THE LICENSEES
(CONDUCT OF BUSINESS) RULES 2016
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The Principles

1. Integrity

A licensee should observe high standards of integrity and fair dealing in the conduct of its business.

2. Skill, Care and Diligence

A licensee should act with due skill, care and diligence towards its customers and counterparties.

3. Conflicts of Interest

A licensee should either avoid any conflict of interest arising or, where a conflict arises, should ensure fair treatment to all its customers by disclosure, internal rules of confidentiality, declining to act, or otherwise. A licensee should not unfairly place its interests above those of its customers and, where a properly informed customer would reasonably expect that the firm would place his interests above its own, the firm should live up to that expectation.

4. Information about Customers

A licensee should seek from customers it advises or for whom it exercises discretion any information about their circumstances and investment objectives which might reasonably be expected to be relevant in enabling it to fulfil its responsibilities to them.

5. Information for Customers

A licensee should take reasonable steps to give a customer it advises, in a comprehensible and timely way, any information needed to enable him to make a balanced and informed decision. A licensee should similarly be ready to provide a customer with a full and fair account of the fulfilment of its responsibilities to him.

6. Customer Assets

Where a licensee has control of or is otherwise responsible for assets belonging to a customer which it is required to safeguard, it should arrange proper protection for them, by way of segregation and identification of those assets or otherwise, in accordance with the responsibility it has accepted.

7. Market Practice

A licensee should observe high standards of market conduct, and should also comply with
any code of standard as in force from time to time and issued or approved by the Commission.

8. Financial Resources

A licensee should ensure that it maintains adequate financial resources to meet its investment business commitments and to withstand the risks to which its business is subject.

9. Internal Organisation

A licensee should organise and control its internal affairs in a responsible manner, keeping proper records, and where the firm employs staff or is responsible for the conduct of investment business by others, should have adequate arrangements to ensure that they are suitable, adequately trained and properly supervised and that it has well-defined compliance procedures.

10. Relations with Guernsey Financial Services Commission

A licensee should deal with the Commission in an open and co-operative manner and keep the regulator promptly informed of anything concerning the firm which might reasonably be expected to be disclosed to it.
THE LICENSEES (CONDUCT OF BUSINESS) RULES 2016

The Guernsey Financial Services Commission ("the Commission"), in exercise of the powers conferred on it by sections 12, 14, 15 and 16 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended ("the Law") hereby makes the following rules:-

1. Introduction

1.1. Citation, commencement and application

1.1.1. These rules may be cited as the Licensees (Conduct of Business) Rules 2016 ("the Licensees Rules") and shall come into operation on 1 January 2017.

1.1.2. The Licensees Rules apply to all licensees unless specifically agreed otherwise by the Commission in accordance with Rule 1.1.3.

1.1.3. The Commission may in its absolute discretion by notice in writing to a licensee exclude or modify the application of any provision of the Licensees Rules if the Commission is satisfied that any such derogation will not be prejudicial to the interests of investors.

1.2. Interpretation

1.2.1. Subject to the terms defined below and unless the context otherwise requires, in the Licensees 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:

“accounting reference date” means the date to which a licensee’s accounts are prepared;

“advertisement” means every form of advertising, whether in a publication or by the display of notices or by means of circulars or other documents or by an exhibition of photographs or cinematograph films or by way of sound broadcasting or television or any other electronic media, and advertising shall be construed accordingly;

“agent”, in relation to a licensee, means any person (including an
employee) who acts under the instruction of a licensee;

“application form” means the relevant application form prescribed by the Commission for the authorisation or registration of collective investment schemes together with all information submitted therewith or thereafter in connection with the application;

“approved bank” means a person who is licensed under the Banking Supervision (Bailiwick of Guernsey) Law, 1994 as amended or is registered under the Banking Business (Jersey) Law, 1991, or authorised to undertake Class 1 Deposit-taking Business under the Isle of Man Financial Services Act 2008 or is authorised and regulated to carry on a banking or deposit-taking business under the Financial Services and Markets Act 2000 or under the law of any Member State or under the law of any other country or territory which may be listed in notices issued from time to time by the Commission;

“associate” in relation to a licensee means:-

(a) an undertaking in the same group as that licensee;

(b) any body corporate at least one-fifth of the issued equity share capital of which is beneficially owned by that licensee or an associate;

(c) any other person whose business or domestic relationship with the licensee or its associate, or with the partners, directors, managers or employees of the licensee, or its associate, places the person in a position to exercise significant influence over the licensee which might reasonably be expected to give rise to a conflict of interest in dealings with third parties;

“attitude to investment risk” means the investment risk a client is willing and able to accept to achieve their financial goals taking into consideration the client’s capacity for loss;

“audited financial statements” has the meaning given in Rule 4.2.1;

“authorised insurance representative” means an individual authorised in accordance with section 16 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002;

“block of business” means business that increases the receiving licensee’s or reduces the transferring licensee’s fee income by 15% or more, such figure being calculated using the last audited accounts of that licensee;
“Board” has the meaning given to it by section 133 of the Companies (Guernsey) Law, 2008, as amended or, in the case of an unincorporated entity, the committee or managing board of a partnership or other similar governing body;

“business day” means any day excluding public holidays and weekends;

“capacity for loss” means the financial loss a client could tolerate without a detrimental effect to their standard of living at the date of investment or inception of the policy;

“Capital Adequacy Rules” means the Licensees (Capital Adequacy) Rules 2010;

“Category 1 controlled investment” means a collective investment scheme as is identified and described in paragraph 1 of Schedule 1 to the Law;

“Category 2 controlled investment” means any investment such as is identified and described in paragraph 2 of Schedule 1 to the Law;

“chief executive” means any person occupying the position of chief executive or managing director (whether solely or jointly) by whatever name called;

“Class A Rules” means the Authorised Collective Investment Schemes (Class A) Rules 2008;

“client” means any person with or for whom a licensee carries on, or intends to carry on, controlled investment business;

“client account” means an account with an approved bank which:-

(a) is in the name of the manager; and

(b) includes in its title the description, “client account” or such description in an official language of the country in which the bank account is held.

“client money” has the meaning given in Rule 9.2;

“client money bank account” means an account at an approved bank in the name of a licensee which includes in its title an appropriate description to distinguish the money in the account from a licensee’s own money;
“collective investment scheme” means any arrangement such as is identified and described in paragraph 1 of Schedule 1 to the Law;

“the Commission” means the Guernsey Financial Services Commission;

“Compliance Officer” has the meaning given at Rule 3.2.1;

“complaint” means any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of a person about the provision of, or failure to provide a financial service which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience;

“compliance return” has the meaning given at Rule 3.4.1 and Schedule 1 to the Licensees Rules;

“contract note” in respect of a transaction relating to a controlled investment, has the meaning given in Rule 10.1.1, and contains and meets the requirements of Rule 10.2;

“contracts for differences” means an investment falling within paragraph 2(1)(h) of Schedule 1 to the Law;

“controlled investment” has the meaning given under Schedule 1 to the Law;

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

“controller”:-

(a) in relation to a body corporate, means any person who, either alone or with any associate or associates is entitled to exercise, or control the exercise of, 15 per cent or more of the voting power at any general meeting of the body corporate or of another body corporate of which the body corporate is a subsidiary; and

(b) in relation to an unincorporated entity means:

(i) any person (legal or natural) in accordance with whose directions or instructions, either alone or with those of any associate or associates, the officers or members of the governing body of the entity are accustomed to act (but disregarding advice given in a professional capacity), and
(ii) any person (legal or natural) who, either alone or with any related person or related persons is entitled to exercise, or control the exercise of, 15 per cent or more of the voting power at any general meeting of the entity; and for the purposes of this definition “related person”, in relation to any person, means that person’s wife, husband or minor child or step-child, any body corporate of which that person is a director, any person who is an employee or partner of that person and, if that person is a body corporate, any subsidiary of that body corporate and any employee of any such subsidiary;

“derivatives” include options, futures and contracts for differences;

“designated custodian” see designated trustee;

“designated manager”, in relation to a collective investment scheme, means the person designated as such by the Commission for the purposes of the Law (as designated in the Commission’s authorisation of the scheme under section 8 of the Law, or the Commission’s declaration of registration of the scheme under section 8 of the Law);

“designated trustee” or “designated custodian”, in relation to a collective investment scheme, means the person designated as such by the Commission for the purposes of the Law (as designated in the Commission’s authorisation of the scheme under section 8 of the Law, or the Commission’s declaration of registration of the scheme under section 8 of the Law);

“director” means, in respect of a company, any person appearing on the register of directors of such company, in respect of a limited partnership, any person appearing on the register of directors of the general partner of such limited partnership and in respect of any other incorporated bodies, any person responsible for the management of the incorporated body;

“discretionary manager” means a licensee which, via an agreement with the client, manages and controls the client’s portfolio without prior reference to the client (subject to suitability having been established as per Rule 5.2.2);

“elective eligible counterparty” has the meaning given at Rule 7.5.3;

“elective professional client” has the meaning given at Rule 7.4.3;

“eligible counterparty” is considered in Rule 7;
“eligible custodian” means:-

(a) an approved bank;

(b) a person who is licensed under the Law to carry on the restricted activity of custody; or

(c) any person which the licensee is satisfied, both at the outset after making reasonable enquiries and thereafter, after repeating those enquiries at reasonable intervals, continues to be satisfied, is a fit and proper person to be such a custodian;

“eligible nominee” means:-

(a) a person chosen by the client who is not an associate of the licensee; or

(b) a corporate nominee (which means a nominee which is a company) whose business is limited to the holding, and activities related to the holding, of investments, including an own nominee;

“employee”, in relation to a person, means an individual who is employed in connection with a licensee’s controlled investment business in Guernsey whether under a contract of service or for services or otherwise;

“finance business” has the same meaning given in the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, as amended;

“financial adviser” means a person authorised by a licensee to give advice to retail clients on controlled investment business;

“futures” means an investment falling within paragraph 2(1)(g) of Schedule 1 to the Law;

“generally accepted accounting principles” refers to financial statements prepared in accordance with International Financial Reporting Standards, UK generally accepted accounting principles (“GAAP”) or US GAAP.

“group” in relation to a licensee means that licensee, any body corporate which is its holding company or subsidiary, and any other body corporate which is a subsidiary of that holding company;

“holding company” has the meaning given in Schedule 5 to the Law;

“insurance company” means a company licensed under the Insurance Business (Bailiwick of Guernsey) Law, 2002, as amended.
“investment services” means activities undertaken in the course of carrying on controlled investment business;

“large undertaking” means a large undertaking meeting two of the following size requirements on a company basis:

(a) balance sheet total of £13,000,000;

(b) net turnover of £26,000,000;

(c) own funds of £1,300,000.

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

“licensee” means the holder of a licence to carry on controlled investment business issued under the Law;

“the Licensees Rules” means the Licensees (Conduct of Business) Rules 2016.

“manager”, in relation to a person, means an employee who, under the immediate authority of his employer, is responsible either alone or jointly with one or more other persons for the conduct of the licensee’s controlled investment business;

“manager” in relation to a collective investment scheme, means an entity responsible for the restricted activity of management, in connection with the collective investment scheme, as defined by Schedule 2 to the Law;

“material records” means such records that would be necessary for the purposes of establishing a complete and accurate record of all aspects of a licensee’s conduct of controlled investment business. These include (without limitation) records of instructions, transactions, valuations, contract notes, and advice;

“Member State” means, at any time, in addition to a state which is a member of the European Union, any other state which is within the European Economic Area;

“open-ended collective investment scheme” has the meaning given at Schedule 3 to the Law;

“option” means an investment falling within paragraph 2(1)(f) of Schedule
1 to the Law;

“other relevant legislation or standards” means any legislation or enactment enacted to enable the Commission to supervise the carrying on of controlled investment business. Other standards include codes or standards (however described) of professional bodies that financial advisers may belong to, for example, the Chartered Institute for Securities and Investment;

“own nominee” in relation to a licensee, means a corporate nominee whose business is limited to the holding, and activities related to the holding, of investments which is either controlled by, or whose directors are accustomed to act in accordance with the directions or instructions of, the licensee in relation to its business generally;

“pension scheme” means a scheme approved under section 155 of the Income Tax (Guernsey) Law, 1975, as amended.

“permanent data” means such records, documents or data as are considered material for the establishment and ongoing proper conduct of controlled investment business by a licensee. These include (without limitation): mandates and other agreements, client take-on documentation, client profiles, records relating to due diligence and other checks made and the findings of such checks. In the case of Category 1 controlled investment business these also include (without limitation): prospectuses, constitutive documents and agreements relevant to the licensee;

“per se eligible counterparty” has the meaning given at Rule 7.5.2;

“per se professional client” has the meaning given at Rule 7.4.2;

“principal manager” has the meaning given in the Class A Rules;

“professional client” is considered in Rule 7;

“professional investor” has the meaning given in paragraphs 1 & 2 of the definition in the Qualifying Investor Funds Guidance, issued May 2007.

“qualified auditor” means a person who has a place of business in Guernsey and is a member of:

(a) The Institute of Chartered Accountants in England and Wales; or

(b) The Institute of Chartered Accountants of Scotland; or

(c) The Institute of Chartered Accountants in Ireland; or
(d) The Association of Chartered Certified Accountants; or

(e) a body outside the United Kingdom undertaking a similar regulatory role and having equivalent professional standards for membership as any of the bodies specified in paragraphs (a) to (d).

For the purpose of this definition a “person” is defined as a partnership, body corporate or an individual with a current practising certificate issued by the bodies referred to in (a) to (e) above.

“Recognised Investment Exchange” means regulated market for the purposes of the Company Securities (Insider Dealing) (Bailiwick of Guernsey) Law, 1996, as amended, that is, any market established under the rules of an investment exchange specified in the Schedule to the Insider Dealing (Securities and Regulated Markets) Order 1996, as amended;

“Recognised Professional Body” means a body which regulates the practice of a profession; references to the practice of a profession do not include references to carrying on a business consisting wholly or mainly of controlled investment business;

“Regulatory Laws” means –

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

(b) the Banking Supervision (Bailiwick of Guernsey) Law, 1994, as amended;

(c) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, as amended;

(d) the Insurance Business (Bailiwick of Guernsey) Law, 2002, as amended;

(e) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended;

(f) any other enactment or statutory instrument prescribed for the purposes of Rule 1 by regulations of the Commission;

“relevant person”, in relation to a licensee, means any of the following:
(a) a director, partner or equivalent, manager or agent of the licensee;

(b) a director, partner or equivalent, or manager of any agent of the licensee;

(c) a financial adviser;

(d) an employee of the firm or of an agent of the licensee, as well as any other natural person whose services are placed at the disposal and under the control of the licensee or an agent of the licensee and who is involved in the carrying on by the licensee of controlled investment business; or

(e) a natural person who is directly involved in the provision of services to the licensee or to its agent under a contractual arrangement for the purpose of the carrying on by the licensee of controlled investment business;

“retail client” is considered in Rule 7;

“Self-Regulatory Organisation” or “SRO” means a body (whether a body corporate or an unincorporated concern) which regulates the carrying on of investment business of any kind by enforcing rules which are binding on persons carrying on business of that kind either because they are members of that body or because they are subject to its regulation;

“shortfall provisions” means that where a policyholder exercises his right to cancel a contract he may not get a full refund of the money he has paid if the value of the investment falls before the cancellation notice is received by the provider.

“significant complaint” means a complaint alleging a breach of the Law, mala fides, malpractice or impropriety, or repetition or recurrence of a matter previously complained of (whether significant or otherwise);

“stock lending activity” means any transaction undertaken by a licensee which results in the temporary disposal of a client’s securities under a stock lending agreement, in return for pre-arranged collateral or cash;

“statement of professional standing” means a certificate issued by a body listed in the guidance note on training and competency schemes issued by the Commission; and

“subsidiary” has the meaning given in Schedule 5 to the Law.
2. Corporate Governance and Senior Management Responsibility in respect of Controlled Investment Business

2.1. Corporate Governance

2.1.1. The Board of a licensee must ensure that there are effective and appropriate policies, procedures and controls, as described at Rule 3, in place which provide for the Board to meet its obligations under the Law and these Rules.

2.1.2. In meeting the requirements of the Licensees Rules, the Board of the licensee must evaluate and record the assessment of its compliance with “The Finance Sector Code of Corporate Governance” or any successor codes. The Board should also refer to Rule 3.

2.1.3. The Board of a licensee must retain responsibility for the outsourcing of any of its functions.

2.1.4. For the avoidance of doubt, the Board of an administered licensee remains responsible for the conduct of the administered entity.

Guidance Note:

Licensees may utilise outsourcing. In such circumstances the Board should make reference to the Commission’s “Outsourcing of functions by entities licensed under the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended”.

2.1.5. Every licensee, other than a licensee administered by another firm in the Bailiwick, must appoint a chief executive (the formal title being at the discretion of the licensee) and appoint a replacement to fill this position as and when it becomes vacant.

2.1.6. A licensee’s Board and senior management shall act and shall take all reasonable steps to ensure that all employees of the licensee act so as to avoid serious damage to the licensee’s reputation or to its financial position.

Guidance Note:

Where the licensee is administered by another firm in the Bailiwick, the Commission’s expectation is that the composition of the Board contains at least one Guernsey resident director. Such director would be considered as the Commission’s point of contact in the first instance.
For any other licensees, it is anticipated that there are at least two Guernsey resident directors, or equivalent, in order to comply with Schedule 4 to the Law.

“Reasonable steps” at Rule 2.1.6 above includes having in place sufficient management controls and compliance procedures and a system for ensuring that such controls continue to be sufficient and that employees are observing internal compliance procedures.

2.2. **Financial Advisers**

2.2.1. A licensee providing advice to retail clients on controlled investment business must authorise one or more financial advisers to act on his behalf.

2.2.2. A licensee shall not advise retail clients on controlled investment business otherwise than through a financial adviser who has been authorised to act on his behalf under rule 2.2.1.

2.2.3. An authorisation in accordance with this section must be in writing and state:

(a) the name of the financial adviser;

(b) the name of its issuer;

(c) the classes of controlled investment business the financial adviser may advise upon;

(d) whether the authorisation is restricted to stated classes of controlled investment business; and

(e) that its issuer is responsible for the actions and conduct of the financial adviser concerned when acting or purporting to act under it.

2.2.4. It is the responsibility of the Board of a licensee to ensure that the activities of a financial adviser are reviewed and managed by a suitably qualified and experienced individual.

2.2.5. In meeting the requirements of rule 2.2.4., the licensee shall refer to the Guidance Note on Training and Competency Schemes issued by the Commission as amended or replaced from time to time.
3. Compliance Arrangements

3.1. General

3.1.1. The Board has effective responsibility for compliance with the Law, the Licensees Rules and any rules or guidance made under the Law. In particular the Board must take responsibility for the policy on review of compliance and discuss a review of compliance at appropriate intervals.

3.1.2. As such it should ensure that a licensee takes reasonable steps, including the establishment and maintenance of procedures, to ensure that its officers and employees act, to the extent applicable, in conformity with-

(a) their own and their employer’s relevant responsibilities under the Law and the rules made thereunder;

(b) the Regulatory Laws;

(c) the requirements of the statutory restrictions on market abuse, insider dealing, money laundering and countering the financing of terrorism;

(d) any other enactment prescribed for the purposes hereof by regulation of the Commission;

(e) appropriate arrangements on propriety in personal dealings;

(f) guidelines issued by the Commission from time to time relevant to the carrying on of controlled investment business; and

(g) requirements of any Self-Regulatory Organisation, Recognised Professional Body or Recognised Investment Exchange of which the licensee is a member or subject to its regulation.

3.1.3. A licensee must keep a breaches register to log all instances of non-compliance with legislation, regulations and rules as listed in Rule 3.1.2.

3.1.4. A licensee must ensure that compliance procedures in respect of its controlled investment business are set out in writing and that a copy of these written procedures is kept at the offices of the licensee, and made available to the Commission on demand.

3.1.5. The Commission may require changes to the arrangements and the licensee shall implement and comply with any such requirements.
3.1.6. A licensee must review its written compliance procedures at least annually.

Guidance Note:

It is not the role of the Commission to approve compliance arrangements. Accordingly it is the responsibility of the Board to determine the “appropriate intervals” referred to in 3.1.1. However, such an interval should be no longer than one year.

3.2. The Compliance Officer

3.2.1. A licensee must appoint a Compliance Officer in Guernsey to be responsible for compliance and must appoint a replacement to fill this position if it becomes vacant.

3.2.2. The Board must ensure that the Compliance Officer appointed:

(a) be either a natural person or, if a legal person, the Commission should be informed of the natural person who takes responsibility for compliance within the organisation as the Compliance Officer;

(b) be resident in Guernsey;

(c) has sufficient resources to perform his duties;

(d) has timely access to all records required under Rule 6;

(e) receives full co-operation from all staff;

(f) reports directly to the Board;

(g) has regular contact with the Board to ensure that the Board is able to satisfy itself that all the requirements of the Law and the Licensees Rules are being met; and

(h) be fully aware of both his obligations and those of the licensee under the Law and the Licensees Rules.

3.2.3. Where a licensee is considering the outsourcing of compliance functions and/or providing the Compliance Officer with additional support from third parties, from elsewhere within the group or externally, then the licensee must:

(a) comply with the Commission’s “Guidance Note, Outsourcing of functions by entities licensed under the Protection of Investors (Bailiwick of
Guernsey) Law, 1987, as amended”;

(b) ensure that roles, responsibilities and respective duties are clearly defined and documented; and

(c) ensure that the Compliance Officer, other third parties and all employees understand their respective roles, responsibilities and duties.

3.2.4. Where the compliance function itself is outsourced to a third party the licensee should advise the Commission of the name(s) of the natural person(s) employed by the licensee (or its administrator / manager where applicable) responsible for oversight of the outsourcee.

Guidance Note:

Where the compliance function itself is outsourced to a third party, the licensee should be aware that the licensee remains responsible for compliance with the Law and the rules and regulations made thereunder. A licensee cannot contract out of its statutory and regulatory responsibilities.

3.3. Compliance Monitoring Programme

3.3.1. The Board of a licensee must, in addition to complying with the preceding requirements of the Licensees Rules -

(a) establish such other policies, procedures and controls as may be appropriate and effective for the purposes of ensuring compliance with the Licensees Rules, the Law and any other rules made under the Law;

(b) establish and maintain an effective policy, for which responsibility must be taken by the Board, for the review of its compliance with the requirements of the Licensees Rules, the Law and any other rules made under the Law and such policy shall include provision as to the extent and frequency of such reviews;

(c) ensure that a review of its compliance with these Rules is discussed and minuted at a meeting of the Board at appropriate intervals, and in considering what is appropriate a licensee must have regard to the risk taking into account -

(i) the size, nature and complexity of the licensee’s controlled investment business;

(ii) its clients, products and services; and
(iii) the ways in which it provides those products and services;

(d) The Board has effective responsibility for compliance with the Licensees Rules, the Law and any other rules made under the Law. In particular the Board must take responsibility for the policy on review of compliance and discuss a review of compliance at appropriate intervals.

(e) In meeting the requirements of the Licensees Rules, the Law and any other rules made under the Law, the Board of a licensee must evaluate and record the evaluation of its compliance with the Finance Sector Code of Corporate Governance or any successor codes.

(f) A licensee must also ensure that there are effective and appropriate policies, procedures and controls in place which provide for the Board to meet its obligations relating to compliance review, in particular the Board must:

(i) ensure that the compliance review policy takes into account the size, nature and complexity of the business and includes a requirement for sample testing of the effectiveness and appropriateness of the policies, procedures and controls;

(ii) consider whether it would be appropriate to maintain a separate internal audit function to assess the adequacy and effectiveness of the area of compliance;

(iii) ensure that when a review of compliance is discussed by the Board at appropriate intervals the necessary action is taken to remedy any identified deficiencies; and

(iv) provide adequate resources either from within the licensee, within the group, or externally to ensure that the compliance policies, procedures and controls of the licensee are subject to regular monitoring and testing as required by the Licensees Rules.

(g) The Board may delegate some or all of its duties but must retain responsibility as per Rule 3.1.1.

3.4. Annual Compliance Return

3.4.1. A licensee must file annually with the Commission its compliance return in the format defined in Schedule 1 and within the timeframe stated in Rule 4.2.6.
3.5. **Employee Screening**

3.5.1. A *licensee* shall maintain effective and appropriate procedures, when hiring *employees*, for the purpose of ensuring high standards of *employee* probity and competence.

3.5.2. The *Board* of a *licensee* is responsible for *employee* screening.

3.5.3. In order for a *licensee* to ensure that *employees* are of the required standard of competence and probity, which will depend on the role of the *employee*, the *licensee* must:-

(a) obtain and confirm appropriate references at the time of recruitment;

(b) require information from the *employee* with regard to any regulatory action taken against him;

(c) require information from the *employee* with regard to any criminal convictions and the provision of a check of his criminal record (subject to the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002);

(d) confirm his educational and professional qualifications; and

(e) obtain either a valid *statement of professional standing* from that *employee*, or evidence that the *employee* has successfully completed the regulatory module of an acceptable qualification prior to authorisation as a *financial adviser*.

3.6. **Employee Training**

3.6.1. The *Board* of the *licensee* is responsible for *employee* training.

3.6.2. Every *licensee* shall create and implement a training and competency scheme for all *employees* appropriate to the nature and scale of the *licensee’s* business.

3.6.3. In meeting the requirements of rule 3.6.2, the *licensee* shall refer to the Guidance Note on Training and Competency Schemes issued by the *Commission* as amended or replaced from time to time.

3.6.4. A *licensee* shall ensure that relevant *employees* receive comprehensive ongoing training to ensure competence for duties including but not limited to:-

(a) *the Law* and the rules made thereunder;
(b) the obligations of *employees* and their potential liability in failing to meet those obligations;

(c) the implications of non-compliance by *employees* with any relevant legislation, rules or guidance;

(d) its policies, procedures and controls for ensuring compliance with the *Law* and the *Licensees Rules* and any other relevant legislation, rules or guidance.

3.6.5. The *licensee* shall maintain a training log to record the training directors and employees of a *licensee* receive.

3.6.6. The *licensee* and its *Board* shall ensure that each of its *financial advisers* hold such qualifications to at least the minimum standard as published by the *Commission* from time to time or satisfy such requirements as the *Commission* may determine and are assessed as competent to undertake that position by the *licensee*.

For the avoidance of doubt, the *Commission* may specify time periods in which such qualifications must be obtained and the *licensee* and its *Board* must ensure that its *financial advisers* obtain the qualifications within the relevant time periods.

In the event that the qualifications are not obtained within the relevant period by any *financial adviser* of the *licensee*, the *licensee* and its *Board* must take such steps as are necessary to revoke the authorisation of the *financial adviser* and stop that individual from providing advice to *retail clients* until such time as the necessary qualifications are obtained. At that time, the *licensee* and its *Board* may wish to authorise that individual as a *financial adviser*.

3.6.7. A *financial adviser* shall carry out and record a minimum of thirty five hours of relevant and appropriate continuing professional development per annum, of which a minimum of twenty one hours shall be structured continuing professional development.

3.6.8. In meeting the requirements of rules 3.6.6 and 3.6.7, the *licensee* shall refer to the Guidance Note on Training and Competency Schemes issued by the *Commission*.

3.6.9. A *licensee* shall obtain a statement of professional standing from each *financial adviser* within three months of the expiry of a valid statement of professional standing. Where a statement of professional standing is not provided to the *licensee* by a *financial adviser*, that *financial adviser*’s authorisation as a *financial adviser* shall be revoked until such time as a valid statement of
professional standing has been obtained.

Guidance Note:

The Commission requires licensees to provide adequate training for their staff in accordance with Principle 9. Training should take into account each staff member’s existing experience and educational and professional qualifications.

Appropriate training should also cover licensees’ in-house training provisions.

The Commission expects that the Board of a licensee shall exercise oversight of the training process both in terms of its planning and execution and to document that oversight.

The Commission places emphasis on the licensee’s system of supervision and administrative controls to ensure that employees do not act beyond their competence.
4. Accounting Records and Financial Statements

4.1. Accounting Records

4.1.1. Every licensee must keep accounting records in English which are sufficient to show and explain its transactions which:

(a) disclose with reasonable accuracy, at any time, the financial position of the licensee at that time;

(b) enable the licensee to demonstrate its continuing compliance with the Capital Adequacy Rules;

4.1.2. Where a licensee acts as a designated manager or a designated custodian, the licensee must keep accounts in English which:

(a) enable a designated manager of a Class A Scheme to keep the daily record required under the Class A Rules;

(b) enable the reports to holders to be prepared by each of the designated manager and the designated custodian of open-ended collective investment schemes; and

(c) enable the designated manager and designated custodian to demonstrate compliance with the Licensees Rules at any time.

4.1.3. In respect of compliance with 4.1.2, should a licensee outsource this activity, it should have daily access to this information and must continue to comply with the Commission’s “Guidance on Outsourcing of functions by entities licensed under the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended”.

4.2. Audited financial statements

4.2.1. Every licensee must prepare audited financial statements covering the period from the immediately preceding accounting reference date (or, in the case of a new business, from the date of incorporation) to the next following accounting reference date which shall as a minimum include:-

(a) accounts complying with generally accepted accounting principles;

(b) in the case of a designated manager only, provide details of the aggregate balance of all client accounts;
(c) in the case of a designated manager only, show the aggregate value of all
scheme property under management as at the relevant accounting
reference date, calculated for each scheme in accordance with the Class A
Rules; and

(d) an auditor’s report thereon, which shall include a statement of financial
resources certified by the auditor confirming that the appropriate financial
resources requirement specified in the Capital Adequacy Rules is satisfied.

4.2.2. In addition, a licensee which is subject to an expenditure-based requirement
under the Capital Adequacy Rules shall prepare, within one month of the
month end, a statement of financial resources in respect of each month. If
required by the Commission, it will be made available for inspection.

4.2.3. Unless the licensee is preparing audited financial statements from the period
of incorporation to the accounting reference date, audited financial statements
shall be prepared in respect of a period no longer than 12 months from the
previous accounting reference date.

4.2.4. Where the licensee is preparing audited financial statements from the period
of incorporation to the accounting reference date, audited financial statements
should be prepared to the date notified to the Commission at the time of
making an application for a licence.

4.2.5. Any change in the accounting reference date of a licensee must immediately
be notified to the Commission together with a statement of reasons for the
change.

4.2.6. Unless the licensee is regulated under another of the Regulatory Laws, and the
Commission has confirmed in writing that that specific law takes precedence
over its obligations under the Licensees Rules, copies of the audited financial
statements shall be submitted to the Commission by no later than four months
after the accounting reference date together with the Compliance Return at
Schedule 1.

4.3. Auditor

4.3.1. Every licensee must appoint a qualified auditor and confirm to the
Commission that the qualified auditor is so qualified.

4.3.2. A licensee shall give the Commission written notice of a change of its qualified
auditor forthwith, including a statement of the reasons for the change.
5. Conduct of Business

5.1. Fitness and propriety

5.1.1. A licensee must observe the Principles in carrying on its controlled investment business.

Guidance Note:

The Commission has a continuing duty to determine whether a licensee remains a fit and proper person to carry on controlled investment business. In so doing, the Commission shall take account of whether the licensee has observed the Principles.

The Principles are a statement of the standards expected of a licensee.

Breach of a Principle will be taken into account for the purposes of discipline and intervention.

The Principles are not exhaustive and conformity with them does not excuse a failure to observe other regulatory requirements.

In considering whether a licensee remains a fit and proper person, the Commission will also have regard to Schedule 4 to the Law.

5.1.2. A licensee must have adequate and effective systems of control in place to ensure that its financial advisers comply with the requirements of Schedule 2

5.2. Client relations

5.2.1. Client agreements

(a) Where a licensee provides investment services to a retail client, whether on a discretionary basis or otherwise, it must do so under a written agreement signed both by the licensee and client which sets out in adequate detail the basis and terms on which the services are provided and the extent of the discretion to be exercised by the licensee, unless the client specifically advises in writing that he does not wish such a written agreement to be used.

(b) If the licensee is to provide investment services on an execution-only basis, the basis and terms on which the services are provided must be set out in
adequate detail and signed by both the licensee and the client;

(c) Where a licensee provides investment services to a professional client or an eligible counterparty, whether on a discretionary basis or otherwise, it must provide that client with the terms on which the licensee is prepared to provide the activities proposed.

(d) Where it is not practicable for a licensee to provide the information required by rule 5.2.1(c) before commencing business with the client the licensee shall provide it to the client as soon as practicable.

Guidance Note:

In all provision of investment services, it is important that both parties understand the responsibilities of the licensee. Where a licensee conducts business on an execution-only basis, it is particularly important that the limitations of the licensee’s responsibilities are closely adhered to. If the licensee were to provide advice to the client on purchases or sales, for the purpose of these Rules, this would not constitute an execution-only arrangement. The Licensees Rules anticipate a clear definition, within any written agreement, of an execution-only relationship.

There is a distinction between the provision of advice on transactions and the provision of best execution on a transaction. For example, the licensee might decide to delay, or stagger, the disposal of a controlled investment in order to achieve best execution.

5.2.2. Suitability

(a) A licensee, at the outset of its provision of advisory or discretionary investment services to a client, should ensure that it has obtained sufficient knowledge of the client to ensure that any advice or discretionary decision is suitable to the requirements of the client.

(b) A licensee should establish and maintain systems to ensure that its employees do not procure, endeavour to procure or advise anyone to enter into a transaction if that employee is not competent to advise on that transaction or to assess its suitability for investors.

(c) A licensee must take reasonable steps to ensure that it does not in the course of its controlled investment business –

(i) recommend an investment to a client; or
(ii) effect or arrange a discretionary transaction with or for any client,
unless the recommendation or transaction is suitable for him having regard to
the facts obtained by the licensee, the terms of any agreement with that client,
and other relevant facts about the client of which the licensee is, or reasonably
should be, aware.

(d) Reasonable steps would include the licensee actively obtaining information
from a client and documenting it in a readily accessible manner. Such
records should be retained for a period of six years from the date the
relationship ceases.

5.2.3. Disclosure

(a) Before a licensee provides investment services to a client, it must disclose
to him in writing the services, products offered and the expertise of the
licensee.

(b) Rule 5.2.3 shall not apply where a licensee provides investment services to
a client who is an eligible counterparty.

(c) A licensee which intends to carry on stock lending activity pursuant to
Rule 9.1.1(f) where it will borrow a client’s stock for its own account or
lend a client’s stock to an associate must disclose its or its associate’s
interest to the client, either generally or in respect of each transaction.

(d) A licensee must not recommend a transaction or investment strategy to
a client or act as a discretionary manager for him unless it has taken
reasonable steps to make him aware of the risks involved, including
conflicts of interest.

5.2.4. Fees, Charges and Remuneration

(a) Before entering into an agreement to provide investment services to a
client, a licensee shall disclose to the client in writing all fees and charges
for providing those services, together with the basis of their calculation.

(b) A licensee shall disclose any and all remuneration to be received in
connection with a transaction prior to the execution of the transaction. If
the amounts are not known, then the basis of calculation shall be provided.

(c) Remuneration shall be disclosed in a manner appropriate to the category of
client to which it relates.

(d) Rule 5.2.4(b) shall not apply for execution-only business unless the client
requests disclosure of the remuneration the licensee has or will receive.

5.2.5. Periodic information

(a) Rule 5.2.5 shall not apply where a licensee provides investment services to a client who is an eligible counterparty.

(b) Rule 5.2.5 shall not apply where a client has self-service access to a statement service, for example where statements are available via the internet, and the client has agreed in writing for Rules 5.2.5(c) and 5.2.5(d) to not apply.

(c) A licensee which manages controlled investments for a client must send a valuation report at intervals which are not less frequent than -

(i) quarterly in respect of securities or securities-related cash balances; and

(ii) monthly for derivatives or derivatives-related cash balances,

unless the client advises the licensee in writing that he wishes them less frequently (although the client must be sent a valuation report on at least an annual basis). If the client advises the licensee in writing that he does not wish to receive a valuation report, the licensee must prepare one in accordance with the Licensees Rules and keep it with the client’s records. Where the licensee has categorised the client as a professional client under the provisions of Rule 7, it may decide not to send out its records.

(d) Where the licensee only provides custody services for a client, statements of assets held in custody should be sent to that client in the intervals defined at Rule 5.2.5(c).

5.2.6. Business Transfer

(a) A licensee shall obtain the prior written consent of the Commission in respect of any transfer of a block of business to or from the licensee, where such transfer will occur at the licensee’s instigation or with their agreement.
5.3. Dealing, managing and advising

5.3.1. Client order priority

(a) A licensee must deal with client and own account orders fairly and in due turn.

(b) Rule 5.3.1(a) shall not apply where a licensee provides investment services to a client who is an eligible counterparty.

5.3.2. Timely execution

(a) Once a licensee has agreed with a client or decided in its discretion to effect or arrange a client order, it must effect or arrange the execution of the order as soon as reasonably practicable in the circumstances.

(b) Rule 5.3.2 shall not apply where a licensee provides investment services to a client who is an eligible counterparty.

(c) Rule 5.3.2(a) does not preclude a licensee from postponing execution of an order where it believes on reasonable grounds that this is in the best interests of the client. Such a decision must be documented.

5.3.3. Best execution

(a) Where a licensee deals with or for a client, it must seek to provide best execution, unless there is a specific instruction, in writing, from the client.

(b) The licensee should have an expressly stated best execution policy within its procedures and disclose it to clients. The policy should state the execution venues that the licensee intends to use.

(c) A licensee may rely on another person who executes the transaction to provide best execution, but only if it believes on reasonable grounds that he will do so.

(d) For the purposes of Rule 5.3.3(a), 5.3.3(b) and 5.3.3(c) above, a licensee provides best execution if –

(i) it takes reasonable care to ascertain the price which is the best available for the client in the relevant market at the time for transactions of the kind and size concerned; and

(ii) unless the circumstances require it to do otherwise in the interests of
the client, it deals at a price which is not less advantageous to him.

(e) In applying best execution, the licensee should have regard to the best price, the likelihood of execution and settlement at that price, and the costs of execution. The licensee should also pay regard to the nature of the order.

(f) In applying best execution, a licensee should leave out of account any charges disclosed to the client which it or its agent would make.

(g) As part of its compliance monitoring programme (referred to in Rule 3.3) the licensee must review a suitable sample of orders to ensure they are executed in accordance with its best execution policy.

(h) Rule 5.3.3 shall not apply where a licensee provides investment services to a client who is an eligible counterparty.

Guidance Note:

Where the licensee relies on another party to fulfil best execution, the ultimate responsibility remains with itself. Therefore the licensee should make whatever enquiries it considers necessary to establish reliance and document these enquiries.

As stated at 5.3.3(a) the licensee should look to obtain best execution for its clients. Where possible, comparisons to similar transactions in the same (and other) execution venues should be made.

Speed of execution, likelihood of execution and settlement, size and nature of the order, market impact, and any other implicit transaction costs may only be given precedence over the immediate price consideration insofar as they are instrumental in delivering the best possible result to the retail client.

5.3.4. Timely and fair allocation

(a) A licensee must ensure that a transaction it executes is promptly allocated.

(b) Where a licensee has aggregated an order for a client transaction with an order for an own account transaction, or with another order for a client transaction, then in the subsequent allocation -

(i) it must not give unfair preference to itself or to any of those for whom it dealt; and
(ii) if the licensee cannot satisfy itself that all orders can be achieved, it must give priority to satisfying orders for client transactions unless it believes on reasonable grounds that, without its own participation, it would not have been able to effect those orders either on such favorable terms or at all.

(c) Rule 5.3.4(b) shall not apply where a licensee provides investment services to a client who is an eligible counterparty.

5.3.5. Restrictions on allocations to officers and employees

(a) In making allocations under Rule 5.3.4, no allocation may be made to the personal account of any officer or employee of the licensee unless:

(i) he is wholly unconnected with the transaction or any prior decision to undertake it; or

(ii) his allocation arises solely because of a prior recorded decision by the licensee that a prescribed block of the transaction should be reserved for allocation to employees of the licensee and the licensee shall ensure that it is a term of the contract of employment of each employee and ensure that it is drawn explicitly to the attention of each employee that he may not make an arrangement with any other person whereby that person participates in any transaction on his behalf or in expectation of any reciprocal benefit on another occasion.

5.3.6. Price at which allocations are to be effected

(a) In any allocation of transactions to which the provisions of this Rule apply, the price at which such allocation is made to interested parties shall (save as mentioned in rule 5.3.7 below) be the price per unit of the total transaction (account being taken of fees and commissions).

(b) Rule 5.3.6(a) shall not apply where a licensee provides investment services to a client who is an eligible counterparty.

5.3.7. Series of transactions treated as one

(a) Where a licensee effects a series of transactions during any one period of 24 hours (commencing with the first transaction in that series) or any one or more subsequent successive periods of 24 hours to achieve one investment decision or objective, then the licensee may ascribe a uniform price to the transactions effected during each such period of 24 hours, calculated as the weighted average of the various prices of the transactions effected during the relevant 24 hour period.
(b) Rule 5.3.7(a) shall not apply where a licensee provides investment services to a client who is an eligible counterparty.

5.3.8. Churning and switching

(a) A licensee must not:

(i) make a recommendation to a client to deal; or

(ii) deal or arrange a deal in the exercise of its discretion for any client,

if the dealing would reasonably be regarded as too frequent in the circumstances.

(b) A licensee must not:

(i) make a recommendation to a client to switch within or between a controlled investment; or

(ii) effect such a switch in the exercise of its discretion for a client,

unless it believes on reasonable grounds that the switch is justified from the client’s viewpoint.

(c) Rules 5.3.8(a) and (b) shall not apply where a licensee provides investment services to a client who is an eligible counterparty.

5.3.9. Dealing ahead of published research or analysis

(a) If a licensee becomes aware that an associate intends to publish to clients a written recommendation, or a piece of research or analysis, it must not effect an own account transaction in the investment concerned or any related investment until the clients for whom the publication was principally intended have had (or are likely to have had) a reasonable opportunity to react to it, unless it has documented and evidenced that the conditions at Rule 5.3.9(b) have been satisfied.

(b) A licensee may effect an own account transaction if:-

(i) the publication could not reasonably be expected to materially affect the price of the investment concerned or any related investment;

(ii) the licensee is a market maker in the investment concerned or in a
related investment and the transaction is effected by it in good faith in the normal course of market making;

(iii) the licensee deals in order to fulfil an unsolicited client’s order;

(iv) the licensee believes on reasonable grounds that it needs to deal to fulfil clients’ orders which are likely to result from publication, and that its doing so will not cause the price of the investment which is the subject of the written recommendation, or piece of research or analysis, to move against clients’ interests by a material amount; or

(v) the licensee or its associates discloses in the publication that it or its associates has effected or may effect an own account transaction in the investment concerned or any related investment.

5.3.10. Staff Dealing Policy

(a) The licensee must have a staff dealing policy that complies with the requirements of the Company Securities (Insider Dealing) (Bailiwick of Guernsey) Law, 1996 and any other requirements under the Law.

5.4. Promotion and Advertising

5.4.1. Issue of Materials

The licensee, if responsible for promotion and advertising, must ensure that any materials issued:-

(a) are clear, fair and not misleading;

(b) do not contain any statement, promise or forecast which is untrue;

(c) are not designed in such a way as to distort or conceal any relevant subject material;

(d) are clearly recognisable as an advertisement;

(e) are not likely to be misunderstood;

(f) where appropriate state that the investment value is not guaranteed or that the value may fluctuate;

(g) do not employ phrases such as “tax-free” or “tax-paid” without making clear which taxes are being referred to, and
(h) do not contain information about past performance unless it contains a warning that past performance is not necessarily a guide to future performance and may not be repeated.

5.4.2. Regulatory Status

(a) The regulatory status of the licensee is to be included on all communications.

5.4.3. Overseas Promotion and Advertising

(a) A licensee shall take all reasonable steps with a view to ensuring that any form of promotion or advertising in a country or territory outside of the Bailiwick of Guernsey is in accordance with the laws and regulations in force in that country or territory.
6. Record Keeping

6.1. Records

6.1.1. All records prepared in order to comply with the Licensees Rules shall be retained for a period of at least six years from their occurrence.

6.1.2. A licensee shall keep, for a period of six years from their occurrence, a record of occurrences which have, or in the opinion of the person responsible for compliance or any client may have, involved an alleged breach of the Law or the rules and regulations made under it and of the steps taken with a view to ensuring that such occurrences do not recur.

6.1.3. Unless otherwise stated, all material records and permanent data prepared in order to comply with the Licensees Rules shall be retained for the duration of the relevant relationship and also for a period of at least six years starting from the date that the relevant relationship ceased. For the purpose of this rule, the term “relationship” includes any direct relationship a licensee has with a client in respect of controlled investment business and any relationship a licensee has either directly with a collective investment scheme, or with another party, in respect of services it provides to that scheme.

6.1.4. A licensee shall keep, and properly maintain, records relating to its controlled investment business and any other activities affecting its controlled investment business, in a form capable of prompt reproduction in English and capable of being checked or audited, so as to demonstrate compliance with the Law and the regulations and rules made under it.

6.1.5. A licensee shall make such records available at any time to the Commission, its employees and any persons authorised by it for any purpose whatsoever.

6.1.6. A licensee must review, at least annually, the ease of retrieval of, and condition of paper and electronically retrievable records including telephone records and recordings.

6.1.7. Where a financial adviser recommends the early redemption, lapsing or partial or full withdrawal of a controlled investment business details of such occurrences shall be maintained for a period of six years from their occurrence, together with an explanation of the reasons for such occurrences, or evidence that such an explanation has been sought, even if not received.

6.2. Scheme property records

6.2.1. Where a designated custodian itself or any other appropriately licensed person
has custody of scheme property and documents of title or documents evidencing title to scheme property, records shall be maintained by the custodian to explain in respect of each scheme:-

(a) the location of scheme property and documents of title or documents evidencing title to scheme property; and

(b) when the licensee took custody of or relinquished custody of the scheme property or documents of title or documents evidencing title; and

(c) the nature, amount and nominal value of the scheme property or documents of title or documents evidencing title.

6.3. Records relating to transactions

6.3.1. In respect of investors in a collective investment scheme:

(a) On the receipt of instructions from an investor to effect a transaction in the units of a collective investment scheme, a designated manager shall make a record of:-

(i) the name of the investor; and

(ii) the name of the collective investment scheme and the number of units or the subscription monies the subject of the instructions; and

(iii) the nature of the proposed transaction; and

(iv) the date and time the relevant instructions were received; and

(v) any other information necessary to complete this transaction.

(b) It shall be sufficient compliance with this Rule if the record is made in an electronic recording which also records, second by second, the time at what is spoken is recorded.

6.3.2. In respect of scheme property of a collective investment scheme:

(a) On transmission of instructions

(i) Where a designated manager in arranging a transaction on account of a collective investment scheme gives instructions to another person to effect it, the designated manager shall simultaneously with the giving of the instructions make a record of:-
(1) the name of the collective investment scheme; and

(2) the name of the other person so instructed; and

(3) the terms of the instructions, including the name of the asset; and

(4) the date and time on which the instructions were so given;

and it shall be sufficient compliance with this Rule if the record is made in an electronic recording which also records, second by second, the time at what is spoken is recorded.

(b) On execution

(i) Where a transaction is effected by a designated manager, the designated manager shall make a record of:-

(1) the name of the collective investment scheme and the property which is the subject of the transaction; and

(2) the day, the price and other terms on which the transaction was effected including, where any conversion between the currencies is involved, the rate of exchange; and

(3) the brokers to the transaction; and

(4) where the designated manager effected the transaction in the capacity of both buyer and seller, that fact;

and it shall be sufficient compliance with this Rule if the record is made in an electronic recording which also records, second by second, the time at what is spoken is recorded.

6.3.3. Record keeping of allocation of transactions

(a) Where a designated manager has effected a transaction to which Rule 5.3.4 applies it shall allocate the transaction between the interested parties as soon as practicable after the transaction has been effected and, upon such allocation, shall keep or procure the keeping of records of:-

(i) the date and time of the allocation; and

(ii) the investments the subject of the allocation; and
(iii) the identity of the interested parties and the designation of any relevant account of the interested parties.

6.4. In respect of controlled investments held on behalf of a client

6.4.1. A licensee which holds custody of controlled investments on behalf of a client, or which appoints another person to be the custodian of client investments, must perform a reconciliation in accordance with 6.4.2 below as often as is necessary to ensure the accuracy of its records relating to clients’ investment entitlements.

6.4.2. Reconciliations are to be performed as follows:

(a) Where client investments are physically held by a licensee, a count must be carried out at least every six months and be reconciled with its record of the client investments.

(b) Where client investments are not physically held by a licensee, the licensee’s record of clients’ investment entitlements must be reconciled, at least every three months, with statements obtained from the eligible custodian or other holder.

6.5. Destruction of records or files

6.5.1. Without limiting any other obligation under the Law or the rules and regulations made under it or under the laws of Guernsey, a licensee shall ensure that it and its directors and employees and other persons to the extent that they are under its power and control shall not, without the express consent in writing of the Commission, amend, destroy, make further entries in, or erase, any record or file (whether in documentary or electronic form) which is, or may be, relevant to any matter which is the subject of any kind of investigation, disciplinary or other process, or appeal under the Law or the rules and regulations made under it.
7. Categorising Clients

7.1. General definition

7.1.1. Subject to Rules 7.1.3 and 7.1.4, any person with or for whom a licensee carries on controlled investment business is a client of that licensee.

7.1.2. A client of an agent is a client of the licensee for whom that agent acts or intends to act in the course of business for which that licensee has accepted responsibility via a contractual arrangement. Such acceptance of responsibility should be evidenced and demonstrable.

7.1.3. Where a licensee is acting as a designated manager of a collective investment scheme authorised or registered under the Law, the licensee may categorise the investors in the collective investment scheme as if they were retail clients without applying the provisions of Rule 7.2 and 7.7.

7.1.4. For the avoidance of doubt, where a licensee is acting as the designated custodian of a collective investment scheme authorised or registered under the Law, for the purposes of these rules it is deemed to be carrying on controlled investment business with the collective investment scheme. This rule does not provide any derogation from the provisions of the other rules to which the collective investment scheme is subject.

7.2. Notification to Clients

7.2.1. A licensee must:

(a) notify a client, in writing, of its categorisation as a retail client, professional client, or eligible counterparty in accordance with this Rule; and

(b) prior to the provision of services, inform a client about:

(i) the effect of this categorisation;

(ii) any limitations to the level of client protection that such a different categorisation would entail; and

(iii) the right that client has to request a different categorisation.

Guidance Note:

Rule 7.6 requires a licensee to allow a client to request re-categorisation as a
client that benefits from a higher degree of protection. A licensee should therefore notify a client that is categorised as a professional client or an eligible counterparty of its right to request a different categorisation.

7.3. **Retail clients**

7.3.1. A retail client is a client who is not a professional client or an eligible counterparty.

7.4. **Professional clients**

7.4.1. A per se professional client or an elective professional client is a professional client.

7.4.2. Each of the following is a per se professional client unless and to the extent it is an eligible counterparty or is given a different categorisation under Rule 7:

(a) not a member of the public; or

(b) a large undertaking and/or a professional investor;

7.4.3. A licensee may treat a client as an elective professional client if the licensee undertakes an adequate assessment of the expertise, experience and knowledge of the client that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved. If the client is an entity, the assessment should be performed in relation to the person authorised to carry out transactions on its behalf.

Guidance Note

In making the assessment required at Rule 7.4.3, the licensee should have regard, inter alia for:-

(i) the frequency of the client’s dealing in the relevant controlled investments;

(ii) the size of the client’s portfolio of cash and controlled investments; and

(iii) the client’s relevant professional expertise.

The Commission would not object to the application of the criteria for “Experienced Investors” or “Knowledgeable Employees” laid out in the Qualifying Investor Funds Guidance in making the assessment.
7.4.4. A licensee may treat a client as an elective professional client if the following procedure is followed:

(a) the client must state in writing to the licensee that it wishes to be treated as a professional client either generally or in respect of a particular service or transaction or type of transaction or product;

(b) the licensee must give the client a clear written warning of the protections and investor compensation rights the client may lose; and

(c) the client must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections.

Guidance Note.

An elective professional client should not be presumed to possess market knowledge and experience comparable to a per se professional client.

7.4.5. If a licensee becomes aware that a client no longer fulfils the initial conditions that made it eligible for categorisation as a professional client, the licensee must take the appropriate action.

Guidance Note.

Professional clients are generally responsible for keeping the licensee informed about any change that could affect their current categorisation.

7.5. Eligible counterparties

7.5.1. A per se eligible counterparty or an elective eligible counterparty is an eligible counterparty.

7.5.2. Each of the following is a per se eligible counterparty (including an entity licensed under similar local legislation in its own jurisdiction) unless and to the extent it is given a different categorisation under Rule 7:

(a) any entity licensed for Dealing, Managing or Advising under the Law;

(b) an approved bank;

(c) an insurance company;

(d) a collective investment scheme;
(e) a pension scheme or its management company;

(f) a national government or its corresponding office, including a public body that deals with the public debt;

(g) a central bank;

(h) a supranational organisation;

(i) any other entity that is

\(\text{(i) incorporated outside the Bailiwick; and} \)

\(\text{(ii) is suitably licensed, authorised or qualified by primary or secondary legislation in its home jurisdiction.} \)

7.5.3. A licensee may treat a client as an elective eligible counterparty if:

(a) the client is an undertaking;

(b) a per se professional client and;

\(\text{(c) he requests such categorisation and the licensee undertakes an adequate assessment of the expertise, experience and knowledge of the client that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved; and} \)

\(\text{(d) the licensee has obtained express confirmation from the prospective counterparty that it agrees to be treated as an eligible counterparty.} \)

7.5.4. A licensee may obtain a prospective counterparty's express confirmation that it agrees to be treated as an eligible counterparty either in the form of a general agreement or in respect of each individual transaction.

7.6. Providing clients with a higher level of protection

7.6.1. A licensee must accede to a client’s request for re-categorisation as a client that benefits from a higher degree of protection.

7.6.2. A licensee may, either on its own initiative or at the request of the client concerned:

\(\text{(a) treat as a professional client or a retail client a client that might otherwise} \)
be categorised as a *per se eligible counterparty*;

(b) treat as a *retail client* a *client* that might otherwise be categorised as a *per se professional client*,

and if it does so, the *client* will be re-categorised accordingly.

7.6.3. If a *per se eligible counterparty* requests treatment as a *client* whose business with the *licensee* is subject to conduct of business protections, but does not expressly request treatment as a *retail client* and the *licensee* agrees to that request, the *licensee* must treat that *eligible counterparty* as a *professional client*.

7.6.4. The ways in which a *client* may be provided with additional protections under this section include re-categorisation on:

(a) a general basis;

(b) a trade by trade basis;

(c) in respect of one or more specified rules;

(d) in respect of one or more particular services or transactions; or

(e) in respect of one or more types of product or transaction.

7.7. **Policies, Procedures and Records**

7.7.1. A *licensee* must implement appropriate written internal policies, procedures and controls to categorise its *clients*.

7.7.2. A *licensee* may satisfy Rule 7.2.1 by either:

(a) issuing a standard notice to the *client* when they are given the *client* agreement; or

(b) by incorporating the notice in the text of the *client* agreement.

In the case of (a) the *licensee* must keep a copy of the standard form for inspection while it is in use and for six years after the *licensee* ceases to use it.

7.7.3. A *licensee* must make a record in relation to each *client* of:

(a) the categorisation established for the *client* under this section, including
sufficient information to support that categorisation;

(b) evidence of despatch to the *client* of any notice required under Rule 7.2.1 and, if such notice differs from the relevant standard form, a copy of the actual notice provided; and

(c) a copy of any agreement entered into with the *client* under Rule 7.

This record must be made at the time of categorisation and should be retained for at least 6 years after the *licensee* ceases to carry on business with or for that *client*. 
8. Complaints

8.1. Complaints Procedure

8.1.1. Every licensee must have in operation, and ensure compliance with, a written procedure for the effective consideration and fair and proper handling of any complaints relating to the licensee’s controlled investment business, howsoever received.

8.1.2. The licensee shall ensure that each of its officers and employees responsible for dealing with clients is at all times aware of the procedure and of the obligation to follow it.

Guidance Note:

It is expected that all complaints are reviewed by at least a senior officer of the licensee who is independent of the circumstances giving rise to the complaint. An appropriate person could be the Compliance Officer.

8.2. Notifications

8.2.1. If a complaint remains unsettled for longer than three months from the date of the licensee becoming aware of the complaint, the licensee shall inform the Commission within fourteen days and shall also advise the complainant that he may inform the Commission directly of his complaint.

8.2.2. The licensee shall inform the Commission within fourteen days of it becoming aware of a significant complaint and shall also advise the complainant that he may inform the Commission directly of his complaint.

8.2.3. The licensee shall inform the Commission within fourteen days of it becoming aware of a series of complaints regarding any one employee, whether a current employee or not.

8.2.4. For the purposes of Rule 8.2.1, where a licensee has given a substantive response in relation to a complaint or significant complaint unless and until the licensee has received an indication from the complainant that the response is unsatisfactory, the licensee shall be entitled to treat the complaint as settled and resolved after the expiry of four weeks from the date of its response.
8.3.   Record Keeping

8.3.1.   Every licensee shall maintain a register in which it records any complaints received, along with sufficient details to allow it to be able to demonstrate that it has dealt (or is dealing) with such complaints in accordance with the Licensees Rules.
9. **Client Assets**

9.1. **Safekeeping of client assets**

9.1.1. A *licensee* which has custody of a *client’s controlled investments* must:

(a) keep safe, or arrange for the safekeeping by an *eligible custodian* of any documents of title relating to them;

(b) ensure that registrable investments which it buys or holds for a *client* in the course of conducting its *controlled investment business* are properly registered in the *client’s* name or, with the consent of the *client*, in the name of an *eligible custodian* or *eligible nominee* with the addition, if deemed appropriate, of an account designation, name or number which is unique to that *client*;

(c) where title to investments is recorded electronically, ensure that *client* entitlements are separately identifiable from those in the beneficial ownership of the *licensee* and any other *client* of the *licensee* in the records of the person maintaining records of entitlement, and for the purposes of this Rule it shall be sufficient if deemed appropriate by the *licensee*, for a *client’s* entitlements to be identified by an account designation name or number which is unique to that *client*;

(d) not use a *client’s* investments for its own account unless it has obtained that *client’s* prior written consent;

(e) where the *licensee* registers *clients’* investments in the name of an *own nominee*, accept responsibility for the acts or omissions of that nominee;

(f) not lend, or arrange the lending of *clients’* investments to a third party unless:

   (i) the *client* to whom the investment belongs has consented, in writing, and the loan is subject to appropriate documented terms and conditions;

   (ii) where *clients’* investments belonging to more than one *client* are registered in the same name, each *client* whose investments are so registered has consented, in writing, to the lending of *client* investments registered in that name, and each *client’s* entitlement is clearly ascertained;

   (iii) adequate collateral is obtained and maintained for the duration of
the loan, in accordance with any written instructions given by the 
client; and

(iv) the licensee arranges for all income, inclusive of dividends, fees 
or commissions, earned thereby (other than any fees payable to the 
licensee for arranging the loan) either to be paid to the client direct 
or to be received by the licensee on the client’s account and 
treated as client money unless instructed otherwise by the client.

9.2.   Client Money

9.2.1.  Client money is money of any currency which, in the course of carrying on 
controlled investment business, a licensee holds for, receives from, or owes to, 
a client. Client money may be held in a different currency to that of receipt.

9.2.2.  For the purposes of Rule 9.2.1: -

(a) a licensee or his agent holds or receives money where either that money is 
not immediately due and payable on demand to the licensee for its own 
account or, although so due and payable, is held or received in respect of 
any obligation of the licensee which has not yet been performed; and

(b) a licensee or his agent owes money where it is due and payable to a client; 
and

(c) a licensee must hold client money separate from the licensee’s own money 
and, to this end, must open one or more client money bank accounts.

9.3.   Client Money Accounts

9.3.1.  All money which is client money and which is received by the licensee and all 
money payable by the licensee which becomes client money shall be held in a 
client account with an approved bank.

9.3.2.  If not already confirmed by the bank, when a licensee opens a client money 
bank account, it must give written notice to the approved bank requiring that 
bank to acknowledge in writing:

(a) that all money standing to the credit of that account is held by the licensee 
as trustee and that the bank is not entitled to combine the account with any 
other account or to exercise any right of set-off or counter-claim against 
money in that account in respect of any sum owed to it on any other 
account of the licensee;
(b) that interest earned on the account will be credited to the account or to an account of the same type;

(c) that the title of the account sufficiently distinguishes the account from any other account containing money that belongs to the licensee, and is in the form requested by the licensee.

9.3.3. If, in the case of a client account with an approved bank outside Guernsey, the bank declines to give the acknowledgement required in Rule 9.3.2 above or if the licensee has any other ground for believing that client money will not be protected as effectively as it would be if held in a client account in Guernsey, the licensee shall not pay or transfer client money into that account.

9.3.4. Rule 9.3.3 above does not apply to money held by a licensee which is also licensed under the Banking Supervision (Bailiwick of Guernsey) Law, 1994, as amended on behalf of a client in an account with itself.

9.3.5. Client money held or received by a licensee shall be paid either into a client account as soon as possible (and, in any event, no later than the next business day) or to the client concerned in accordance with Rule 9.4.1 below.

9.3.6. Money held or received by a licensee in the form of a cheque, draft or electronic transfer drawn in favour of the licensee which includes client money shall be paid into a client account unless it represents money payable to one client only in which case it may be endorsed over or paid to the client concerned or as the client shall so direct.

9.3.7. Money received pursuant to Rules 9.3.5 and 9.3.6 which is not client money should be paid out of the client money bank account no later than one business day after the day on which the money had been cleared.

9.3.8. Rule 9.3.7 shall not apply to amounts of less than £25 (or currency equivalent).

9.4. Payments from Client Money Accounts

9.4.1. Money ceases to be client money if it is paid:-

(a) to the client;

(b) into a bank account in the name of the client (not being an account which is also in the name of the licensee); or

(c) to the licensee itself; where it is due and payable to the licensee.
9.4.2. The following items may be withdrawn from a client account:

(a) money, not being client money, paid into the account for the purpose of opening or maintaining the account;

(b) money paid into the account in contravention of the Licensees Rules;

(c) money properly required for a payment to or on behalf of a client;

(d) money properly required for or towards payment for the purchase of units, shares, partnership interests or of a debt due to the licensee from a client other than in respect of fees or commission;

(e) subject to Rule 9.4.3, money properly required for or towards payment of fees or commissions payable to the licensee and specified in a statement delivered to the client showing how those fees and commissions have been calculated;

(f) money drawn on a client’s authority or in conformity with any contract between the licensee and the client;

(g) money which may be properly transferred into another client account;

(h) if a cheque is paid into a client account and that cheque includes money which is not client money, that money which is not client money shall be withdrawn from the account as soon as cleared funds are credited to the account in respect of that cheque;

(i) interest withdrawn from the client money bank account.

9.4.3. Money shall not be withdrawn from a client account for or towards payment of fees or commissions payable to the licensee unless the fees or commissions have been calculated in accordance with the formula disclosed to clients in the relevant permanent data documentation.

9.4.4. Where a licensee draws a cheque or other payable order under Rule 9.4.1 above, the money does not cease to be client money until the cheque or order is dispatched.

9.4.5. Where a licensee makes a payment to a client from an account other than a client money bank account, the sum of money in the client money bank account equivalent to the amount of that payment will not become due and payable to the licensee until the client or other party has received that payment in cleared
9.4.6. Where a licensee has contracted to rebate commission to a client, the amount becomes client money when it becomes payable and should be settled within the timeframe agreed in the contract.

9.4.7. No money, other than money required by Rule 9.3.5 or Rule 9.6.1(a) or Rule 9.6.1(b) to be paid into a client account, shall be paid into such an account unless:-

(a) the money is the licensee’s own money and it is required to be so paid for the purpose of opening or maintaining the account and the amount is the minimum amount required for the purpose; or

(b) the money is the licensee’s own money and it is so paid in order to restore in whole or in part any money paid out of the account in contravention of the Licensees Rules or to restore the account out of an overdraft position.

9.5. Operation of Client Money Accounts

9.5.1. A licensee shall maintain records sufficient to demonstrate compliance with Rule 9.

9.5.2. A licensee must at least once a month reconcile the balance on each client money bank account as recorded by the licensee with the balance on that account as set out on the statement issued by the approved bank.

9.5.3. The client money account must not become overdrawn and there must not be a shortfall in client money upon reconciliation with the statement issued by the approved bank.

9.5.4. In the event of a breach of Rule 9.5.3 the licensee must immediately restore the account as described in Rule 9.4.7(b)

9.6. Provisions applicable only in relation to collective investment schemes

9.6.1. Subject to Rule 9.4.1, a designated manager/licensee which is liable to pay money to a client, either

(a) in respect of a transaction entered into with or for that client in the course of the designated manager/licensee’s business; or

(b) by way of interest (if any) on client money,
must forthwith upon the same becoming due and payable ensure that such money is held for that client in a client account unless the designated manager/licensee’s debt is discharged by paying such money directly to the client.

9.6.2. Money which may be withdrawn in accordance with Rule 9.4.2 by way of payment from a client to the designated manager/licensee shall be withdrawn immediately the designated manager/licensee becomes entitled to withdraw it.

9.6.3. Where interest is payable on a client account, the designated manager/licensee shall notify clients as to whom the interest is payable within the scheme particulars of the collective investment scheme.

Guidance Note:

These Rules anticipate that client money is recorded in the name of the licensee; in the case of collective investment schemes, these Rules apply whether client money is recorded in the name of the designated manager or principal manager.
10. Contract Notes

10.1. General

10.1.1. A licensee shall, after a transaction has been effected with or on behalf of a client in a collective investment scheme which is authorised or registered under the Law or in a Category 2 controlled investment, deliver or send or arrange for there to be delivered or sent to the client (or to a person nominated by the client for the purpose) a statement relating to the transaction (a “contract note”).

10.1.2. Rule 10.1.1 shall not apply where a licensee provides investment services to a client who is an eligible counterparty.

10.2. Contents and other requirements

10.2.1. The contract note shall contain:

(a) the name and address of the licensee; and

(b) the client’s name or other designation, and account number; and

(c) the dealing day in respect of the transaction; and

(d) in the case of a transaction in a collective investment scheme which is authorised or registered under the Law, the time of pricing in respect of the transaction; and

(e) the name of the controlled investment and the number of units subject of the transaction or the size of the transaction; and

(f) whether the transaction is one of sale, purchase or conversion and, as the case may be, the sale, purchase or conversion price of the units, shares and limited partnership interests or controlled investment; and

(g) the total consideration payable at the settlement date and the amount thereof; and

(h) where the transaction involves the conversion of one currency into another the rate of exchange obtained in effecting that conversion; and

(i) the amount or percentage and type of any charges whether included in the price or otherwise, unless the licensee is dealing as principal; and
(j) whether any remuneration commission is or will be payable in connection with the transaction by or on behalf of (or to) the licensee or an associate and, if so, to (or from) whom; and

(k) the settlement date; and

(l) any other relevant matters in relation to the transaction.

10.3. Other requirements

10.3.1. In the case of a transaction in an open-ended collective investment scheme which is authorised or registered under the Law, the contract note shall be sent in accordance with the scheme’s principal documents and in any case before the close of business on the seventh business day following the day on which the transaction was effected.

10.3.2. For a transaction effected in a Category 2 controlled investment, the contract note shall be sent as soon as practicable except where the client specifically requests, in writing, otherwise.

10.3.3. For the purpose of Rules 10.3.1 and 10.3.2:

(a) a transaction effected after the close of business on any business day but before the end of that business day shall be treated as having been effected before the close of business on the next following business day; and

(b) where a series of transactions is treated as one transaction in pursuance of Rule 5.3.7, the end of the relevant period of 24 hours shall be treated as the time at which the transaction was effected; and

(c) where a transaction falls to be allocated in accordance with Rules 5.3.4 to 5.3.6, the transaction shall be treated as having been effected on the day on which the allocation is made.

10.3.4. In the event that a client for whom a licensee has effected a sale, conversion or purchase of a Category 2 controlled investment requests the time of pricing in respect of a transaction, this must be promptly provided by the licensee.
11. Conflicts of Interest

11.1. Conflicts of interest policy

11.1.1. Licensees shall establish, implement and maintain an effective conflicts of interest policy, set out in writing and appropriate to the size and organisation of the licensee and the nature, scale and complexity of its business.

11.1.2. Where the licensee is a member of a group, the policy must also take into account any circumstances, of which the licensee is or should be aware, which may give rise to a conflict of interest arising as a result of other members of the group.

11.2. Contents of the Conflicts of interest policy

11.2.1. The conflicts of interest policy established in accordance with Rule 11.1 shall include the following content:

(a) it must identify, with reference to the specific controlled investment business carried out by or on behalf of the licensee, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more clients;

(b) it must specify procedures to be followed in order to manage such conflicts.

11.2.2. Licensees shall ensure that the procedures provided for in Rule 11.2.1(b) are designed to ensure that relevant persons engaged in controlled investment business involving a conflict of interest of the kind specified in Rule 11.2.1(a) carry on that controlled investment business at a level of independence appropriate to the size and organisation of the licensee and the nature, scale and complexity of the business and of the group to which it belongs.

11.2.3. For the purposes of Rule 11.2.1(b), the procedures to be followed and measures to be adopted shall include such of the following as are necessary and appropriate for the licensee to ensure the requisite degree of independence:

(a) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;

(b) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients
whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the licensee;

(c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

(d) procedures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out controlled investment business; and

(e) procedures to prevent or control the simultaneous or sequential involvement of a relevant person in controlled investment business where such involvement may impair the proper management of conflicts of interest.

11.2.4. If the adoption or the practice of one or more of those procedures does not ensure the requisite degree of independence, licensees shall adopt such alternative or additional measures and procedures as are necessary and appropriate for those purposes.

11.2.5. Where procedures made by the licensee in accordance with Rule 11.1 to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, the licensee shall clearly disclose the general nature and sources of conflicts of interest to the client before undertaking business on its behalf.

11.2.6. Licensees shall make disclosure to clients, pursuant to Rule 11.2.5, including sufficient detail, taking into account the nature of the client, to enable that client to take an informed decision with respect to the controlled investment business in the context of which the conflict of interest arises.

11.3. Record of services or activities giving rise to detrimental conflict of interest

11.3.1. Licensees shall keep and regularly update a record of the controlled investment business carried out by or on behalf of the licensee in which a conflict of interest entailing a material risk of damage to the interests of one or more clients has arisen or may arise.
11.4. Gifts and Inducements

11.4.1. Having regard to Rules 11.1 to 11.3, inclusive, a licensee must take reasonable steps to ensure that neither its directors, employees nor any of its agents -

(a) offers or gives; or

(b) solicits or accepts,

any gift or other direct or indirect benefit which is likely to conflict significantly with any duties of the recipient (or the recipient’s employer) owed to a client in connection with controlled investment business.

11.4.2. Rule 11.4.1 shall not apply where a licensee provides investment services to a client who is an eligible counterparty.
12.  Notifications

12.1.  Notifications under the Law

12.1.1.  Where a person shall become -

(a) a director or controller of a licensee which is a company; or

(b) a partner in a licensee which is a partnership;

the licensee should refer to the requirements of sections 27C and 28A of the Law.

12.2.  Name and Address

12.2.1.  A licensee shall give written notice within fourteen days to the Commission of:

(a) a change in the registered or equivalent name of the licensee;

(b) a change in any business name under which the licensee carries on controlled investment business in Guernsey;

(c) a change in the address of the head office or principal place of business of the licensee;

(d) a change in the address of the registered office of the licensee; and

(e) a change in the address for the service of notices or documents furnished pursuant to Section 3(1)(e) of the Law.

12.3.  Key Employees

12.3.1.  A licensee shall notify the Commission, in writing, within fourteen days of the fact that, and the date on which, any person has :-

(a) become

   (i) a manager who is connected with the licensee’s controlled investment business in Guernsey;

   (ii) the secretary of the licensee, in the case of a Bailiwick company;

   (iii) the Compliance Officer in Guernsey as per Rule 3.2; or
(iv) a financial adviser

(b) ceased to be

(i) a manager who is connected with the licensee’s controlled investment business in Guernsey;

(ii) the secretary of the licensee, in the case of a Bailiwick company;

(iii) the Compliance Officer in Guernsey as per Rule 3.2; or

(iv) a financial adviser

12.3.2. A notice under Rule 12.3.1(b) shall include a statement of the reasons for the change.

12.4. Information regarding key employees

12.4.1. A licensee shall give written notice to the Commission within fourteen days of it becoming aware of the following matters in relation to any individual falling within Rule 12.3.1:

(a) a change of name;

(b) the refusal of any application for, or revocation or suspension of, any licence, authorisation or registration under any legislation relating to finance business;

(c) the imposition of disciplinary measures or sanctions by a regulatory authority (including a Self-Regulatory Organisation) or professional body in relation to the individual’s professional or business activities;

(d) the making of an order by a court disqualifying that individual from serving as director of a company or from being concerned with the management of a company; or

(e) any breach of Schedule 2 by a financial adviser.

12.4.2. A notice under Rule 12.4.1 shall include a statement of the circumstances and all known matters related to the reason for the notification.
12.5. Information regarding all employees

12.5.1. A licensee shall give written notice to the Commission within fourteen days of it becoming aware of the occurrence of the following in relation to any of its employees:-

(a) a conviction of any offence involving fraud or other dishonesty;

(b) a conviction of any offence under legislation relating to finance business;

or

(c) the institution of saisie, desastre, bankruptcy, sequestration or similar proceedings.

12.5.2. A licensee shall give written notice to the Commission within fourteen days of the summary dismissal of any employee in Guernsey and the reasons for this dismissal, which shall include employees under probation.

12.5.3. A record shall be maintained of the names of any employees disciplined by a licensee in connection with any breach of the Law or rules made thereunder or with any other conduct which may reasonably be expected to affect the conduct of the licensee’s controlled investment business including particulars of:-

(a) the offence for which the employee was disciplined; and

(b) steps taken to discipline the employee.

Details of the particulars required to be recorded under Rule 12.5.3(a) and (b) above shall be submitted to the Commission within seven days of the employee being so disciplined. Any record made for the purposes of this Rule shall be kept until six years have expired from the date on which disciplinary steps were taken.

12.6. General

12.6.1. A licensee shall give written notice to the Commission within fourteen days of the occurrence of any of the following:-

(a) the presentation of an application for the winding-up (other than a petition for a voluntary winding-up for the purposes of reconstruction or amalgamation) of, or administration order on, the licensee or a company which is a subsidiary or holding company of the licensee;

(b) the appointment of a receiver, administrator, administrative receiver or
trustee of the licensee;

(c) the making of a composition or voluntary arrangement with creditors of the licensee;

(d) the granting, withdrawal, or refusal of an application for, or revocation of, any licence, authorisation or registration to carry on finance business under any legislation relating to finance business whether in Guernsey or elsewhere;

(e) the appointment of inspectors by a statutory or other regulatory authority (including a Self-Regulatory Organisation) or Recognised Professional Body to investigate the affairs of the licensee;

(f) the imposition of disciplinary measures or sanctions on the licensee or its directors in relation to its finance business by any regulatory authority (including a Self-Regulatory Organisation) or Recognised Professional Body;

(g) the bringing against any licensee or its directors of any material legal action or proceedings, or any arbitration to which the licensee is a party, relating to finance business; and

(h) the conviction of the licensee of any offence under legislation relating to finance business, companies or bankruptcy or of any offence involving fraud or dishonesty.

12.7. Holding company

12.7.1. A licensee shall give written notice to the Commission within fourteen days if it becomes or ceases to be a subsidiary of another company or entity. The notice shall specify the following information if this has not already been notified:-

(a) the holding company’s (or entity’s) name;

(b) its principal business;

(c) the name of its directors; and

(d) the address of its registered office.
12.8. Subsidiaries

12.8.1. A licensee shall give written notice to the Commission within fourteen days of the formation, acquisition, disposal or dissolution of a subsidiary.

12.8.2. The notice shall specify the following:-

(a) the subsidiary’s name; and

(b) its principal business, if any.

12.9. Proposed change in restricted activity

12.9.1. A licensee shall give written notice to the Commission within fourteen days of any significant change in the business plan, irrespective of whether it requires any change to its licence.

12.10. Written notice

12.10.1. A licensee shall give written notice and details to the Commission within fourteen days where it has reason to believe that :-

(a) it will be unable to comply with, or be unable to demonstrate compliance with, the requirements of the Licensees Rules;

(b) a director or employee has been engaged in activities involving fraud or other dishonesty in relation to the licensee’s controlled investment business in Guernsey;

(c) the licensee’s auditor may qualify the accounts; or

(d) the liabilities of a subsidiary or holding company of the licensee exceed its assets.
Schedule 1 – Compliance Return

Form 142 (Investment Audited Financial Statements and Compliance Returns (Licensee)) as detailed from time to time on the Licensee’s timeline on their online submission page.
Schedule 2 – Conduct of Financial Advisers

1. General principles

1.1. *Financial advisers* must be authorised by the *licensee* by whom they are employed and only authorised *financial advisers* may advise *retail clients* on *controlled investments* in or from the Bailiwick of Guernsey.

1.2. A person shall not use the term “*financial adviser*” unless authorised to do so by an entity appropriately licensed by the *Commission*.

1.3. No standards can be exhaustive in all circumstances. In areas where the terms herein are not specific, *financial advisers* should be guided by the Principles of Conduct of Finance Business and the underlying spirit of these requirements.

1.4. Lack of mention herein of a particular act or omission shall not be taken as indication that such an act or omission constitutes acceptable professional conduct.

1.5. A *financial adviser* shall:

   (a) comply with all applicable laws, enactments, regulations, rules, codes, guidance, principles and instructions when dealing with clients;

   (b) in the conduct of his business, provide advice objectively and not act in any way which is contrary to the terms herein or any other relevant legislation or standards;

   (c) whenever possible, make an appointment before visiting a *client*;

   (d) where unsolicited calls are unavoidable, yet deemed to be in the *client’s* best interests, ensure that they are made at an hour likely to be convenient to the *client*; and

   (e) when making unsolicited contact with prospective *clients*, for the purpose of marketing or advising on *controlled investments* the *financial adviser* shall identify himself at the start of the call and explain the genuine purpose of the call. The purpose of the call should be to discuss the prospective *client’s* financial arrangements and not to sell specific products.

1.6. Prior to providing advisory services to a *client*, a *financial adviser* shall:

   (a) make it known that he represents a regulated entity which assumes responsibility for his conduct while advising *clients* on financial matters;

   (b) disclose to the *client* in writing the classes of products upon which he is authorised to provide advice, his qualifications and his professional experience;
(c) disclose to the client in writing the range, scope and any limitations in the product providers and/or products upon which he is able to provide advice;

(d) fully explain to the client any involvement in conditional selling;

(e) ensure that he has sufficient knowledge of the legislation affecting the client including taxation. If he is unable to advise a client then he should inform the client and, if possible, refer the client to a person who can give him appropriate advice;

(f) give advice only on those matters in which he is competent and shall seek or recommend specialist advice where necessary;

(g) not use or disclose any information acquired from his clients except in the normal course of negotiating, maintaining, renewing, encashing or surrendering a controlled investment for a client, unless the written consent of the client has been obtained beforehand or disclosure of the information is required in the public interest or is compelled by law;

(h) not inform the client that his name has been provided by another person without that person’s consent, and shall disclose that person’s name if requested to do so by the client; and

(i) inform the client of any ongoing services provided by the licensee and shall disclose to the client in writing all fees and charges for providing those services.

2. Assessing suitability

2.1. Prior to recommending a controlled investment (or any material change to an existing controlled investment including cancellation), the financial adviser shall:

(a) obtain and record sufficient knowledge of the client’s personal and financial circumstances and understanding of their objectives to ensure that any advice is suitable to the needs, wishes and financial position of the client;

(b) make a documented assessment of the client’s attitude to investment risk. In the event of a recommendation to be made in joint names, a separate assessment should be made of each person and a documented decision made with the clients for an overall attitude to investment risk;

(c) make a documented assessment of the affordability of the funds to be invested by the client and of the client’s capacity for loss; and
(d) maintain evidence on each client’s file of product research carried out, including but not limited to quotations, illustrations and comparisons unless the licensee maintains a Board or committee approved “white list”.

3. Product research and recommendation

3.1. A financial adviser shall:

(a) not advise a client to convert, allow to lapse, cancel or surrender any product unless he can demonstrate the action to be in the best interests of the client. If such action is advised then the reasoning should be fully documented in the written advice provided to the client;

(b) not make comparisons with any other types of investments unless he clarifies the differing characteristics of each investment;

(c) not make inaccurate or unfair criticisms of any financial institution;

(d) not withhold any written evidence or documentation relating to the product from the client;

(e) if using illustrations, projections and forecasts supplied by a provider, ensure that the client is provided with all relevant documentation that has been supplied;

(f) ensure that all illustrations, projections and forecasts are relevant to the specific country where the client is resident and if they are not, explain the differences; and

(g) use his judgement objectively in the best interests of his clients where a choice of provider is available to the financial adviser;

3.2. Prior to the inception (or any other material change to a controlled investment or including cancellation) of a controlled investment, and in order to assist the client in making an informed decision, a financial adviser shall provide the client with written advice, which must include as a minimum:

(a) a recommendation setting out in plain language what product is being recommended, how it meets the client’s needs, wishes and financial position and why it is favourable over any other products considered;

(b) the principal terms of any product recommended by him;

(c) an explanation of the key risks associated with the product being recommended. It is not sufficient to rely on provider literature for this purpose;

(d) in the case of products where the investment return is not guaranteed, explain that it is not guaranteed. Where a product purports to be guaranteed, explain any conditions or limitations applying to the guarantee;
(e) an explanation, where applicable, of the different surrender values that may be available over the term of the controlled investment including a warning that surrender practice may vary from time to time;

(f) warnings of the possible penalties of early surrender, whether at the choice of the client or through their death. Where a terminal bonus may be payable, emphasise that the product will normally have to run its full term before the bonus becomes payable;

(g) details of any cooling off period relating to the particular product being recommended and an explanation that there will be an opportunity for the client to cancel or withdraw from the contract and set out the period during which he will be able to exercise this option. Any shortfall provisions should also be explained at this time;

(h) disclosure to the client of the extent of research carried out, including the names of the providers and products considered;

(i) full and frank disclosure of any matter which may affect the client’s decisions;

(j) an explanation to the client of the amount of remuneration that the licensee will receive as a result of the sale or variation of each product recommended, and an explanation of any and all charges (including bid-offer spread charges and cancellation charges) that will or may be incurred both at inception and the ongoing charges during the life of the product. If the amounts are not known, then the basis of calculation shall be provided;

(k) where applicable, explain that deductions are made to cover the cost of life cover, commission, expenses, surrender penalties and other charges; and

3.3. A financial adviser may issue written advice post inception provided:

(a) the financial adviser has provided the client with the information required in section 3.2 verbally;

(b) not doing so would mean the financial adviser being unable to meet his duty to provide best execution under section 5.3.3 of the Licensees Rules;

(c) the written advice is provided to the client as soon as practicable and in sufficient time to make use of any cancellation period that may be available to him.

3.4. After providing a client with a written recommendation, a financial adviser shall:

(a) afford the client reasonable time to consider the written advice prior to the client making a decision to accept the recommendation, unless the written advice has been provided post inception in accordance with section 3.3;
(b) ensure as far as possible that when a client is completing an application form or any other document, that all material facts are accurately and properly disclosed, making it clear to the client that all answers or statements are the client’s own responsibility. If the financial adviser completes the proposal form on behalf of the client then the client must be asked to check the details before signing the form and be provided adequate opportunity to do so; and

(c) inform the client of the name of each provider with whom a contract is placed. This information shall be given whenever possible prior to the inception of the product and any changes thereafter shall be advised at the earliest opportunity to the client.

4. Post inception principles

4.1. Following the inception of a controlled investment, the financial adviser shall as soon as reasonably practicable:

(a) ensure that any confirmation of investment, certificates or evidence of cover and the basis of payments are provided to the client at inception and again on any renewal or as soon as is reasonably practicable; and

(b) have proper regard for the wishes of a client who seeks to terminate any agreement.

5. Breaches

5.1. If a financial adviser breaches any part of the terms herein he must immediately inform the licensee by whom he is employed.