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The Licensees (Conduct of Business) Rules 2009

Guidance Note

March 2010

Introduction

The Guernsey Financial Services Commission (“the Commission”) has received certain representations concerning the Licensees (Conduct of Business) Rules, 2009 that have led it to conclude that the following Guidance Note should be issued to bring clarification. Some of these issues were mentioned in the Commission’s presentation to industry on 17 December 2009. This paper formalises such matters into guidance.

The Commission continues to meet licensees to discuss the practical effects of the Licensees (Conduct of Business) Rules, 2009. The Commission is prepared to issue further Guidance Notes when it is deemed necessary to clarify Rules.

Annual Compliance Return

The Commission expects the filing of the Annual Compliance Return to commence with immediate effect. That is, all licensee accounts submitted should be filed with the Annual Compliance Return shown at Schedule 2.

For licensees administered by another entity within the Bailiwick of Guernsey the Compliance Return should be signed by the Compliance Officer and a director of the licensee.

Client Classification

The Commission is aware that licensees may need to repaper their client agreements and that this process may take several months to complete (please see below).

The Commission’s expectation is that the Board of every licensee will have formulated a detailed plan, with clear projected deadlines, to bring the repapering exercise to a conclusion.

Licensees can expect the on-site and monitoring teams to discuss progress and timeframes with licensees as part of their routine oversight and supervision.

The Commission would expect that, typically, licensees should be able to complete the repapering exercise by 30 June 2010. If a licensee were to become aware that there would be significant problems with this deadline, it should contact the Commission immediately.

In respect of designated managers acting concerning fund business, where designated managers are focussing on the provisions of Rule 7.1.3, the expectation is that no further work is required beyond noting that investors are to be treated as retail clients.

Auditor's Opinion

Rule 4.2.1(d) requires the auditor's report to contain a statement of financial resources certified by the auditor confirming that the appropriate financial resources requirement is satisfied.

This Rule is brought forward from the Collective Investment Schemes (Designated Persons) Rules 1988 and the Licensees (Financial Resources, Notification, Conduct of Business and Compliance) Rules, 1998 and therefore has not changed. In practice, the licensee prepared the financial statements and within that there was a schedule detailing the financial resources requirement statement as required under the relevant Rules. Auditors merely made reference to it in their audit report.

In the case of administered entities which have previously relied under the provisions of 2.01(d)(ii) of the Licensees (Financial Resources, Notification, Conduct of Business and Compliance) Rules, 1998, a similar provision exists in the proposed Licensees (Capital Adequacy) Rules, 2010. As before, the opinion is driven by the directors, not by the auditors.

Conclusion

The Commission continues to welcome approaches from any licensees who have any matters of concern relating to the Licensees (Conduct of Business) Rules, 2009 or this Guidance Note. Any approaches should be made to the Monitoring Team of the Investment Business Division in the first instance.