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Guernsey Financial
Services Commission

PROSPECTUS RULES 2018

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THE GUERNSEY FINANCIAL SERVICES COMMISSION

PROSPECTUS RULES 2018 GUIDANCE NOTES

These Guidance Notes are intended to aid the understanding of the Commission's policy and practice and should be read in conjunction with the Prospectus Rules 2018 ("the Prospectus Rules"). In respect of *registered investment schemes* the Prospectus Rules should be read in conjunction with the Registered Collective Investment Scheme Rules 2018. The Prospectus Rules do not apply to Private Investment Funds.

The Prospectus Rules seek to provide a clear and concise set of requirements for the disclosure of information in respect of *prospectuses* for *registered investment schemes*, and *offers to the public* for any Category 2 controlled investment in the Bailiwick, but excluding private investment funds. The disclosure of current and reliable information is necessary for investors to make informed investment decisions. These disclosures may be in addition to those required by any relevant listing authority.

If a "Red Herring" *prospectus* is to be circulated in advance of the final offer document, the Commission does not expect the Prospectus Rules to be complied with, provided that appropriate disclaimers are included in the "Red Herring".

For the purposes of the Prospectus Rules, the Commission would look through any nominee arrangement to the underlying investors in order to determine whether the *offer* had been promoted to more than 50 persons.

As with all other types of investment business, the Commission is always prepared to meet *managers*, potential promoters or their professional advisers in order to discuss matters of policy and practice regarding the disclosure requirements as set out in these rules.

Enquiries should be directed to the Investment and Fiduciary Supervision and Policy Division of the Commission.

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The Guernsey Financial Services Commission (“the *Commission*”), in exercise of the powers conferred on it by sections 12, 14, 16 and 18 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 as amended (“the *Law*”) hereby makes the following rules:-

PART 1 – INTRODUCTION

1.01 Citation and commencement

- (1) These rules, which may be cited as the Prospectus Rules 2018 (“the Prospectus Rules”), are made on 6 July 2018 and shall come into operation on 6 October 2018.

1.02 Interpretation

- (1) Unless the context otherwise requires, in these Prospectus Rules, expressions defined in the *Law* have the same meaning as they have in the *Law*, and the following expressions have the meanings assigned to them:

“**associate**”, in relation to any person, means –

- (a) The spouse or child of that person;
- (b) any company of which that person is a director;
- (c) any person who is an employee or partner of that person;
- (d) if that person is a company –
 - (i) any director or subsidiary of that company; and
 - (ii) any director or employee of any such subsidiary; and
- (e) if that person has with any other person an agreement or arrangement as to the acquisition, holding or disposal of shares or other interests in a *company* or under which they undertake to act together in exercising their voting power in relation to a *company*, that other person;

“the Bailiwick” means the Bailiwick of Guernsey.

“cell company” means a protected cell company, incorporated cell company (each as defined in the Companies (Guernsey) Law, 2008 as amended), and any company by which segregation of assets is achieved according to class by either statutory or contractual segregation.

“closed-ended investment scheme” means a Closed-ended investment scheme as defined in the *Law*.

“collective investment scheme” means any arrangement such as is identified as described in paragraph 1 of Schedule 1 of the *Law*;

“Commission” means the Guernsey Financial Service Commission

“company” means any body corporate (whether or not incorporated, and wherever incorporated or constituted) which is not a public sector body;

“designated administrator” in relation to a *registered investment scheme*, means the person designated by the *Commission* to be the designated manager for the purposes of the *Law*;

“designated custodian” in relation to a registered *open-ended investment scheme* other than a unit trust, means the custodian of the scheme as designated in the *Commission’s registration* of the *registered investment scheme* under section 8 of the *Law*;

“designated trustee” in relation to a registered *open-ended investment scheme* that is a unit trust, means the trustee of the unit trust;

“director” means, in respect of a *company*, any person appearing on the register of directors of such *company*, in respect of a *limited partnership*, any person appearing on the register of directors of the general partner of such *limited partnership*, and in respect of any other incorporated bodies, any person responsible for the management of that incorporated body;

“holder” in relation to a share in a *registered investment scheme*, means the person who is entered in the register as the holder of the share or *unit* or *limited partnership interest* or the first named holder in the case of joint holders;

“IOSCO” means International Organization of Securities Commissions;

“Law” means the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended;

“limited partnership” means a partnership, wherever domiciled, which is for the time being registered as a limited partnership in accordance with the relevant legislation;

“limited partnership interest” an interest or share in a *limited partnership*.

“manager” means the person appointed *manager* of a *registered investment scheme*, including the general partner (appointed under a limited partnership agreement), the *manager* of a unit trust (appointed under a unit trust instrument) or appointed by the trustee under a management agreement to discharge the duties under a management agreement;

“offer” means the offer for issue of securities, *limited partnership interests* or *units* of a *registered investment scheme*, or any Category 2 controlled investment;

“offeror” or **“issuer”** means the *company, limited partnership* or unit trust, the securities, *limited partnership interests* or *units* of which are the subject of the *offer* in the *prospectus*;

“open-ended investment scheme” means a *collective investment scheme* under which the investors are entitled under the terms of the scheme –

- (a) to have their units redeemed or repurchased by, or out of funds provided by, the scheme, or
- (b) to sell their units on an investment exchange,

at a price related to the value of the property to which they relate;

“promotion” has the meaning given in Schedule 2 of the Law and related expressions shall be construed accordingly;

“prospectus” means any prospectus, notice, circular, or other document containing detailed information about an *offer to the public* of any Category 2 controlled investment for subscription, purchase or exchange and, in the case of a *registered investment scheme*, includes information particulars, prospectus, scheme particulars, offering memorandum, explanatory memorandum, term sheet, application form, subscription agreement, and any other similar documents or any combination of the foregoing;

“the public” includes any section of the public, however selected, but a controlled investment is not promoted to the public by a *promotion* directly communicated to an identifiable category of persons not exceeding 50 in number if those persons are in possession of sufficient information to be able to make a reasonable evaluation of any *offer* included in the *promotion* and are the only persons who may accept any such *offer*;

“registered investment scheme” means an *open-ended investment scheme* or a *closed-ended investment scheme* declared in a *registration* issued by the Commission under section 8 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended and 7.02 of the Registered Collective Investment Scheme Rules 2018 to be a registered investment scheme for the purposes of the *Law*, and **“registration”** and related expressions shall be construed accordingly;

“senior management” includes members of the administrative, supervisory and management bodies and partners with unlimited liability;

“significant beneficial ownership”, in relation to a *company, limited partnership* or unit trust, means an investor who, alone or with *associates*, is entitled to exercise, or control the exercise of, or has the option to acquire securities that would, upon exercise, entitle the investor to exercise, or control the exercise of, 15 percent or more of the voting rights in general meeting of that *company, limited partnership* or unit trust;

“unit” means the rights or interests (however described) of investors in the *offeror*

“unitholder” means a holder of *units*.

- (2) The Interpretation (Guernsey) Law, 1948 applies to the interpretation of these Rules.
- (3) References to enactments shall include reference to any modifications or re-enactments thereof for the time being in force.

PART 2 – APPLICATION OF RULES

2.01 Application of Rules

(1) Unless specifically agreed otherwise by the Commission, and subject to (2) below, all of the Prospectus Rules apply to every *prospectus* in relation to:

- (a) *registered investment schemes*;
- (b) an *offer* by a company or *limited partnership* that is registered in any of the Islands in the *Bailiwick* or unit trust that is governed by any of the laws of *the Bailiwick* of any Category 2 controlled investment; or
- (c) an *offer to the public* in the *Bailiwick* of any Category 2 controlled investment, wherever the *offeror* is domiciled.

(2) The Prospectus Rules do not apply to:

- (a) any *offer* of a Category 2 controlled investment that is listed or traded on any stock exchange, in respect of a *company*, *limited partnership* or unit trust registered or incorporated in a country or territory in which the local regulatory body is an ordinary member, associate member or affiliate of IOSCO or listed on an exchange that is supervised by a member of IOSCO;
- (b) a Private Investment Fund

(3) In the case of a *company*, the *directors* or, in the case of a *limited partnership*, the *general partner* or, in the case of a unit trust, the *manager* and *trustee* or, in each case, such persons with actual responsibility for the preparation of the *prospectus* are responsible for compliance with these rules.

PART 3 – INFORMATION TO BE SPECIFIED IN PROSPECTUS

3.01 Details relating to the offer

(1) The *prospectus* shall state the following –

- (a) the names, occupations and addresses of –
 - (i) the *offerors* or vendors, and
 - (ii) any promoter,

of the securities or membership of the *company*, *limited partnership interests* of the *limited partnership* or *units* of the unit trust;

- (b) the terms applicable to the acquiring of the securities or membership of the *company*, *limited partnership interests* or *units* and (if those terms include a price that is payable) the method, time and place of payment;

- (c) the opening and closing dates and times of the *offer*;

- (d) the minimum amount, if given, required to be raised by the *offer*;

- (e) when and how monies will be returned in the event of the *offer* not being completed or any securities, *limited partnership interests* or *units* applied for not being allotted;

- (f) if known at the date of the issue of the *prospectus*, the anticipated date and forecast amount of the first distribution or interest payment on the securities, *limited partnership interests* or *units* that are the subject of the *offer*;

- (g) general particulars of any property that is to be acquired with the proceeds of the *offer*, together with any investment restrictions that apply; and

- (h) in the case of any business that is intended to be acquired with the proceeds of the *offer*, the length of time during which that business has been carried on and summary financial information, if known at the date of the issue of the *prospectus*.

3.02 Capital

- (1) The *prospectus* shall state the following (if applicable) –

- (a) in the case of a limited liability *company*, particulars of the share capital and securities that are the subject of the *offer*;
- (b) in the case of a *company* limited by guarantee, an invitation to become a guarantor member and particulars of the amount of the guarantee;
- (c) in the case of a *limited partnership*, particulars of the interests that are the subject of the *offer*; and
- (d) in the case of a unit trust, particulars of the *units* that are the subject of the *offer*,

together with details of any existing issued securities, *limited partnership interests* or *units* that are not part of the *offer*.

- (2) For the avoidance of doubt, in the case of a *cell company*, only the details of cell share capital of the particular cell or the incorporated cell share capital of the particular incorporated cell company which is subject to the *offer*, must be disclosed.

3.03 Goodwill, preliminary expenses and benefits

- (1) The *prospectus* shall state the value of goodwill and preliminary expenses, and the accounting treatment as required by Rule 3.08(1)(b), or of any benefit given to a promoter, in each case from the proceeds of the *offer*.

3.04 Contracts

- (1) The *prospectus* shall state the dates of, parties to and general nature of every material contract, not being –
 - (a) a contract or agreement entered into in the ordinary course of the business carried on or intended to be carried on by the *offeror*; or
 - (b) a contract entered into more than 2 years before the date of issue of the *prospectus*.
- (2) For the avoidance of doubt, management agreements are material and should be disclosed.

3.05 Interest of directors (in the case of a company, protected cell company or incorporated cell company) including the directors of the managing general partner of a limited partnership scheme and the directors of a trustee/manager of a unit trust scheme

- (1) The *prospectus* shall state the following (if applicable)–
 - (a) full particulars of the nature and extent of any direct or indirect interest (if any) in the *company* or in the securities that are the subject of the *offer* of every *director* and member of *senior management* of the *company*, including any shareholdings by the *directors* and members of *senior management*;

- (b) details of all sums paid or agreed to be paid to any such *director* in cash or shares or otherwise by any person to induce that *director* to become or to qualify as a *director*, or otherwise for services rendered by the *director* or by the firm .

3.06 Options and prior interests

- (1) The *prospectus* shall state the details of any subscriptions, allotments or options to be given, or already existing, in respect of any other securities of the *company*, *limited partnership interests* of the *limited partnership* or *units* of the unit trust including any that have a prior right over the securities, *limited partnership interests* or *units* covered by the *offer* to a distribution of the profits or assets of the *offeror*.

3.07 Borrowings, indebtedness and hedging powers

- (1) The *prospectus* shall state the details of all borrowings or indebtedness of the *offeror* and the extent of any mortgage, charge or security interest over or attaching to the assets of the *offeror* as at the date of the *prospectus* or an appropriate negative statement and the details of any hedging powers.

3.08 Accounts and reports

- (1) The *prospectus* shall state the following –
- (a) where applicable, current financial information on the *offeror*, including a copy of the latest audited accounts of the *offeror* accompanied by a report on the financial statements thereon by the *offeror's* auditors; and

- (b) the generally accepted accounting practices or principal accounting policies that will be applied to the preparation of the *offeror's* accounts; and
- (c) the duration of the first accounting period (if relevant); and
- (d) the accounting date of the *offeror*; and
- (e) when reports will be published, distributed or available to holders in relation to the accounting date of the *offeror*; and
- (f) any other reports of a specialist nature by any person who could be described as an expert on any aspect of the business of the *offeror*, identifying any unusual element of risk to the investor; and
- (g) when any other reports will be published, distributed or available to holders.

3.09 Registered office and register of members, limited partnership interests or unitholders

- (1) The *prospectus* shall state the address of the registered office of the *offeror* (where applicable) and (if different) the address at which its register of members, limited partners or *unitholders* is kept.

3.10 Principal establishments

- (1) The *prospectus* shall state the location and nature of the *offeror's* principal operating establishments.

3.11 Designated Administrator and Designated Custodian or Designated Trustee (in respect of a registered investment scheme)

(1) The *prospectus* shall state the name and addresses of the following:-

- (a) the *designated administrator*;
- (b) the *designated custodian or designated trustee* (in respect of a registered *open-ended investment scheme*);
- (c) the name of the custodian (if appointed) in respect of a registered *closed-ended investment scheme*.

3.12 Directors and secretary (in the case of a company, protected cell company or incorporated cell company) including the directors of the managing general partner of a limited partnership scheme and the directors of a trustee/manager of a unit trust scheme

(1) The *prospectus* shall state the following –

- (a) the names, business occupations (if any) and addresses of the *directors* or proposed *directors* of the *company*; and
- (b) the name, qualifications (if any) and address of the secretary of the *company* (if applicable).

3.13 General Partner (in the case of a limited partnership)

(1) The *prospectus* shall state the following –

- (a) its name;

- (b) place and date of registration or incorporation (if a *company*); and
- (c) the address of its registered office.

3.14 Trustee (in the case of a unit trust)

(1) The *prospectus* shall state the following –

- (a) its name;
- (b) place and date of incorporation; and
- (c) the address of its registered office.

3.15 Other Parties

(1) The *prospectus* shall state the following –

- (a) the name and address of the *offeror's* auditors;
- (b) the name and address of the *offeror's* legal advisers; and
- (c) the name and address of the *offeror's* principal bankers.

3.16 Significant Beneficial Ownership

(1) The *prospectus* shall state the following -

- (a) Shareholdings of those persons who hold a *significant beneficial ownership* interest in the *offeror* at the date of the *prospectus*;
- (b) With respect to tender *offers*, take-over bids, and other transactions intended to effectuate a change of control as defined by the *Law* or that potentially may result in a change of control, or that may consolidate control, information necessary to make informed decision-making; and
- (c) The names of those holding *significant beneficial ownership* in any person in rule 3.11, 3.13 or 3.14 acting in relation to a *registered investment scheme*.

3.17 Voting and other rights

- (1) The *prospectus* shall state the following –
 - (a) the arrangements that will exist for general meetings;
 - (b) any class rights that will exist;
 - (c) the voting rights that will be exercisable at meetings of *unitholders*; and
 - (d) a summary of the rights conferred upon or attaching to *unitholders* of the securities, *limited partnership interests* or *units* that are the subject of the *offer* in the *prospectus*.

3.18 Additional information

- (1) The *prospectus* shall state any other material information (including risk disclosures) that an investor would reasonably require to enable such investor to

make an informed judgement about the merits of investing in the securities, *limited partnership interests* or *units* offered.

3.19 Date of issue

- (1) The *prospectus* shall state the date of issue.

PART 4 – STATEMENTS TO BE INCLUDED IN PROSPECTUS

4.01 Statements to be included in prospectus

- (1) The *prospectus* shall include the following statements –

“Neither the Guernsey Financial Services Commission nor the States of Guernsey take any responsibility for the financial soundness of the [company, limited partnership or unit trust] (as appropriate) or for the correctness of any of the statements made or opinions expressed with regard to it.”

“If you are in any doubt about the contents of this document you should consult your accountant, legal or professional adviser or financial adviser.”

“[The directors of the company, the general partner of the limited partnership or manager or trustee of a unit trust] (as appropriate) 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 facts or of opinion. [All the directors, general partner, manager or trustee accept responsibility accordingly.] (as appropriate).”

- (2) The *prospectus* in respect of the *offer* for the issue of securities, *limited partnership interests* or *units* shall include the following statement –

“It should be remembered that the price of [securities, limited partnership interests or units] (as appropriate) and the income from them can go down as well as up.”

PART 5 – CIRCULATION OF PROSPECTUS

5.01 Circulation of Prospectus

- (1) No person shall circulate a *prospectus* in the Bailiwick of Guernsey; and no company, limited partnership or unit trust, registered or otherwise established in Guernsey, shall circulate or procure the circulation of, a *prospectus* outside of the Bailiwick of Guernsey unless the conditions in paragraph 5.02 are complied with.

5.02 Conditions

- (1) The conditions to which paragraph 5.01 refers are that –
- (a) the *prospectus* contains the information specified in Part 3;
 - (b) the *prospectus* includes the statements specified in Part 4;
 - (c) there has been delivered to the Commission –
 - (i) a final copy of the *prospectus*, such copy to include any reports referred to within the *prospectus*; and
 - (ii) the application fee as prescribed from time to time by Regulations made under Section 22 of the *Law*; and
 - (iii) such other particulars as the Commission may require;
 - (d) the Commission has registered the *prospectus*.

PART 6 – INFORMATION TO BE PROVIDED TO INVESTORS

6.01 Changes in Content

- (1) Changes to any matter required to be included in a *prospectus* by virtue of Rules 3.11 to 3.15 shall be immediately notified to investors in an appropriate format. This may be by an appropriate announcement on a web site, regulatory announcement service, e-mail or letter.
- (2) A copy of the notification in (1) above shall be provided to the *Commission* by electronic means as soon as practicable.
- (3) Where the notification is a *prospectus* or the same it shall be resubmitted to the *Commission* for registration under Rule 5.02(1)(d).
- (4) If a supplement, then the combination of *prospectus* and supplement must comply with the requirements of Part 3 of the Prospectus Rules 2018.

PART 7 – EXCLUSION OF PROVISIONS

7.01 Exclusion of Provisions

- (1) The *Commission* may, by notice in writing to the *directors* of the *company*, general partner of a *limited partnership*, trustee of a unit trust or *issuer*, exclude or modify the application of any provision of these rules in relation to that *company*, *limited partnership* or unit trust, if the *Commission* is satisfied that compliance with that provision is not necessary in the interests of investors.

- (2) An exclusion or modification under paragraph (1) may be in such terms as the *Commission* may specify.

PART 8 – TRANSITIONAL PROVISIONS

8.01 The Prospectus Rules 2008

- (1) The Prospectus Rules 2008 shall be revoked upon the commencement of these Rules, save that the 2008 Rules shall continue to apply to any outstanding obligations of any person as at that date.
- (2) Any Prospectus in circulation on the commencement of these Rules shall continue as if the Prospectus Rules 2008 were in force. Any changes to the prospectus shall take effect in accordance with Part 6 of these Rules.

Dated this day of July, 2018

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C. A. SCHRAUWERS

Chairman of the Guernsey Financial Services Commission

For and on behalf of the Commission

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