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GUERNSEY SUSTAINABLE FUNDS: THE NATURAL CAPITAL FUND RULES and GUIDANCE, 2022

The Natural Capital Fund 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 shaded boxes.

¹ Order In Council No. XVIII of 2020.

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PART 1 INTRODUCTION

1.1 Application

- (1) These Rules apply to the use of the description Natural Capital Fund.
- (2) The Commission may in its absolute discretion, by written notice to a licensee, exclude or modify the application of any provision of these Rules.
- (3) The Commission may issue supplementary guidance regarding the standards of conduct and practice expected in relation to any aspect of the regulatory framework. Such guidance will not constitute rules of the Commission.

Guidance

This document takes a two-level approach –

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

Alternative measures to those set out in the guidance may be adopted 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.

PART 2 GENERAL RULES

2.1 Objectives and investment criteria

2.1.1 Objectives

- (1) The objectives of a Natural Capital Fund must reflect the following –
 - (a) spreading risk, and the criteria for the spread of risk must be specified in the scheme's prospectus; and
 - (b) seeking a return for investors whilst either –
 - (i) making a positive contribution; or
 - (ii) significantly reducing harm to the natural world.
- (2) The objectives of a Natural Capital Fund must align with either –
 - (a) the United Nations Convention on Biological Diversity's Post-2020 Global Biodiversity Framework's 2030 Action Targets;
 - (b) the United Nations Sustainable Development Goals 12-15; or
 - (c) the European Union Taxonomy for Sustainable Activities' Environmental Objectives (c) to (f).

Guidance

An objective of significant reduction in harm to the natural world may involve a strategy of investment, and possibly also active investee engagement at a governance or management level, in enterprises implementing a programme to materially transition business activity away from practices detrimental to nature.

The frameworks listed in rule 2.1, as the bases of Natural Capital Fund objectives incorporate the immense variety of natural capital and provide a comprehensive understanding of what strategies and goals are necessary to abate natural capital loss. This affords the scheme the flexibility to adopt the sections of the frameworks relevant to its specific investment focus and strategy while operating in line with internationally recognised standards.

A Natural Capital Fund's objectives do not have to align with every single one of the Post-2020 Global Biodiversity Framework's 2030 Action Targets, each of the United Nations Sustainable Development Goals, or EU Taxonomy Environmental Objectives but must merely identify those relevant to its investment strategy.

Investment in stark contravention of any of the relevant international targets or goals, even where these are not expressly aligned with the scheme's objectives, is likely to be incompatible with an overall objective of making a positive contribution or significantly reducing harm to nature.

2.1.2 Investment criteria

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

2.2 Targets and monitoring

- (1) The governing body must set natural capital targets against which the scheme's positive contribution to the natural world and any reduction of harm, to the natural world, may be tracked. These targets must –
 - (a) be relevant to the scheme's objectives;
 - (b) be based on up-to-date, good quality scientific research;
 - (c) make reference to a relevant baseline position to enable meaningful measurement of progress;
 - (d) be clearly documented; and
 - (e) be reviewed not less than once every twelve months.
- (2) The governing body must –
 - (a) ensure that an appropriate framework of policies, procedures, and controls is in place to monitor and measure performance as well as progress against the targets;
 - (b) use appropriate metrics to measure performance against the targets; and
 - (c) review progress against targets periodically and at least annually.

Guidance

The Rules do not prescribe the use of any one methodology for the setting and monitoring of targets and the governing body may, with reference to appropriate internal or external expert advice, adopt an approach appropriate and tailored to the investment strategy of the scheme.

Consideration may be given to the adoption of a target setting approach based on the Science Based Targets for Nature (SBTN). The SBTN have their basis in the methodology of, and are part of, the Science Based Targets Initiative which is the current global standard. This methodology involves the following key elements –

- Assessment of the scheme's biggest impacts and dependencies on nature and the environment;
- Prioritisation of particular areas across the whole 'sphere of influence' and setting appropriate targets;
- Measurement of baseline data (especially for priority targets and locations);
- Action to avoid future impacts, reduce current impacts, regenerate and restore ecosystems, and transform systems; and
- Tracking progress towards targets and reporting on such progress.

The metrics chosen to measure performance against targets must be appropriate to the objectives and the natural capital targets set by the scheme. Measurement tools/metrics should be meaningful and relevant and the governing body of the scheme would be expected to consider the extent to which these tools permit the measurement to be (where relevant) –

- Derived from a deep, global, scientifically robust base of knowledge that is directly linked to an underlying key component of natural capital;
- Geographically targeted – meaning that a metric is able to measure relative impact on a sufficiently focussed geographical area – many areas (even though adjacent to each other) differ greatly in terms of their natural capital value both in terms of dependency (services the area is providing to people) and their intrinsic natural capital value;
- Quantitative – meaning that units of some form are established, with clear meaning of what a unit is and what it signifies;
- Directional – meaning it has to be clear whether an increase in units or a decrease in units is desirable.
- Additive – meaning addition of units (positive and negative) ultimately arrives at a final total measuring impact and/or dependencies, and progress across the entire portfolio;
- Temporally responsive – meaning you need to be able to calculate how many units more (or less) you have compared to your baseline. The tools should also be adaptable to changes in circumstances (for example, as a result of conservation or restoration activity in a specific geographical area).

Guidance – continued

Proprietary models and measurement tools may be used, provided that the scheme has access to the internal or external expertise necessary to ensure that such proprietary tools are robust, science based, and fulfil the criteria above. Where a scheme does not use a proprietary model, it should use a measurement tool developed by a reputable source and ensure the above criteria are still met.

Consideration may be given to –

- ENCORE (Exploring Natural Capital Opportunities, Risks and Exposure) – developed by the Natural Capital Finance Alliance and UNEP-WCMC;
- BFFI (Biodiversity Footprint for Financial Institutions) – developed by CREM and PRé Sustainability, together with ASN Bank;
- CBF (Corporate Biodiversity Footprint) – developed by Iceberg Data Lab and I Care Consult as scientific partner;
- STAR (Species Threat Abatement and Restoration) – developed by the IUCN Species Survival Commission's Post-2020 Taskforce (to be incorporated into ENCORE's biodiversity risk measure);
- GBSFI (Global Biodiversity Score for Financial Institutions) – developed by CDC Biodiversité (France) and the B4B+ Club, or
- BIA-GBS (Biodiversity Impact Analytics powered by the Global Biodiversity Score) developed by Carbon4Finance and CDC Biodiversité.

This is only a small selection of tools available, and the Commission will accept other frameworks that can be proven to be credible and based on scientific methods. Nevertheless, any measurement tool chosen needs to be appropriate for the targets set.

2.3 Application

- (1) A governing body applying on behalf of a scheme, for designation as a Natural Capital Fund, must submit to the Commission –
 - (a) the appropriate applications;
 - (b) a final version of the prospectus, where required to be issued;

- (c) a declaration, in accordance with Part 1 of Schedule 1, made by the governing body, that the scheme's objectives and targets comply with these Rules;
- (d) a report, approved by the governing body, setting out –
 - (i) the investment approach and objectives of the scheme and how these align with relevant international goals set out at rule 2.1.1;
 - (ii) natural capital targets set and the approach used to set them; and
 - (iii) how compliance is monitored;
- (e) a copy of any certification, confirming compliance of the scheme's objectives, targets, and monitoring procedures with these Rules, as provided by a third party expert verifier, where such certification has been obtained;
- (f) the requisite fee; and
- (g) any other information as the Commission may require in a particular case.

Guidance

The Commission has designed the scope of these Rules to include schemes that, through their activities, commit to significantly reduce harm to nature – in addition to those which exclusively aim to contribute positively. It is anticipated that, in calibrating the scope of the regime to encompass schemes with such transitional investment strategies, a wider spectrum of investment strategies may be accommodated, thereby increasing the range of schemes which might seek designation. It is hoped that, as a consequence, a greater contribution can be made to the flow of resources directed towards the effort to preserve and rebuild the planet's reserves of natural capital.

Guidance - continued

This approach is not, however, an invitation for applications of a superficial nature. The Commission expects applicants to make a genuine commitment to their overarching objectives and demonstrate this in their application, particularly in the report set out at rule 2.3, and in their periodic reporting to the Commission.

It is expected that a fund's governing body should engage the necessary third party expertise to confirm the compliance, with these Rules, of the fund's objectives, targets, investment criteria, and the framework for monitoring and measuring the fund's progress against the applicable natural capital targets. It is accepted, however, that certain funds may have access to the appropriate in-house expertise and the use of such expertise is not precluded. In such cases the governing body should evidence, to the Commission, the strength and qualification of the in-house expertise relied on in the making of the application.

2.4 Designation

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

Guidance

When the Commission considers an application for designation as a Natural Capital Fund it will assess –

- the scheme's principal documents;
- the scheme's prospectus;
- the declaration, and other submissions, as required by rule 2.3; and
- any other material supplied, to the Commission, at the time of application.

2.5 Oversight of the scheme

- (1) The governing body must notify the designated administrator where the scheme is in contravention of the Law or these Rules.
- (2) The designated administrator must satisfy itself that the governing body has put in place natural capital targets and a monitoring process, with respect to these targets, in accordance with these Rules.
- (3) Where the designated administrator has been notified, by the governing body, or has otherwise become aware, of a contravention of the Law or these Rules, the designated administrator must –
 - (a) immediately take steps to notify, where appropriate, the governing body, manager, and designated custodian;
 - (b) immediately inform the governing body that it must ensure steps have been taken to rectify the position;
 - (c) if the position has not been rectified within one month of the date on which the contravention was identified –
 - (i) notify the Commission; and
 - (ii) provide the Commission with the proposals to rectify the breach; and
 - (d) if the position has not been rectified within two months of the date on which the contravention was identified, ensure that all investors are informed or otherwise notify the Commission that such communication has not taken place and the reason why.
- (4) Subsection (3) does not apply to Natural Capital Funds –
 - (a) during the first six months from the date of designation, or until the scheme is fully invested, whichever occurs first; or

- (b) once a decision has been taken to wind up the scheme, in accordance with the scheme's principal documents, and the Commission has been duly notified.

Guidance

The administrator is neither responsible for verifying the validity of natural capital targets against which the scheme's positive contribution to and/or reduction of harm may be tracked, nor is the administrator responsible for monitoring progress against such targets.

The designated administrator's responsibilities, as specified in the underlying fund authorisation or registration rules, continue to apply.

2.6 Removal of designation

- (1) Where the designated administrator is aware that a Natural Capital Fund continues, after a period of three months from the date when a contravention was identified, not to meet the requirements of these Rules, then it must –
 - (a) provide the declaration of non-compliance, set out in Part 2 of Schedule 1, to the Commission;
 - (b) inform the governing body that it must, as soon as possible, cease to use the designation of Natural Capital Fund on all documents and other material, whether electronic or otherwise;
 - (c) ensure that all investors have been notified of any steps taken under this rule; and
 - (d) ensure that a copy of the declaration of non-compliance is placed in a prominent position on the scheme's website.
- (2) Where the circumstances detailed in subsection (1) apply, the scheme's designation as a Natural Capital Fund ceases.

- (3) Where a Natural Capital Fund is being wound up the designated administrator must notify and seek the approval of the Commission if it wishes to continue to use the Natural Capital Fund designation.

Guidance

The Commission may, using its statutory powers, remove the designation when it is satisfied that the scheme -

- does not set objectives consistent with the requirements of these Rules;
- does not set and monitor progress against natural capital targets;
- does not set investment criteria consistent with the scheme's objectives;
- remains invested, for more than three months, in breach of the investment criteria;
- is being wound up;
- at any stage, after it ceases to meet the notified natural capital criteria, or the investment criteria, to protect –
 - the interests of investors;
 - the public; or
 - the reputation of the Bailiwick.

2.7 Prospectus disclosures

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

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

2.8 Notifications and submissions

2.8.1 Notifications and submissions to the Commission

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

2.8.2 Notifications and submissions to investors

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

Guidance

The annual report to the Commission, demonstrating the scheme's performance, may include –

- reports from the chosen measurement tool regarding the scheme's progress against different metrics (and subsequently its natural capital targets);
- reports generated internally by a proprietary model measuring the scheme's progress against natural capital targets;
- information on stakeholder engagement and voting activity (if appropriate due to the investment strategy including active stakeholder engagement);
- a description of the governing body's monitoring and oversight against natural capital targets;

Guidance - continued

- details of any changes to the scheme's natural capital targets and the rationale and process behind any such change;
- progress against transitional plans (with demonstration of the appropriate measurements);
- disclosures made in line with other frameworks that aid in illustrating the scheme's compliance with the objectives and progress against natural capital targets;
- additional frameworks/recommendations of internationally recognised bodies that the scheme complies with; and/or
- any other information demonstrating the scheme's commitment to the objectives.

In preparing annual investor disclosures a scheme should have regard to the draft Task Force on Nature-Related Financial Disclosure's recommendations for nature-related risks and opportunities and seek to make disclosures consistent with this emerging framework. Schemes will be expected to follow the TNFD disclosure recommendations following their finalisation anticipated in late 2023.

The requirement to notify investors of performance against a fund's natural capital targets may be met through appropriate disclosure as part of the fund's annual report.

While a fund has the flexibility to make the disclosures required under the Rules, in a form suitable to its particular objectives and targets, disclosures compliant with Article 9 of the Sustainable Financial Disclosure Regulation may be deemed to be compliant with the Rules.

PART 3 GENERAL PROVISION

3.1 Interpretation

(1) In these rules terms have their ordinary meaning unless specifically defined in the Law or in these rules.

(2) In these rules the following definitions should be followed -

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

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

(d) the transition to a circular economy;

(e) pollution prevention and control;

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

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

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

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

“principal documents” means –

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

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

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

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

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

PART 4 CITATION AND COMMENCEMENT

4.1 Citation and commencement

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

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SCHEDULE 1

Part 1 – Declaration of compliance

On behalf of the governing body of the scheme:

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

Part 2 – Declaration of non-compliance

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

SCHEDULE 2

Use of the Natural Capital Fund Logo



1. The logo must be reproduced from original artwork provided by the Commission and must comply with the Natural Capital Fund Brand Guidelines which can be found at www.gfsc.gg.
2. The use of the Natural Capital Fund logo must not be misleading.

Guidance

For example, due consideration should be given to the placement of the logo on stationery, or the homepage of an investment manager's website, if other funds within its portfolio are not designated as Natural Capital Funds.

3. As soon as possible, after a scheme's designation has been removed pursuant to rule 2.6, the scheme and its designated administrator, or any manager or designated custodian of the scheme, must stop using the Natural Capital Fund Logo in respect to that scheme.

Guidance

It should be noted that the use of the words “Natural Capital Fund” is separately restricted under rule 2.4.

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EXPLANATORY NOTE

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

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

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

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