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THE LICENSEES (CONDUCT OF BUSINESS) RULES, 2009

EXPLANATORY NOTE AND FEEDBACK ON CONSULTATION

The Commission, in conjunction with a Working Party including practitioners from the investment business sector, has been preparing new Conduct of Business Rules mandatory for all entities licensed under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 as amended. Earlier this year the Investment Business Division posted on the Commission website the draft Licensees (Conduct of Business) Rules 2009 (“the Rules”) for consultation. There was a wide ranging response to the consultation and all responses were reviewed by the senior management team of the Investment Business Division. Given the volume of responses to the consultation it has not been possible to provide a line by line response on each comment and the changes made to the Rules. The purpose of this document is to outline the main themes raised from the consultation and in particular provide our reasoning where we have not incorporated comments from the consultation.

I would like to thank everyone who took the opportunity to respond to this consultation. The Rules have, today, been placed on the web site in final form. The Conduct of Business Rules will become effective on 1 January 2010.

1. The definition of Director

Many respondents believed that the definition required greater clarity. We have now ensured that the definition of director is consistent with the Authorised Closed-Ended Investment Schemes Rules 2008.

2. Chief Executive’s and Compliance Officer’s signing of the annual compliance return where functions are outsourced

Some respondents were not comfortable with signing the annual compliance return in cases where the licensee was outsourcing significant functions. In this respect I would refer licensees, together with their senior management including the Board of Directors, to the Commission’s Guidance Note, “Outsourcing of functions by entities licensed under the Protection of Investors (Guernsey) Law, 1987 as amended” (“the Guidance Note”). This guidance note is consistent with the requirements laid down in IOSCO’s “Principles of Outsourcing of Financial Services for Market Intermediaries”, being the internationally expected standards. The Guidance Note states:

“The Commission considers outsourcing arrangements on the basis that responsibility cannot be outsourced and that the Licensee at all times remains responsible and accountable to the Commission, as its regulator, for compliance with the Law and the rules and regulations made thereunder. The outsourcing arrangement must not impair the Commission’s ability to exercise its statutory responsibilities.”

Licensees are also reminded that compliance with guidance such as that set out in the Guidance Note forms part of the Minimum Criteria for Licensing as set out in Schedule 4 to the Protection of Investors (Bailiwick of Guernsey) Law, 1987 and the Commission has a statutory obligation to consider whether a licensee continues to meet the minimum criteria.

3. The annual compliance return is considered to be too prescriptive and onerous.

We would consider this return to summarise the minimum considerations that the Board of Directors of a licensee should be evaluating in respect of its risk and compliance. The Commission therefore cannot accept this point and the requirement to complete the return has been retained.

4. The Rules need to be made clearer about which type of licensees are obliged (or not obliged) to follow particular rules

The point has been accepted and the Rules have been amended as necessary in order to address the issue.

5. Client Classification

The draft Rules posted for consultation did not provide any guidance as to the classification of different types of client, rather it left the determination of client classification to the Board of a licensee. We received overwhelming feedback asking for clear definitions relating to this issue to be placed in the Rules. One of the terms of reference set by the Working Party was to ensure that these Rules did not present difficulties to firms that had to comply with European MiFID provisions through, for example, parent and/or group policies. Accordingly, we have now made reference to MiFID for the explicit determination of client classification that is now incorporated in the Rules.

6. The Rules on periodic information (frequency of valuations) is considered too onerous and a request has been made to also separate out the Rule into requirements for different types of licensee

This point has been accepted and section 5.2.4 of the Rules has been amended to address this.

Peter Moffatt
Director of Investment Business