GUERNSEY FINANCIAL SERVICES COMMISSION

PROSPECTUS RULES 200[*]

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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. In respect of registered open-ended collective investment schemes and registered closed-ended collective investment schemes, the Prospectus Rules should be read in conjunction with the Registered Collective Investment Scheme Rules 200[*].

The Prospectus Rules seek to provide a clear and concise set of requirements for the disclosure of information in respect of prospectuses for registered open-ended collective investment schemes, registered closed-ended collective investment schemes and offers to the public for any Category 2 controlled investment in the Bailiwick. 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.

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 Director or Deputy Director of Investment Business.

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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

These rules, which may be cited as the Prospectus Rules 200[*] ("the Prospectus Rules"), are made on [●] [●] 200[*].

1.02 Interpretation

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:

"closed-ended investment scheme" means a collective investment scheme under which the investors are not 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;

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

"company" means any body corporate as defined in sections 1 and 2(3) of the Companies (Guernsey) Law, 2008;

"controlled investment business" has the meaning given in section 1(3) of *the Law*;

"directors" includes any person who occupies the position of director of whatever name called and, in relation to an unincorporated body, any member of the committee or other similar governing body;

"IOSCO" means International Organization of Securities Commission;

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

"limited partnership" has the meaning given by the Limited Partnerships (Guernsey) Law, 1995;

"limited partnership interests" interest or share in a limited partnership.

"manager" means the person appointed manager of either a closed-ended investment scheme or open-ended investment scheme to discharge the duties under a management agreement and shall include any agreement whereby the manager has delegated the performance of some or all of its functions;

"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 (including any draft prospectus to be circulated in advance of the final offer documentation) 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, 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 7.02 of the registered fund rules to be a registered investment scheme for the purposes of the Law, and "**registration"** and related expressions shall be construed accordingly.

"registered fund rules" means the Registered Collective Investment Scheme Rules 2008;

"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, 5 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 a unit trust.

(2) The Interpretation (Guernsey) Law, 1948 applies to the interpretation of these Rules.

PART 2 – APPLICATION OF RULES

2.01 Unless specifically agreed otherwise by the Commission, 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; and

(c) an offer to the public in the Bailiwick of any Category 2 controlled investment, wherever the offeror is domiciled.

2.02 The Prospectus Rules do not apply to any offer of a Category 2 controlled investment that is listed on an exchange, in respect of a company, limited partnership or unit trust domiciled in a country or territory in which the Securities Regulator is a member of IOSCO or listed on an exchange that is supervised by a member of IOSCO.

2.03 The manager or, 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 are responsible for compliance with these rules.

PART 3 – INFORMATION TO BE SPECIFIED IN PROSPECTUS

3.01 Details relating to the offer

The prospectus shall state the following -

(1) 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 or units;

(2) 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;

(3) the opening and closing dates and times of the offer;

(4) the minimum amount required to be raised by the offer;

(5) when and how moneys 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;

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

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

(8) 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.

3.02 **Capital**

The prospectus shall state the following –

(1) in the case of a par value company, particulars of the authorised, nominal, issued and paid up share capital of the company;

(2) in the case of a no par value company, particulars of the stated authorised capital;

(3) in the case of a no par value company, particulars of the securities that are the subject of the offer;

(4) in the case of a company limited by guarantee, an invitation to become a guarantor member, particulars of the amount of the guarantee;

(5) in the case of a limited partnership, particulars of the interests that are subject of the offer; and

(6) in the case of a unit trust, particulars of the units that are subject of the offer,

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

For the avoidance of doubt, only the 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**

The prospectus shall state the particulars of any amounts to be written off or provided for and the period of amortisation in respect of goodwill or preliminary expenses, or of any benefit given to a promoter.

3.04 **Contracts**

The prospectus shall state the dates of, parties to and general nature of every material contract, not being –

(1) a contract entered into in the ordinary course of the business carried on or intended to be carried on by the offeror; or

(2) a contract entered into more than 2 years before the date of issue of the prospectus.

For the avoidance of doubt, details of any material agreements entered into, including management agreements, should be disclosed.

3.05 **Interest of directors (in the case of a company, protected cell company or incorporated cell company)**

The prospectus shall state the following –

(1) 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 or related parties;

(2) where the interest of a director mentioned in sub-paragraph (1) consists of being a partner in a firm, full particulars of the nature and extent of the interest in the firm;

(3) details of all sums paid or agreed to be paid to any such director or firm 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 or other related party in connection with the promotion or formation of the company.

3.06 **Options and prior interests**

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 partnerships or units including any that have a prior right over the securities, limited partnerships or units covered by the offer to a distribution of the profits or assets of the offeror.

3.07 **Borrowings and indebtedness**

The prospectus shall state the details of all borrowings or indebtedness in the nature of borrowing 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.

3.08 **Accounts and reports**

The prospectus shall state the following –

(1) 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

(2) the generally accepted accounting practices that will be applied to the preparation of the offeror's accounts; and

(3) the duration of the first accounting period (if relevant); and

(4) the accounting date of the offeror; and

(5) when reports will be published, distributed or available to unitholders in relation to the accounting date of the offeror; and

(6) 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

(7) when any other reports will be published, distributed or available to unitholders.

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

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 partnership interests or unitholders is kept.

3.10 **Principal establishments**

The prospectus shall state the location and nature of the offeror's principal operating establishments.

3.11 **Directors and secretary (in the case of a company, protected cell company or incorporated cell company)**

The prospectus shall state the following –

(1) the names, business occupations (if any) and addresses of the directors or proposed directors of the company; and

(2) the name, qualifications (if any) and address of the secretary of the company.

3.12 **General Partner (in the case of a limited partnership)**

The prospectus shall state the following –

(1) its name, place and date of registration or incorporation (if a company), and the address of its registered office and details of significant beneficial ownership.

3.13 **Trustee (in the case of a unit trust)**

The prospectus shall state the following –

(1) its name, place and date of incorporation, and the address of its registered office.

3.14 **Other Parties**

The prospectus shall state the following –

(1) the name and address of the offeror's auditors;

(2) the name and address of the offeror's legal advisers; and

(3) the name and address of the offeror's principal bankers.

3.15 **Control**

The prospectus shall state the following -

(1) Shareholdings of those persons who hold a significant beneficial ownership interest in the offeror at the date of the prospectus or who have committed, as at the date of the prospectus, whether pursuant to the offer or otherwise, to acquire a significant beneficial ownership interest; and

(2) With respect to tender offers, take-over bids, and other transactions intended to effectuate a change of control or that potentially may result in a change of control, or that may consolidate control, information necessary to make informed decision-making

3.16 **Voting and other rights**

The prospectus shall state the following –

(1) the arrangements that will exist for general meetings;

(2) any class rights that will exist;

(3) the voting rights that will be exercisable at meetings of holders; and

(4) a summary of the rights conferred upon or attaching to holders of the securities, limited partnership interests or units that are the subject of the offer in the prospectus.

3.17 **Additional information**

The prospectus shall state any other material information (including risk disclosures) that an investor (including a person who cannot be expected to have any special knowledge of investments of the nature being offered) would reasonably require to enable the person to make an informed judgement about the merits of investing in the securities, limited partnership interests or units offered.

3.18 **Date of issue**

The prospectus shall state the date of issue.

PART 4 – STATEMENTS TO BE INCLUDED IN PROSPECTUS

4.01 The prospectus shall include the following statements –

(1) "the Guernsey Financial Services Commission takes no 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."

(2) "If you are in any doubt about the contents of this document you should consult your stockbroker, bank manager, solicitor, accountant or other financial adviser."

(3) "[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)"

4.2 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 and the income] (as appropriate) from them can go down as well as up."

PART 5 – CIRCULATION OF PROSPECTUS

5.1 Subject to paragraph 5.2 –

(1) no person shall circulate a prospectus in the Bailiwick of Guernsey;

(2) no company, limited partnership or unit trust, registered or domiciled in Guernsey, shall circulate a prospectus outside of the Bailiwick of Guernsey; and

(3) no company, limited partnership or unit trust, registered or domiciled in Guernsey, shall procure the circulation of a prospectus outside the Bailiwick of Guernsey,

unless the conditions in paragraph 5.2 are complied with.

5.2 The conditions to which paragraph 5.1 refers are that –

(1) the prospectus contains the information specified in Part 3

(2) the prospectus includes the statements specified in Part 4

(3) there has been delivered to the Commission –

(i) a certified final copy of the prospectus, such copy to include any reports referred within the prospectus; and

(ii) the application fee as prescribed from time to time by Regulations made under Section 22 of the Law; and

(iv) such other particulars as the Commission may require.

[(4) the Commission has registered the prospectus

PART 6 – INFORMATION TO BE PROVIDED TO INVESTORS

6.1 Changes in the contents of the prospectus must be notified to holders either immediately or in the subsequent annual report.

PART 7 – EXCLUSION OF PROVISIONS

7.1 The Commission may, by notice in writing to the directors of the company or manager of the scheme, general partner of a limited partnership or trustee of a unit trust, exclude or modify the application of any provision of those rules in relation to that company, scheme, limited partnership or unit trust, if the Commission is satisfied that compliance with that provision is not necessary in the interests of investors.

7.2 An exclusion or modification under section 7.1 may be in such terms as the Commission may specify.