



**CONSULTATION PAPER ON  
REVISED  
PROPOSALS FOR AMENDMENTS  
TO THE PROTECTION OF  
INVESTORS LAW  
AND THE INSIDER DEALING LAW**

## **Introduction**

1. In December 2006 the Commission issued a consultation paper on proposed legislative amendments to the Protection of Investors Law, the Financial Services Commission Law, the Insider Dealing Law and the Control of Borrowing legislation. The aims of the proposals were to increase investor protection, to assist Guernsey's finance sector to be seen as fair, efficient and transparent and to reduce systemic risk. The recommendations included the proposals requiring primary legislation made by the finance industry and policy working group established in 2005 by the Commerce and Employment Department and the Guernsey Financial Services Commission ("the Harwood Committee") to consider the investment industry in the Bailiwick and the conditions required for its continued prosperity. The recommendations modified some of the legislative approaches suggested by the working group but achieved the same objectives. Other recommendations of the working group can be met by changing policies or rules made under the Protection of Investors Law or other legislation. For example, the Commission, with the agreement of the Policy Council, has already introduced a framework for registered closed end funds under the Control of Borrowing legislation.
2. This new consultation paper makes revised proposals arising from the Commission's consideration of the comments made by industry on the December paper and a meeting on 1 February with representatives of GIFA and GIMSA. For the purposes of brevity, this updated paper does not rehearse the full detail of the discussion in the December paper and it does not cover the proposals arising from suggestions by the Harwood Committee. Those proposals have been welcomed and have been the subject of two rounds of consultation. The Commission has already established a working group to assist with the revision of the rules which apply to licensees. A separate working group will be established to help prepare the rules arising from the Harwood Committee's recommendations. This updated consultation paper covers proposals to improve investor protection; to enhance the fairness, efficiency and transparency of Guernsey's finance sector; and to reduce systemic risk. The Commission is seeking comments from interested parties on the proposals in this updated paper.

## **IOSCO objectives**

3. The Commission proposes that the Protection of Investors Law should be amended to include the objectives for investment regulators established by the International Organization of Securities Commissions ("IOSCO"). The objectives are:
  - the protection of investors;
  - ensuring markets are fair, efficient and transparent;
  - reducing systemic risk.

Following the December consultation, comments were made that these objectives should be incorporated in the Financial Services Commission Law

instead. In fact, the Commission had already considered such an approach. It remains of the view that the Protection of Investors Law is the appropriate place for the IOSCO objectives – the IOSCO objectives are directed at securities regulators and there are difficult issues to resolve satisfactorily in trying to extend those objectives to all areas of the Commission’s work. The Commission considers that all three of IOSCO’s objectives are appropriate for it to adopt through its regulation of licensees (including the Channel Islands Stock Exchange) and fund business and IOSCO’s position that supervisors should be involved with preventing and detecting market manipulation and insider dealing.

### **Intervention, administration and winding up**

4. Section 28 of the Protection of Investors Law provides that the States of Guernsey may modify or supplement any enactment appertaining to the winding up or other dissolution of a Bailiwick body which carries on investment business or which applies for a licence or an authorisation. Such an Ordinance may empower the Commission to apply for the winding up, or to take steps in relation to the dissolution, of a Bailiwick body. It may also make special provision as to the grounds upon which, and the manner in which, a Bailiwick body may be wound up or dissolved, and for the application of assets of such body. In addition, the Ordinance may permit the continuance of any description of business of a Bailiwick company with a view to its transfer as a going concern to another body, and empower the appropriate court to give directions and orders, including an order to reduce the amount of the contracts of the company in place of ordering it to be wound up. We propose that this power should be activated and extended as necessary to allow the Commission to approach the Court in individual cases to appoint an administrative manager or to wind up any licensee or applicant under the Protection of Investors Law, or to otherwise prevent such licensee or applicant from undertaking business in the Bailiwick by the issue of an injunction, where this is necessary to minimise damage and loss to investors or to contain systemic risks. The Court should only grant such powers to the Commission on a case by case basis and on appropriate application by the Commission. In order to assist with these objectives, we propose that the Commission should also have specific powers to:
  - ensure assets are properly managed by for example requiring a licensee to appoint a person to take possession or control of assets held by the licensee or by a third party on behalf of a licensee or to otherwise minimise the risk to investors and counterparties, and systemic risk;
  - restrict activities by a licensee with a view to minimising damage and loss to investors;
  - require a licensee to take specific actions such as moving client accounts to another firm;
  - make public relevant information concerning a licensee’s failure.

The Protection of Investors Law should make it clear that the use of all of these powers should be appealable to the Royal Court by the licensee or applicant.

### **Appointment of inspectors**

5. The Investment Business Division of the Commission, which administers the Protection of Investors Law, has carried out a number of investigations under the law. The most significant of these is the investigation into the promotion of split capital investment trusts. The cost of this investigation was and still is significant both in terms of staff time and money and it highlights the importance of amending the Protection of Investors Law to include provisions equivalent to those in the Banking Supervision Law, the Insurance Business Law, the Insurance Managers and Insurance Intermediaries Law and the Regulation of Fiduciaries Law concerning investigations by inspectors. The Commission proposes that, if it is desirable to do so in the interests of the customer of a licensee under the Protection of Investors Law or for the protection or enhancement of the reputation of the Bailiwick, it should have the power to investigate or appoint persons to investigate and report to it on matters of concern. We also propose that a licensee would be able to appeal to the Court against the appointment of an inspector. We envisage that the Protection of Investors Law would copy the Regulation of Fiduciaries Law as closely as possible on the appointment – the relevant provisions are attached in appendix 1. As can be seen from the appendix, the Commission proposes that the provisions on the appointment of inspectors in the Protection of Investors Law would cover former licensees, but only in connection with the business, ownership or control of a former licensee at a time when it held a licence under the law. It has been suggested that the appointment of inspectors is necessarily combative. This has not been the case in practice. Inspectors are appointed to ascertain facts. Inspectors can be appointed to investigate particular matters which, for example, require urgent attention and a licensee might feel more comfortable with the appointment of an independent third party – the licensee itself might wish inspectors to be appointed.
  
6. As with the other regulatory laws, we propose it should be possible for the Commission to make an application to the Court for the costs, fees and expenses of an investigation to be recovered from the licensee(s) being investigated rather than indirectly through the fees payable to the Commission by licensees as a whole. The Commission has no wish to be unfair or to allow legislation to put it in the position of being seen to be unfair. As indicated in appendix 1, before allowing any costs, fees and expenses to be paid by a licensee we would expect the Court to be satisfied that the sum was not unreasonable in amount or was not unreasonably incurred, and that the Commission had not acted unreasonably, frivolously or vexatiously in incurring that sum. Where the Court considers that the costs, fees and expenses arising from an investigation are not reasonable, it would not allow the costs to be borne by the licensee. The Commission is mindful of the costs of investigation to a licensee and has on occasion held back from appointing inspectors under the other regulatory laws for this reason. All costs, fees and expenses relating to inspectors are closely monitored by the Commission. Some responses to the December consultation paper queried how costs, fees and expenses would be apportioned in various complicated scenarios – the apportionment would be a matter for the Court. There are potential

situations where the Commission's conclusions from the facts provided by the inspection are not adverse to a licensee but where the costs of the inspectors could, potentially, still be payable by a licensee. The Commission considers any recovery of costs, fees or expenses should be a matter for the Court to decide.

### **IOSCO MMoU**

7. The UK Financial Services Authority, the Jersey Financial Services Commission and the Isle of Man Financial Supervision Commission are signatories to the IOSCO Multilateral Memorandum of Understanding, ("MMoU"). This MMoU is the benchmark for international cooperation by securities supervisors. It is clear that securities supervisors who do not sign the MMoU will be viewed by their counterparts globally as not wishing to ensure the protection of investors; to ensure that markets are fair, efficient and transparent; or to ensure and the reduction of systemic risk. It is also clear that, as more supervisors sign the MMoU, it will become increasingly difficult for financial institutions in those jurisdictions whose supervisors which are not signatories to the MMoU to have access to the markets of those jurisdictions which are signatories. Forty-one investment regulatory bodies are signatories including, most recently, the Bermuda Monetary Authority and the Financial Services Commission of the British Virgin Islands. A significant number of other supervisors have applied to become signatories. IOSCO has made it clear that Guernsey's legislative framework will need to be modified if the Commission is to be successful in its application to sign the MMoU and to be able to honour the commitments entered into by being accepted as a signatory. Hence, we have not signed the MMoU and are not able to do so. The proposals below are aimed at allowing the Commission to sign the MMoU and for Guernsey to be able to appropriately satisfy requests for assistance made to it by foreign regulators.
8. As the following text will make clear, a distinction is drawn between obtaining and exchanging information in connection with criminal investigations – where the requesting authority is a law enforcement agency such as the police or an examining magistrate – and the information obtained will be utilised by the foreign prosecuting authority – and information obtained and exchanged for the purposes of proceedings which are not criminal in nature, such as investigations and proceedings conducted by regulatory or administrative authorities. In the case of criminal proceedings, HM Procureur is the competent and appropriate authority in Guernsey to act, and in non-criminal investigations and proceedings into alleged breach of financial services laws and regulations, the Commission is the competent and appropriate authority to act.

### **Market manipulation – criminal offences**

9. The Protection of Investors Law already contains provisions which make market manipulation a criminal offence. In order for these provisions to be activated, the Commission suggests that regulations should be made under the law which specify the markets in connection with which an offence of market manipulation may be committed. The Commission proposes that such regulations should be made and that they should replicate as much as possible the regulations

specifying the markets in connection with which the offence of insider dealing may be committed.

10. HM Procureur is able to investigate the potential commission of the offence of market manipulation in Guernsey. In order to assist foreign regulators on the commission of potential criminal offences of market manipulation, HM Procureur can use the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991 (“the Fraud Investigation Law”) in most, but potentially not all, cases. This law allows HM Procureur by way of a “production order” to provide a foreign criminal law enforcement or regulatory body with information or documents in connection with market manipulation where the subject of the enquiry may have been involved with the commission of a criminal offence that amounts to serious or complex fraud. Cross border enquiries in connection with potential market manipulation will usually potentially involve serious or complex fraud.
11. The provision of information in connection with the potential commission of a criminal offence of market manipulation to a foreign regulatory body by HM Procureur under the Fraud Investigation Law is not ideal. There may be cases where assistance is requested in respect of potential market manipulation in which it does not appear to HM Procureur, when the request is made, to involve serious or complex fraud. At that stage, no fraud may be disclosed, simply because there is insufficient evidence, although fraud may be suspected. As a result, it is possible that HM Procureur may not be able to co-operate with, and provide information or documents to, a body requesting assistance. Accordingly, the Commission recommends that provisions should be incorporated in the Protection of Investors Law so that HM Procureur may:
  - (i) appoint inspectors to investigate whether market manipulation has occurred;
  - (ii) apply to the Bailiff to grant warrants authorising an officer of police and any other person named in the warrant to enter and search premises; and
  - (iii) obtain and transmit material to foreign authorities, including regulatory bodies, for the purposes of investigating or prosecuting potential offences of market manipulation, in terms similar to the relevant provisions of the Fraud Investigation Law.

### **Insider dealing – criminal offences**

12. The offence of insider dealing is contained in the Company Securities (Insider Dealing) (Bailiwick of Guernsey) Law, 1996 (“the Insider Dealing Law”). Under this law, HM Procureur is able to obtain material from any person in Guernsey. HM Procureur is also able to transmit that material to a prosecuting or regulatory authority in another jurisdiction, if he is satisfied that it is likely to be of relevance to criminal proceedings or an investigation in respect of a contravention or suspected contravention of the law relating to insider dealing in the foreign jurisdiction.

## **Market manipulation/insider dealing – regulatory/administrative matters**

13. With regard to regulatory matters, the Commission can obtain information and documentation under the Protection of Investors Law from regulated persons. However, difficulties arise where a foreign regulator is making enquiries about a potential violation of regulatory or administrative legislation relating to either market manipulation or insider dealing where:
  - (i) the violation will be dealt with by way of civil process, not by the jurisdiction's criminal prosecuting authority; and
  - (ii) where the subject of the enquiry is not a regulated person or business in the Bailiwick or the client of a regulated business in the Bailiwick.

In such cases, there is no legal mechanism which allows either HM Procureur, the Commission or any other body in Guernsey to obtain information, documents or statements, or to interview the person concerned. The Commission therefore proposes that the Protection of Investors Law should be amended to allow the Commission to deal directly with unregulated, as well as regulated, persons in Guernsey in connection with potential market manipulation or insider dealing, where a foreign regulatory body is making enquiries about a potential breach of its jurisdiction's non-criminal market manipulation provisions, and asks us for assistance. In such cases we propose that the Commission should have the power to investigate, obtain statements and conduct interviews, and when appropriate be able to take copies of information and documents for disclosure to the foreign regulator. If an enquiry involves the personal activity of an officer of a regulated institution, but not the institution itself, the Commission would expect to use these new powers by approaching the individual rather than require the institution to liaise with the officer.

14. In order for any approach to an unregulated person to be enforceable, the Commission proposes that it should be an offence for an unregulated person without reasonable excuse to fail to comply with a request by the Commission for an interview or statement or to fail to provide information or documents. We propose that the maximum penalty should be a fine at level 5 on the uniform scale (£10,000) and 12 months' imprisonment. In addition, we propose that it should also be an offence for unregulated persons to provide false or materially misleading statements, information or documents or to remove from the Bailiwick, destroy, conceal or fraudulently alter any information or documents to avoid detection of an offence. We further propose that the penalty should be a maximum fine of level 5 on the uniform scale on conviction in the Magistrate's Court and a maximum of 2 years in prison if convicted on indictment in the Royal Court.

## **Checks and balances on disclosing information and documentation**

15. Signatories to the MMoU who make enquiries of other supervisors on potential market manipulation or insider dealing issues are required to provide the level of information to the requested supervisor specified in appendix C to the MMoU. A copy of the MMoU can be found on the Commission's website at

[www.gfsc.gg](http://www.gfsc.gg) - a copy of appendix C of the MMoU is attached to this consultation paper in appendix 2. The MMoU requires specific information to be provided – it does not allow “fishing expeditions”. The aim of appendix C of the MMoU is to require securities supervisors to show reasonable cause for their enquiry. The Commission is required by the Financial Services Commission Law to keep non-public material it receives confidential. Any non-public material held by the Commission may only be disclosed to third parties under specified legal gateways. Officers of the Commission can commit a criminal offence under the Financial Services Commission Law for the inappropriate disclosure of information. The disclosure of the information requested by a foreign supervisor must fall within one of these legal gateways in the Financial Services Commission Law and the Protection of Investors Law which permit that disclosure.

16. Where an enquiry involves assistance to a foreign regulator in respect of an unregulated person, each request for assistance would be subject to the same considerations under the Financial Services Commission Law as currently apply to requests for assistance by foreign regulatory bodies. Without any change to legislation being necessary, in dealing with potential approaches to unregulated persons the Commission would therefore have to take into account:
- (i) whether, in the country or territory of the requesting authority, corresponding assistance would be given to the Commission;
  - (ii) whether the case concerns the breach of a law or other requirement which has no close parallel in the Bailiwick or involves the assertion of a jurisdiction not recognised by the Bailiwick;
  - (iii) the seriousness of the case and its importance to persons in the Bailiwick;
  - (iv) whether the disclosure of information to or cooperation with the requesting authority would, in the Commission’s view, lead to disproportionate injury, loss or damage to the persons subject to the exercise of the powers in question; and
  - (v) whether it is otherwise appropriate in the public interest to give the assistance sought.

These provisions in the Financial Services Commission Law prevent the inappropriate disclosure of information or documentation and they are stronger (ie they provide greater safeguards) than the provisions on which they are modelled – the provisions which apply to the UK Financial Services Authority.

17. Currently, the Commission’s executives discuss all sensitive or potentially controversial enquiries made by foreign regulators with the Commissioners and an approach to a regulated person to obtain information is not made unless the Commissioners approve that approach. Having considered the responses to the December consultation paper, the Commission considers that no approach to an unregulated person on behalf of a foreign supervisor should be made unless the Commissioners, as well as the relevant Commission executives, have agreed



that the approach is appropriate. We propose that the Protection of Investors Law should be changed to reflect this safeguard to the potential obtaining and disclosure of information involving members of the public. It has been suggested that it should be the Courts, the Bailiff or HM Procureur which should be provided with the power to assist foreign supervisors on these administrative matters. The issue here is that, irrespective of whether or not these persons would be willing to become involved in such civil matters, IOSCO expects an executive body – in particular a jurisdiction’s securities supervisor – to possess the power to obtain administrative information in order to assist its peers around the world.

18. Regulated persons already have a statutory right of appeal against the provision of information and documents to the Commission. The Commission proposes that unregulated persons should also have a right of appeal to the Royal Court against any approach by the Commission to provide the information and documents referred to in this consultation paper. This means that, during the course of an appeal, information and documents will not be obtained by the Commission from the unregulated person and therefore not disclosed to a foreign supervisor.
19. In order to help avoid information and documentation on administrative matters being used for criminal proceedings – in respect of which the proper course for obtaining information lies through HM Procureur – the Commission would, as a matter of policy, routinely verify that the requesting supervisor is seeking information in respect of an administrative, not a criminal, matter. Where the Commission has any doubt that the request for assistance by a foreign supervisory authority involves only an administrative matter, it will liaise with HM Procureur as the matter may be potentially criminal in nature. In addition, we propose that a right against self-incrimination should be incorporated in the Protection of Investors Law – it is already contained in the regulatory laws enacted from 1994 onwards. As is the case currently in respect of non-public material it provides to foreign regulatory bodies, the Commission intends to impose a condition with regard to confidential information by documentation provided by an unregulated person and disclosed by the Commission under a legal gateway in respect of potential market manipulation or insider dealing so that the recipient of the information is advised that the information is confidential and that it may not further disseminate the information to other bodies without the prior written consent of the Commission. The MMoU requires signatories to it not to disclose non-public information and documents received under it except as contemplated in the request for assistance or in response to a legally enforceable demand. In the event of a legally enforceable demand, any foreign supervisory authority in receipt of information provided by the Commission under the MMoU will, prior to complying with the demand, assert such appropriate legal exemptions or privileges with respect to such information as may be available. The MMoU also requires the overseas authority to use its best efforts to protect the confidentiality of non-public documents and information it receives. Compliance with the MMoU is actively policed by an IOSCO monitoring group. Upon receipt of a complaint by the Commission that a foreign supervisory authority had breached the terms of the MMoU, the monitoring group would commence an investigation. A range of sanctions are available to the monitoring group, including termination of a

foreign supervisor's ability to use the MMoU for obtaining information and documentation on potential market manipulation and insider dealing from its international peers. In any case, as the monitoring group comprises all of the signatories to the MMoU, any complained of breach of confidentiality by a supervisory body will be widely known and lead to caution in providing information to that body. These are significant disincentives to a breach of confidentiality by a supervisory authority.

20. It should also be noted that market manipulation and insider dealing are criminal offences in Guernsey. If the Commission considers that such an offence might have been committed in the Bailiwick, it has a responsibility to notify HM Procureur so that he may consider the implications and whether or not a prosecution in Guernsey should be conducted. If an offence has been committed by a Guernsey person it is much more likely that an offence under Guernsey legislation has been committed rather than an offence under foreign legislation. Therefore, the Commission would be alerted to the possibility that a criminal offence has been committed both in the Bailiwick and elsewhere. Any suggestion by a foreign supervisor that a criminal offence has been committed abroad would lead to the Commission discussing with HM Procureur the potential for an offence to have been committed in Guernsey and the implications of disclosing information to a third party.
21. During 2004 the Commission issued a public statement on the procedures and implications of interviews it (or inspectors appointed by the Commission) carried out on behalf of foreign regulators. The issue of this statement, which was required by the Financial Services Commission Law, protects individuals who are to be interviewed by providing a framework for providing notice of interviews and the interviews themselves. The Commission proposes that this statement should be extended to apply to it when dealing with unregulated persons in Guernsey who the Commission approaches in connection with the proposals in this paper.
22. In light of the proposed development of powers for the Commission to conduct enquiries involving unregulated persons, the Commission proposes that it should be required by law to maintain records in readily accessible form on its enquiries into potential market manipulation or insider dealing for a minimum of 5 years after its investigation into a potential case has been completed.

### **Insider dealing law**

23. Finally, we propose that the States of Guernsey should have power to amend the Insider Dealing Law by Ordinance. This will allow Guernsey to respond quickly in future to changes in expectations of jurisdictions' ability to combat insider dealing.

## **Consultation**

24. Comments on the above proposals should be addressed to:

Richard Walker  
Director of Policy and International Affairs  
Guernsey Financial Services Commission  
PO Box 128  
La Plaiderie Chambers  
La Plaiderie  
St Peter Port  
Guernsey  
GY1 3HQ

Comments should be made by the close of business on 21 May 2007. Copies of correspondence received by the Commission in respect of this consultation will be forwarded to the Commerce and Employment Department.

24 April 2007  
Guernsey Financial Services Commission

## Appendix 1

### EXTRACT FROM THE REGULATION OF FIDUCIARIES LAW

#### Investigations by inspectors

24. (1) The Commission may, in relation to any licensed fiduciary, if it considers it desirable to do so -

- (a) in the interests of the clients of the licensed fiduciary; or
- (b) for the protection or enhancement of the reputation of the Bailiwick;

appoint one or more competent persons (hereinafter called "**inspectors**") to investigate and report to the Commission on -

- (i) the nature, conduct or state of the business of the licensed fiduciary or any particular aspect of that business; or
- (ii) the ownership or control of the licensed fiduciary;

and the Commission shall give notice in writing of the appointment to the fiduciary concerned.

(2) An inspector may also, if he thinks it necessary to do so for the purposes of his investigation, subject to the provisions of subsection (3), investigate the business of any company -

- (a) which is or has at any relevant time been an associated company of the licensed fiduciary under investigation (where the licensed fiduciary is a company); or
- (b) of which a partner in the licensed fiduciary under investigation is or has at any relevant time been a controller (where the licensed fiduciary is a partnership).

(3) An inspector may not investigate the business of a company under subsection (2) unless and until the Commission has given notice in writing to the company of the proposed investigation.

(4) A licensed fiduciary or company being investigated under subsection (1) or (2) and any person who is or has been a director, controller, manager, partner, employee, agent, banker, auditor, advocate or other legal adviser of a licensed fiduciary or company being so investigated, or who has been appointed to make a report in respect of such a licensed fiduciary or company under section 5(6) or section 23(1)(b), or who is or has been a significant shareholder in relation to such a

licensed fiduciary or company -

- (a) shall produce to an inspector, at such time and place as the inspector may require, all documents in his custody or power relating to that licensed fiduciary or company; and the inspector may take copies of or extracts from any documents produced to him under this paragraph;
- (b) shall attend before an inspector at such time and place as the inspector may require and answer such questions as the inspector may put to him in relation to that licensed fiduciary or company; and
- (c) otherwise shall give an inspector all assistance in connection with the investigation which he is reasonably able to give.

(5) An inspector shall, if so required, produce evidence of his authority.

(6) A person who without reasonable excuse -

- (a) fails to comply with any provision of subsection (4); or
- (b) obstructs, fails to comply with any requirement of or fails to give all reasonable assistance to an inspector exercising or purporting to exercise any right conferred by this section;

is guilty of an offence.

(7) A statement made by a person in response to a requirement imposed by or under this section may not be used in evidence against him except -

- (a) in proceedings for an offence under subsection (6) or section 46(1); or
- (b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it.

(8) Nothing in this section shall compel the production or divulgence by an advocate or other legal adviser of a communication subject to legal professional privilege; but an advocate or other legal adviser may be required to give the name and address of any client.

(9) Where a person claims a lien on a document its production under this section shall be without prejudice to his lien.

(10) A requirement imposed by or under this section shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by statute, contract or otherwise; and, accordingly,

the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

(11) Subject to the provisions of subsection (12), the costs, fees and expenses of an investigation and report under subsection (1) or (2) shall be met by the licensed fiduciary the business, ownership or control of which is being investigated under subsection (1); and those costs, fees and expenses may, subject as aforesaid, be recovered by the Commission from that licensed fiduciary as a civil debt.

(12) No sum in respect of the costs, fees and expenses of an investigation and report under subsection (1) or (2) may be recovered by the Commission from a licensed fiduciary as a civil debt where the court is satisfied that-

- (a) the sum is not reasonable in amount or was not reasonably incurred; or
- (b) the Commission acted unreasonably, frivolously or vexatiously in incurring that sum.

(13) A notice under subsection (1) or (3) shall give particulars of the right of appeal conferred by section 19.

(14) The provisions of this section shall apply in relation to a former licensed fiduciary as they apply in relation to a licensed fiduciary, but only in connection with the business, ownership or control of the former licensed fiduciary at a time when it held a fiduciary licence.

## Appendix 2

### EXTRACT FROM THE IOSCO MMOU

#### APPENDIX C OF THE IOSCO MMoU

<b>FORM FOR DRAFTING REQUESTS FOR INFORMATION</b>
This request is being made pursuant to the provisions of the IOSCO MOU concerning consultation and cooperation and the exchange of information.
Description of the facts underlying the investigation: <ul style="list-style-type: none"><li>• <i>entities/individuals involved and whether regulated or not by the Requesting Authority</i></li><li>• <i>type of scheme</i></li><li>• <i>location of investors</i></li><li>• <i>location of affected markets and whether regulated or not by the Requesting Authority</i></li><li>• <i>timeframe of the suspected misconduct</i></li><li>• <i>nature of the suspected misconduct</i></li><li>• <i>location of assets</i></li><li>• <i>chronology of relevant events</i></li></ul>
Describe how the information requested will assist in developing the investigation.
Description of uses for which assistance is sought, if other than in accordance with the provisions of the MOU.
Description of the information needed or assistance sought ( <i>e.g., account opening documents, periodic account statements, trade confirmations, etc.</i> ).
Time period for which documents should be gathered.
Information useful for identifying the relevant documents ( <i>e.g., account number, name, address, date of birth of account holder, names of entities believed to control the accounts</i> ).
Information useful for identifying the individual(s) from whom statements are needed ( <i>e.g., name, address, date of birth of individual, telephone number</i> ).
Sources of information ( <i>e.g., regulated individuals and entities, investors, knowledgeable insiders</i> ).

Preferred form in which information should be gathered.
Indication of wish to participate in any interview.
Special precautions.
Dates of previous requests in this matter.
Laws and regulations: <ul style="list-style-type: none"> <li>• <i>provisions of the securities or derivatives laws that may have been violated</i></li> <li>• <i>brief description of the provisions</i></li> <li>• <i>explanation of how the activities being investigated may have constituted violations of such provisions</i></li> </ul>
Responsibility for administering and enforcing the securities or derivatives laws.
Desired time for a reply.
Preferred manner in which information is to be transmitted ( <i>e.g., telephone, courier, e-mail, computer disk and format</i> ).
Contact information : <ul style="list-style-type: none"> <li>• <i>name of contact</i></li> <li>• <i>telephone and fax numbers</i></li> <li>• <i>e-mail address</i></li> </ul>
Other relevant information.