would be contrary to the terms of this *Guide* or contrary to any of the *JFSC*'s published policies applicable to Jersey Eligible Investor Funds will require the prior consent of the *JFSC*);
  - 3.2.8 the basis upon which dealing in the Jersey Eligible Investor Fund is to take place, if applicable;
  - 3.2.9 in the case of a *Closed Fund*, the basis upon which any subsequent offerings in the Jersey Eligible Investor Fund may be made;
  - 3.2.10 the basis upon which the value of the Jersey Eligible Investor Fund is to be calculated and (in the case of an *Open Fund*) how the value of *Units* in the Jersey Eligible Investor Fund is to be determined;



- 3.2.11 the manner in which *Units* in the Jersey Eligible Investor Fund are to be created, issued and paid for and (in the case of an *Open Fund*) cancelled and redeemed;
- 3.2.12 the manner in which votes to be held by *Unitholders* are conducted, and the manner in which meetings of *Unitholders* are to be convened and managed generally;
- 3.2.13 the fees, charges and expenses payable from the property of the Jersey Eligible Investor Fund;
- 3.2.14 the address at which the most recent audited annual report and accounts of the Jersey Eligible Investor Fund may be inspected;
- 3.2.15 the address, if any, where the register of *Unitholders* can be inspected;
- 3.2.16 the manner in which any voting rights in underlying assets held by the Jersey Eligible Investor Fund will be exercised;
- 3.2.17 the safe custody arrangements for the property of the Jersey Eligible Investor Fund including disclosure, if applicable, of prime broker arrangements;
- 3.2.18 in the case of *Umbrella* structures, details of the “ring-fencing” of assets within sub-funds, or, if there is no such arrangement, a statement to the effect that “in the event of the Jersey Eligible Investor Fund being unable to meet liabilities attributable to any particular sub-fund out of the assets attributable to such sub-fund, the excess liabilities may be met out of the assets attributable to the other sub-funds” and an explanation of the manner in which such liabilities may be apportioned; and
- 3.2.19 a statement to the effect that:  

“Further information in relation to the regulatory treatment of Jersey Eligible Investor Funds in Jersey may be found on the website of the Jersey Financial Services Commission at [www.jerseyfsc.org](http://www.jerseyfsc.org)”.

- 3.3 A statement to the following effect shall be included in the *Offer Document*:  

*“The [directors of the company/general partner/manager/trustee] have/has taken all reasonable care to ensure that the facts stated in this document are true and accurate in all material respects, and that there are no other facts the omission of which would make misleading any statement in the document, whether of fact or of opinion. The [directors/general partner/manager/trustee] accept responsibility accordingly.”*
- 3.4 Nothing in any of the *Constitutive Documents* of a Jersey Eligible Investor Fund may exclude the jurisdiction of the courts of Jersey to entertain an action concerning the Jersey Eligible Investor Fund.
- 3.5 In the event that an *Offer Document* is issued in a language other than English, a copy of an English language version of the document must be lodged with the JFSC. A statement should be included in both the original *Offer Document* and the translation stating which version will take precedence in the event of a dispute.

### Investment Warning

- 3.6 All Jersey Eligible Investor Funds must contain an investment warning in a prominent position in the *Offer Document* in substantially the terms of paragraph 5 of Schedule 2 of the CFPO:  

*“This fund has been established in Jersey as a Jersey eligible investor fund. It is only open to eligible investors who fall within the definition of “eligible investor” within the meaning of*

*paragraph 3 of Schedule 2 of the Collective Investment Funds (Certified Funds-Prospectuses) (Jersey) Order 2012.*

*This fund is only suitable for professional or experienced investors, or those who have taken professional advice. Regulatory requirements, which may be seen as necessary for the protection of retail investors or those who are not eligible investors, do not apply to Jersey eligible investor funds.*

*By declaring that you have received this warning and understood and accepted its terms you are expressly agreeing that you are an eligible investor within the meaning of paragraph 3 of Schedule 2 of the Collective Investment Funds (Certified Funds-Prospectuses) (Jersey) Order 2012. You are also expressly agreeing that you accept the risks in the investment accordingly.*

*If you are an investment manager acquiring an interest in this fund as an investment that is, directly or indirectly, for or on behalf of persons who are not eligible investors within the meaning of paragraph 3 of Schedule 2 of the Collective Investment Funds (Certified Funds-Prospectuses) (Jersey) Order 2012, by additionally declaring that you are satisfied that the investment is suitable for those investors and that they are able to bear the economic consequences of investment, including the possibility of the loss of the entire investment, you are declaring that you have sufficient information in order to be satisfied as to the truth of that statement.*

*You are wholly responsible for ensuring that all aspects of this fund are acceptable to you (and to any persons referred to in the preceding paragraph). Investment in a Jersey eligible investor fund may involve special risks that could lead to a loss of all or a substantial portion of that investment. Unless you (and those persons, if any) fully understand and accept the nature of this fund and the risks inherent in investing in this fund you should not invest in this fund."*

### On-going Requirements

- 3.7 All material changes to information provided to the JFSC in connection with a Jersey Eligible Investor Fund should be notified to the JFSC as soon as possible and, in any event, within 28 calendar days of such change taking place.
- 3.8 Any change to a Jersey Eligible Investor Fund that would not meet the criteria set out in this Guide or that would breach any certificate condition applicable to that Jersey Eligible Investor Fund will require the prior consent of a duly authorised officer of the JFSC.

## Section 4

### 4 Authorisation of the Jersey Eligible Investor Fund

- 4.1 In order to authorise a Jersey Eligible Investor Fund, the *JFSC* must receive a completed copy of the *Application Form*.
- 4.2 The administrator, *Manager* or trustee (as applicable) shall:
- 4.2.1 complete and sign a copy of the *Application Form*;
  - 4.2.2 arrange for such form to be countersigned on behalf of the board of the fund company, the general partner of a limited partnership or the *Manager* or trustee of a unit trust, as applicable;
  - 4.2.3 forward a copy of the completed *Application Form* and the stated supporting documentation to the *JFSC*;
  - 4.2.4 forward a written certificate signed on behalf of the board of the fund company, the general partner of a limited partnership or the *Manager* or trustee of a unit trust, as applicable certifying that in the opinion of such person having completed appropriate enquiries that the Jersey Eligible Investor Fund's *Offer Document* complies with the content requirements set out in Section 3 of this *Guide*; and
  - 4.2.5 provide details (full name, date of birth and residential address) of all of the *Principal Persons* of the *Investment Manager*, including those named in the *Offer Document*.
- 4.3 Upon receipt of a completed *Application Form*, the *JFSC* will take steps to authorise the Jersey Eligible Investor Fund and/or its *fund service providers* as the case requires. In the event that the *Application Form* states that the Jersey Eligible Investor Fund complies with the terms of this *Guide*, or that any deviation from the terms of this *Guide* has previously been agreed in writing by a duly authorised officer of the *JFSC*, the *JFSC* will authorise the Jersey Eligible Investor Fund in reliance upon the *Application Form*. In other cases the *JFSC* will discuss with the applicant those deviations that have not been previously agreed.
- 4.4 The relevant certificate application forms and fees shall be submitted at the time the application is made and prior to the issue of any certificate and other consents.
- 4.5 For an *Umbrella* fund, an *incorporated cell company*, or a *protected cell company*, which has already been granted a certificate under the *Law*, a sub-fund, incorporated cell or protected cell certificate application and fee will need to be submitted for each additional sub-fund, incorporated cell or protected cell that is added prior to an amended certificate being issued. In the case of an *incorporated cell company*, the incorporated cell certificate application form is to be used.