

BACKGROUND

Following amendments to the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended (“ the POI Law”) in 2008, registered collective investment schemes, whether open or closed-ended and authorised closed-ended collective investment schemes now fall within the scope of the POI Law. Under Section 8(5) of the POI Law an authorisation/registration must name the designated manager, and in the case of an authorised or registered open ended collective investment scheme, the designated custodian/trustee. It has always been the Commission’s expectation in respect of Class A, B or Q open-ended collective investment schemes that a change of designated manager or designated custodian/trustee should not occur until the Commission has varied the authorisation to ensure that the provisions of the aforementioned Section 8(5) are met. It is also the Commission’s expectation that the same applies in respect of Registered Open-Ended/Closed-Ended and Authorised Closed-Ended Collective Investment Schemes, however experience has shown that this has not always been understood.

EXPECTATIONS

The Rules applicable to each of the various types of authorised/registered open-ended collective investment schemes under the POI Law detail which party should notify the Commission of a proposed change of designated manager or designated custodian/trustee. Whilst the Commission is content for a third party, such as a law firm, to make the application, the relevant formal notification(s) required under the rules must be included. The Commission has for a number of years requested additional information/documentation to enable it to vary Class A, B and Q authorisations. Accordingly, the following information/documentation is required to enable the Commission to vary the authorisation/registration of a collective investment scheme. It is not an additional requirement, but rather a clarification of existing Commission practice: -

1. The date when the change of designated person is due to become effective;
2. The reasons behind the proposed change of designated person;
3. In respect of authorised/registered open-ended collective investment schemes, revised Scheme Particulars or Addendum to the Scheme Particulars to reflect the change of Designated Person. Please note that this is not required in respect of closed-ended investment schemes, unless additional monies are to be raised by way of some form of new placement, or similar;
4. Novation Agreement (or equivalent documentation);
5. Details of how and when investors will be notified of the change of designated person. If required by the scheme’s constitutive documents, investor approval to the proposed change(s) may be needed;
6. Should the proposed designated manager or designated custodian/trustee not be acting as an existing designated person of an authorised or registered collective investment scheme, then contact should be made with the Commission prior to the application being made to ascertain what additional information/documentation the Commission may require to vary the authorisation/registration of the collective investment scheme;
7. In respect of registered closed-ended/open-ended collective investment schemes and authorised qualifying investor funds, the proposed designated manager will need to provide the following warranties, which are detailed in the Guidance Notes on Qualifying Investor Funds and Registered Collective Investment Schemes in an originally signed letter. The warranties are summarised below for your convenience: -

Qualifying Investor Funds

- I confirm that the fund is a Qualifying Investor Fund, as defined in the Guidance Document issued by the Commission dated April 2006.
- I confirm that we, as proposed designated manager of the fund, have performed sufficient due diligence to be satisfied that the promoter of, and the associated parties to, the fund are fit and proper and that in this respect consideration has been given to all of the issues set out in the Guidance Document issued by the Commission dated April 2006.

- I confirm that we, the proposed designated manager of the fund, have effective procedures in place to ensure restriction of the fund to professional, experienced and knowledgeable employee investors.
- I confirm that we, the proposed designated manager of the fund, are content that the economic rationale for the fund and any attendant risks are clearly disclosed in the fund's scheme particulars/prospectus/offer document or equivalent.

Registered Collective Investment Schemes

- I confirm that we, as proposed designated manager of the scheme, have performed sufficient due diligence to be satisfied that the promoter of, and the associated parties to, the scheme are fit and proper and that in this respect consideration has been given to all of the issues set out in the Guidance Document issued by the Commission dated December 2008.
- I confirm that we, the proposed designated manager of the scheme, are content that the disclosures in the scheme's prospectus/offer document or equivalent meet the requirements of the Prospectus Rules 2008 and that the following disclosures are made in the scheme's prospectus/offer document or equivalent:

"The Company is a Registered Closed-[Open-] ended investment scheme registered pursuant to the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended and the Registered Collective Investment Scheme Rules 2015 issued by the Guernsey Financial Services Commission (the "Commission"). The Commission, in granting registration, has not reviewed this document but has relied upon specific warranties provided by [I], the Company's designated manager."

"The Commission takes no responsibility for the financial soundness of the [Scheme] or for the correctness of any of the statements made or opinions expressed with regard to it."

"A registered collective investment scheme is not permitted to be directly offered to the public in Guernsey but may be offered to regulated entities in Guernsey or offered to the public by entities appropriately licensed under the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended."

Timing

It is the Commission's intention to review the request for the variation of authorisation/registration and issue a response within ten business days of receipt. The ten business day period is indicative and, although every effort will be made to adhere to it, the Commission cannot in any way be bound by it. Please note that the response will not necessarily be the final variation, but may be a request for further information/documentation.

Please note that until the authorisation/registration is varied the current designated person remains formally responsible as the Designated Manager/Custodian/Trustee of the collective investment scheme and the new designated person should not act (or hold itself out as acting) in that capacity.