

THE AUTHORISED CLOSED-ENDED INVESTMENT SCHEMES RULES and GUIDANCE, 2021

The Authorised Closed-Ended Investment Schemes Rules, made in accordance with the Protection of Investors (Bailiwick of Guernsey) Law, 2020¹ (“the Law”), are set out in this document.

Further guidance, provided by the Guernsey Financial Services Commission (“the Commission”), is set out in blue boxes.

¹ Order in Council No. XVII of 2020.

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PART 1 INTRODUCTION

1.1 Application

- (1) The Authorised Closed-ended Investment Schemes Rules 2021 replace The Authorised Closed-ended Investment Schemes Rules 2008².
- (2) The Commission may in its absolute discretion, by written notice, exclude or modify the application of any provision of these Rules.
- (3) The Commission may issue supplementary guidance regarding the standards of conduct and practice expected in relation to any aspect of the regulatory framework. Such guidance will not constitute rules of the Commission.
- (4) The following Rules apply in the case of an umbrella fund as if each reference to an authorised closed-ended investment scheme were a reference to each constituent part within the umbrella fund but subject to any modification set out in any particular rule.

Guidance Note: This document take a two-level approach –

- the Rules set out the standards to be met; and
- guidance notes present suggested ways of showing compliance with the Rules.

Licensees may adopt alternative measures to those set out in the guidance so long as it is possible to demonstrate that such measures achieve compliance.

The text contained in shaded boxes contains guidance from the Commission and does not form part of the Rules.

² G.S.I No. 83 of 2008.

PART 2 ADMINISTRATION AND CUSTODY

2.1 Administration

- (1) The designated administrator must administer the Authorised closed-ended investment scheme (“the scheme”) in accordance with –
 - (a) the principal documents;
 - (b) these Rules;
 - (c) the most recently published information particulars;
 - (d) in the case of a company, subject to any proper directions given by the directors;
 - (e) in the case of a limited partnership, subject to any direction given by the general partner; and
 - (f) in the case of a unit trust, the corporate trustee or manager.
- (2) In the case of a company, the directors must not give any directions or exercise any powers, duties, or discretions which would, or might, cause the company to operate against its principal documents, information particulars, or these Rules.
- (3) The designated administrator may, at its discretion and if not restricted under the principal documents, and in the case of a company scheme subject to any directions given by the directors, delegate any function to any person provided that the designated administrator is satisfied, and continues to remain satisfied, that the delegate is competent to undertake those functions.

Guidance Note:

Any such arrangement, as set out in rule 2.1(3), must be carried out in accordance with any applicable Commission guidance on outsourcing.

2.2 Custody of scheme property

- (1) Where there is no appointed custodian, at the time of application for the scheme, the Commission must be advised of the relevant provisions that will apply in respect of the safekeeping of the scheme property.
- (2) Where the scheme appoints a custodian, either at the time of application or at a later date, the following must be disclosed to the Commission –
 - (a) all provisions that are in place to ensure the assets of the scheme are adequately safeguarded; and
 - (b) full details of the custodian, including name and address.

Guidance Note:

The designated administrator of a scheme may provide safekeeping facilities to the scheme.

2.3 General provisions applicable to the designated administrator

- (1) Every scheme must have a designated administrator.
- (2) The designated administrator of the scheme must be licensed, under the Law, and operate and have a place of business in Guernsey.
- (3) The duties of the designated administrator, and the directors of a company, and the general partner of a limited partnership, and the trustee of a unit trust, imposed on them by these Rules and by the principal documents and the information particulars are in addition to those imposed on them by applicable law.

PART 3 CONFLICT OF INTEREST

3.1 Conflicts of interest

- (1) The directors, the general partner, and the trustee must each take all reasonable steps to ensure that there is no breach of any of the following requirements of this rule by any relevant person, i.e. –
 - (a) the designated administrator;
 - (b) in the case of a unit trust, the trustee;
 - (c) any investment adviser;
 - (d) any manager;
 - (e) in the case of a company –
 - (i) the company; and
 - (ii) a director of the company;
 - (f) the directors or partners of the general partner;
 - (g) the custodian; and
 - (h) any associate of any person set out above.
- (2) Cash forming part of the scheme property may be placed in any current, deposit, or loan account with a relevant person only if the arm's length requirement in (9) is satisfied.
- (3) A relevant person may lend money to the scheme only if the arm's length requirement in (9) is satisfied. Loans that form part of an investor's commitments do not fall into this category.

- (4) A relevant person may not sell or deal in the sale of property to the scheme unless the arms' length requirements in (9) and (10) are satisfied. A sale includes any lease or other transaction under which scheme property is made available to the scheme.
- (5) A relevant person may not purchase scheme property, from a scheme, unless the arm's length requirement in (9) is satisfied. A purchase includes any lease or other transaction under which the scheme property is made available to the relevant person by the trustee or custodian.
- (6) A relevant person may not vest property in the scheme against the issue of shares unless –
 - (a) the arm's length requirement in (9) is satisfied; or
 - (b) it is vested in order that the whole or part of such property becomes the initial scheme property of the scheme.
- (7) A relevant person may not enter into stock lending transactions in relation to the scheme unless the arm's length requirement in (9) is satisfied.
- (8) A relevant person may not provide services, for the scheme, unless those services are provided on terms which satisfy the arm's length requirements set out in (9).
- (9) The arm's length requirement is that the arrangements, between the relevant person and the scheme, are at least as favourable to the scheme as would be any comparable arrangement effected on normal commercial terms, negotiated at arm's length, between the relevant person and an independent party.
- (10) The arm's length requirement is deemed to be satisfied where the transaction with the relevant party satisfies the criteria set out in (11) or (12).
- (11) The transaction satisfies the criteria for best execution on-exchange if –
 - (a) the property is an approved security or an approved derivative; and

- (b) the transaction is effected with or through a member of the relevant exchange under the rules of that exchange;

OR

- (c) there is evidence, in writing, of the transaction and its terms; and
- (d) the manager has taken all reasonable steps to effect the transaction or to ensure that it is effected on the terms which are the best available for the scheme in the circumstances.

(12) The transaction satisfies the criteria for independent valuation if –

- (a) the value of the property is certified, in writing, for the purpose of the transaction by a person selected or approved by the directors, or the general partner, or the manager, or trustee as –
 - (i) independent of any relevant person;
 - (ii) qualified to value property of the relevant kind; and
- (b) the directors are of the opinion that the terms of the transaction are not likely to result in any material prejudice to holders.

(13) Sections (2) to (7) are subject to any provision in the principal documents or the information particulars forbidding the taking of advantage of any or all of them.

PART 4 INFORMATION PARTICULARS

4.1 Preparation and alteration

- (1) The information particulars must contain the information set out in Schedule 1.
- (2) Changes to the contents of the information particulars must be notified to holders either immediately or in the subsequent annual report and copied to the Commission.

4.2 False or misleading information particulars or omissions

- (1) The directors, or general partner, or trustee, are responsible for the information particulars of a scheme and must take all reasonable steps to ensure that they do not contain any false or misleading statements or omit facts which would make any statements misleading.

PART 5 NOTIFICATION

5.1 Immediate notifications

- (1) The proposed appointment of a replacement designated administrator must be notified to the Commission immediately. The appointment will only be effective following confirmation of the designation from the Commission.
- (2) The designated administrator must give immediate written notice, to the Commission, with respect to the following –
 - (a) a proposed material change to –
 - (i) the constitutive documents; that is the articles of incorporation, trust instrument or partnership agreement; or
 - (ii) the information particulars;
 - (b) or a proposed change of –
 - (i) manager or general partner;
 - (ii) designated administrator;
 - (iii) secretary;
 - (iv) registrar;
 - (v) custodian or trustee;
 - (vi) investment adviser or investment manager;
 - (vii) directors; or

- (viii) qualified auditor;
- (c) a proposed material delegation of the duties of any of the parties listed at (b)(i) to (vii);
- (d) any change in the name or of the ultimate or intermediate beneficial ownership of any of the parties listed in (b)(i) to (viii);
- (e) any alteration to the material agreements under which an entity, licensed under the Law, is providing management, administration, or custodian services to the scheme;
- (f) any proposed material alteration to the scheme, including to its name or its investment, borrowing, and hedging powers;
- (g) any proposal to reconstruct, amalgamate, terminate prematurely, or extend the life of the scheme;
- (h) any proposal to list or de-list the scheme on a stock exchange; or
- (i) the bringing of, or the intention to bring, against or by the scheme, any legal action to which the scheme is a party, relating to finance business.

5.2 Periodic notifications – annual reports and financial statements

- (1) The designated administrator must submit, to the Commission, copies of the audited annual report and accounts for the scheme, in line with the information particulars, no later than six months following the end of the annual accounting period.
- (2) When the audited annual report and accounts are sent to the Commission any documents or other agreements which have not previously been forwarded to the Commission and which have been materially amended must be re-submitted.

5.3 Periodic notifications – quarter-end statistical information

- (1) The designated administrator must submit, to the Commission, a statistical return relevant to the scheme for each quarter. The information to be contained in the statistical return must be set out in the format, and returned within the timescale, required by the Commission.

PART 6 AUTHORISATION

6.1 Application for authorisation

- (1) The administrator of a scheme seeking a declaration of authorisation from the Commission must submit the appropriate application form and must also provide –
 - (a) signed or certified copies of the principal documents, information particulars, and other agreements material to the scheme;
 - (b) the application fee as prescribed by the applicable Fees Regulations; and
 - (c) such other information as the Commission may require.
- (2) Applications must clearly indicate the identity of the proposed designated administrator.

6.2 Authorisation declarations

- (1) The Commission may declare that a scheme, that complies with rule 6.1, is authorised if it is satisfied –
 - (a) that the scheme's principal documents and information particulars appear, to the Commission, to comply with these Rules; or
 - (b) that it is unnecessary in the interests of investors for the scheme's principal documents and information particulars to comply with any specific rules, relating to their contents, with which they do not comply.

- (2) An authorised closed-ended investment scheme declaration must, where relevant, specify the rules with which the scheme's principal documents or information particulars do not comply.

Guidance Note:

Where an authorised closed-ended investment scheme declaration of authorisation is issued the Commission will, at the same time, confirm the designation of the administrator.

6.3 Undertakings

- (1) Any conditions, set out by the Commission within the authorisation, must be adhered to.

Guidance Note:

As a condition of the authorisation of a scheme the Commission is entitled to require such undertakings, indemnities, bonds, guarantees, and assurances as the Commission may determine to secure compliance with these Rules.

PART 7 GENERAL PROVISION

7.1 Interpretation

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

“administration agreement” means an agreement under which a person is appointed designated administrator of an authorised closed-ended investment scheme to discharge its duties;

“annual accounting period” means the period, normally of twelve months, as specified in the information particulars or principal documents;

“approved derivative” means one which is traded or dealt in on a regulated market;

“approved security” means a transferable security that is admitted to official listing on the International Stock Exchange, or in the UK, or in an EEA State, or is traded on or under the rules of a regulated market;

“custodian”, in relation to an authorised closed-ended investment scheme, means the custodian of that scheme (other than a unit trust);

“custodian agreement” means an agreement under which a body corporate is appointed to hold the property of an authorised closed-ended investment scheme (other than a unit trust);

“financial instrument” means any instrument specified in Section C of Annex I to MIFID;

“holder” means the person who is entered in the register as the holder of the share, unit, or partnership interest; or the first named holder in the case of joint holders;

“information particulars” means particulars of an authorised closed-ended investment scheme prepared in accordance with Part 4 and includes a prospectus, scheme particulars, offering memorandum, explanatory memorandum, term sheet, admission document, subscription agreement, listing particulars, application form, or any other similar documents;

“investment adviser” means a person who, under a commercial arrangement not being a mere contract of employment, provides the manager or the board of

directors, or trustee of a unit trust scheme, with advice as to the merits of investment opportunities available to the scheme whether or not they regularly exercise a discretionary power over investments for the account of the scheme;

“management agreement” means an agreement under which a person is appointed manager of the scheme to discharge duties;

“manager” means the person appointed manager (if any) of an authorised closed-ended investment scheme, including the general partner (appointed under a limited partnership agreement), the manager of a unit trust (appointed under a unit trust agreement), to discharge the duties under a management agreement;

“market operator” means a person who manages or operates the business of a regulated market. The market operator may be the regulated market itself;

“principal documents” means, in relation to –

- (a) a unit trust, the trust instrument and the management agreement (if any);
- (b) a company, the articles of incorporation of a Guernsey company (or an equivalent document under the applicable law of a non-Guernsey body corporate), the administration agreement, and the custodian agreement;
- (c) a partnership, the limited partnership agreement, the partnership agreement, the partnership administration agreement, the partnership management agreement, and the custodian agreement; and
- (d) an authorised closed-ended investment scheme other than a unit trust, a company, or a limited partnership, the documents dealing collectively with the same or similar obligations and duties as the principal documents constituting a unit trust, a company or a limited partnership and administration agreement and custodian agreement;

“qualified auditor” means a person who has a place of business in the Bailiwick of Guernsey and who holds a current practising certificate issued by –

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

“regulated market” means, in accordance with Article 4(1)(21) of MiFID, a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments, in the system and in accordance with its non-discretionary rules, in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules or systems, and which is authorised and functions regularly and in accordance with the provisions of Title III of MiFID;

“share” means a share or unit or limited partnership interest or similar interest in an authorised closed-ended investment scheme; and

“umbrella fund” means an authorised closed-ended scheme which provides that the contributions of investors and the profits or income out of which payments are to be made to them are pooled in separate parts of the property and whether or not investors in each separate part may exchange rights in one part for rights in another.

PART 8 TRANSITIONAL ARRANGEMENTS, SAVINGS, REVOCATIONS, CITATION AND COMMENCEMENT

8.1 Transitional Arrangements

- (1) Designated managers, recognised under the Authorised Closed-ended Investment Schemes Rules 2008, will be re-designated as designated administrators in accordance with these Rules.

8.2 Savings

- (1) Declarations of authorisation issued under section 8 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, and previously governed by the Authorised Closed-ended Investment Schemes Rules 2008, are recognised as valid for the purposes of these Rules.
- (2) Any exclusion or modification granted by the Commission, under the Authorised Closed-ended Investment Schemes Rules 2008, will continue to apply where the Law and these Rules provide scope for such exclusions and modifications.

8.3 Revocations

8.3.1 Revocation of The Authorised Closed-ended Investment Schemes Rules 2008

- (1) The Authorised Closed-ended Investment Schemes Rules 2008 are revoked.

8.4 Citation and commencement

- (1) These rules may be cited as the Authorised Closed-ended Investment Schemes Rules, 2021.
- (2) These rules come into force on 1st November 2021.

SCHEDULE 1

Information particulars

The following must be stated –

1. Name and structure

- i. That the scheme is an authorised closed-ended investment scheme;
- ii. whether the scheme is a company, unit trust, a limited partnership, a protected cell company, an incorporated cell company, or other;
- iii. where the scheme is domiciled;
- iv. whether the scheme is an offer for subscription, a placing, or other;
 - v. any pre-existing commitments, e.g. debt issued or proposed to be issued;
- vi. whether the scheme is to be listed or traded on a stock exchange and, if so, which.

2. Parties

Names and addresses of the following (as applicable) –

- i. the promoter;
- ii. the manager or general partner;
- iii. the custodian/trustee;
- iv. the designated administrator;
- v. the investment manager;
- vi. the investment adviser;
- vii. the registrar;
- viii. the qualified auditor; and
- ix. the directors.

3. Investment objectives

- i. Specific details relating to the objectives;
- ii. details of powers to change the investment objectives including requirements to submit proposals to a holder vote; and
- iii. any borrowing, gearing or hedging powers that may apply.

4. Investment policy

- i. The investment restrictions that will apply;
- ii. how the spread of risk will be achieved;
- iii. any borrowing or gearing powers that will apply; and
- iv. details of any powers to change any of the above, including any requirements to submit proposals to a vote of holders.

5. Duration

- i. Any provision for the early termination of the scheme's life;
- ii. any provision for the extension of the scheme's life;
- iii. the exit strategy at the term of the scheme's life, including the manner in which assets will be repaid;
- iv. any provisions for the re-purchase of shares in the scheme; and
- v. the provisions that will apply should the initial raising of monies not be successful.

6. Periodic accounting or reporting

- i. The accounting standards that will be applied to the preparation of the scheme's accounts;
- ii. the duration of the first accounting period;
- iii. the accounting date of the scheme; and
- iv. when reports will be published and distributed to holders in relation to the accounting date of the scheme.

7. Subscription procedure

The minimum subscription amount, if any.

8. Valuation procedure

- i. The basis of the valuation, particularly if the underlying investments are not listed, and whether a net asset value per share is to be calculated; and
- ii. provision for the publication of the net asset value; and
- iii. the availability of the net asset value if this is not to be published.

9. Shareholder, Limited Partner and Unitholder's rights

- i. The arrangements that will exist for general meetings; and
- ii. any class rights that will exist; and

- iii. the voting rights that will be exercisable at meetings of holders.

10. Distribution policy

- i. The distribution policy and indicative distribution date; and
- ii. where appropriate, the policy relating to the distribution of capital and distribution in specie.

11. Directors' interest and the interest of the parties to the scheme

The information particulars should include a statement showing the interests of each director, and of the parties listed in section 2 of this Schedule to these Rules, in the shares of the scheme, together with the level of the directors' remuneration and expenses. Details of any other directorships that are held and have been held in the past five years, by the directors, will be made available to any potential holder, at the registered office of the scheme. Any potential conflict of interest must be disclosed for any intended holder to make an informed judgment on the merits of investing in the scheme.

12. Fees and expenses

The nature of all fees, material charges, and expenses payable out of the scheme property and, where applicable, how their amounts will be determined.

13. Risk warnings

Sufficient risk warnings must be disclosed for any intended holder to make an informed judgment on the merits of investing in the scheme.

14. Tax

- i. The entity's tax status; and
- ii. the tax treatment applicable in jurisdictions where the entity is to be marketed.

Guidance Note:

In this respect, the Commission is prepared to accept general disclosure or, if specific countries have been targeted, information that is relevant to investors in those countries. Such information should be correct at the time of the initial issue and indicate that potential investors should seek tax advice specific to their own circumstances.

15. Additional information

The information particulars must state any other material information that an investor would reasonably require to enable the person to make an informed judgment about the merits of investing in the securities, limited partnership interests, or shares offered.