GUIDANCE NOTE

Independence of Managers and Trustees of Class A Collective Investment Schemes

1. Rule 7.17(1) of the Collective Investment Schemes (Class A) Rules 2002 provides that

"(a) The manager and the trustee of an authorised scheme shall :-

(i) be different persons and act independently of each other;
(ii) each be licensed under the Law and administered, and have a place of business, in Guernsey;
(iii) not be a subsidiary of the other; and
(iv) not have directors or other officers in common.

(b) In the case of a company scheme, the trustee shall not have directors or other officers in common with those of the company .

(c) The Commission shall be entitled to require such undertakings, bonds guarantees and assurances as the Commission may determine to secure compliance with paragraph (1)(a) and (b) of this rule."

Rule 4.06(1) of the Collective Investment Schemes Rules 1988 makes provisions to similar effect.

2. This guidance note sets out the policy the Commission has adopted in determining whether it regards managers and trustees as meeting these independence criteria as far as funds authorised under either the 1988 or the 2002 Rules are concerned. The term "manager" is taken by the Commission to include both principal and designated manager. This guidance addresses the issue of independence between manager (both principal and designated) and trustee; its provisions do not require independence between principal and designated manager.

3. Independence between manager and trustee can be influenced by a number of factors. These include :-

directors and officers in common;

cross shareholdings;

contractual arrangements.

4. **Directors in common:** independence can be compromised if either company can control the actions of the other by means of executive power. The Rules preclude directors and officers of the manager from holding similar posts with the trustee and *vice versa.* They also provide that the trustee may

not have officers in common with a fund which is a body corporate. The concept of "directors in common" would extend to directors and officers of companies associated with manager or trustee who were simultaneously directors of trustee or manager.

5. The Commission will not accept arrangements under which one board obtains *de facto* as opposed to *de jure* control over the other. Such arrangements could include, for example, quorum provisions, or reservation of decision-making powers to specified directors, which could have (even exceptionally) the result of preventing one board from acting independently of the other.

6. **Cross-shareholdings:** independence could be curtailed if either company can control the other through the exercise of shareholder votes. The Commission will normally regard any arrangement in which the manager controls 15% or more of the trustee's voting share capital (or *vice versa*) as failing to provide the independence intended by the Rule. In determining whether or not the 15% test was met, any shareholding in the trustee by an associate of the manager, or in the manager by any associate of the trustee, would be aggregated respectively with any direct shareholding in the trustee by the manager or in the manager by the trustee. The Commission would be prepared to consider, on a case by case basis, arrangements where cross-shareholding exceeded 15% to see whether, exceptionally, there were grounds for concluding that independence was properly and effectively safeguarded by other means.

7. **Contractual arrangements:** other arrangements may compromise independence. These could include, for example, arrangements for the trustee or an associate of the trustee to receive fees for fund promotion, or agreements under which the manager arranges, or commits to arrange, a significant level of dealing in fund property through a broker-dealer associated with the trustee. These examples are not exhaustive and the Commission must be consulted in advance on any commitment which could have consequences for the actual or perceived independence of manager and trustee.

8. **"Associate"** and **"director"** have the meanings assigned to them in rule 1.02 of the Licensees (Financial Resources, Notification, Conduct of Business and Compliance) Rules 1998.