



CONSULTATION PAPER

THE PROTECTION OF INVESTORS (BAILIWICK OF GUERNSEY) LAW, 1987 AS AMENDED DRAFT CODE OF MARKET CONDUCT

Background

The Protection of Investors (Bailiwick of Guernsey)(Amendment) Law, 2003 (“the Amendment Law”) introduced the criminal offence of market abuse. A conformed copy of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 as amended (“the POI Law”) can be viewed in the Investment section of the Commission’s website, www.gfsc.gg, [here](#).

Section 41B(1) of the Amendment Law states that the Commission may prepare and issue a code containing such provisions as the Commission considers will give appropriate guidance to those determining whether or not behaviour amounts to market abuse.

The Commission considers that it is appropriate that such a code be issued and, in accordance with Section 41D(1) of the POI Law a draft Code of Market Conduct has been prepared to take account of the provisions of the Law and a copy of the draft code is [available here](#).

As the provisions of the Amendment Law relating to market abuse closely follow the equivalent provisions in the UK’s Financial Services and Markets Act 2000 it was considered appropriate that the draft code should reflect the UK approach to the subject.

Legal Provisions in respect of issuing the Code

Section 41D(1) of the Amendment Law requires that the Commission publishes a draft version of the proposed code and issues a notice that this has occurred in La Gazette Officielle. The Amendment Law allows that representations about the proposal may be made to the Commission within a period of not less than 28 days immediately after the date of publication of the notice. In the Commission’s opinion, the importance of the subject matter means that a longer period of consultation is appropriate and accordingly a period of approximately two months has been set.

Before issuing the proposed code the Commission shall have regard to any representations made to it in accordance with the provisions of the Amendment Law.

Following the receipt of representations about the proposal the Commission is obliged to publish an account, in general terms, of the representations made and its response to them as well as highlighting any amendments made to the draft code.

Section 41D(7) of the Amendment Law allows the Commission to charge a reasonable fee for providing a person with a copy of the draft code. However, no such fee will be charged.

Specific Issues arising from the draft Code upon which the Commission is seeking comment.

1. As noted above under “Background” the provisions of the Amendment Law relating to market abuse closely follow the equivalent provisions in the UK’s Financial Services and Markets Act 2000; accordingly it was considered appropriate that the draft code should reflect the UK Financial Services Authority’s approach to the subject.

Question 1: *Should the proposed Code reflect the approach taken by the UK’s Financial Services Authority?*

2. Section 41A(3) of the Amendment Law states:

“The Policy Council may by regulations prescribe (whether by name or by description)-

- (a) the markets to which this section applies; and
- (b) the investments which are qualifying investments in relation to those markets”.

Section 1.7 of the draft Code covers the question “Where does the Code apply?” whilst Section 10.2 of the draft Code refers to the prescription of markets and qualifying investments. The proposals are as follows:

The prescribed markets are those markets specified in the Orders made under 9(1) of the Company Securities (Insider Dealing) (Bailiwick of Guernsey) Law, 1996.

The qualifying investments are those investments that fall within the scope of the definition of Controlled Investment set out in Schedule 1 to the Protection of Investors (Bailiwick of Guernsey) Law, 1987 as amended. For the avoidance of doubt, such qualifying investments include Category 1 controlled investments; that is open-ended collective investments schemes and Category 2 controlled investments, that is general securities and derivatives.

In the case of prescribed markets, it was considered appropriate that the list of markets should follow that set out in the Insider Dealing legislation due to the similarities between the issues covered by the two sets of legislation, and the desire to keep matters simple by using one list for more than one piece of legislation.

Question 2: *Should the list of prescribed markets follow that established by another piece of legislation, in this case Guernsey's insider dealing law, or should a stand-alone list of markets be issued solely for the purposes of this Code?*

Question 3: *Is it appropriate that the qualifying investments are those as proposed or should other investments be included?*

3. Section 41C(1) of the Amendment Law states that the Commission may include in a code of market conduct provision to the effect that in its (that is the Commission's) opinion behaviour conforming with the City Code or with any other code or guidance issued in relation to takeovers and mergers issued in any other jurisdiction does not amount to market abuse (in specific cases).

The Amendment Law goes on to say that if the code of market conduct includes provision as referred to above then the Commission shall keep itself informed of the way in which the relevant provisions of the City Code (or relevant codes or guidance issued in another jurisdiction) is interpreted and administered.

The draft Code includes provision for the Commission to consider relevant provisions of the City Code (or relevant codes and guidance issued in other jurisdictions) when considering whether certain behaviour amounts to market abuse. The proposed approach is considered appropriate in light of the way in which different markets operate and the fact that domestic bodies will be best placed to offer guidance on issues affecting the markets in that jurisdiction.

Question 4: *Is it appropriate that the Code should include provision that the Commission considers the approach taken by other bodies when considering whether certain behaviour amounts to market abuse?*

Comments on these and any other issues relating to the draft Code should be sent, to arrive by no later than Friday 29 April 2005, to

Carl Rosumek
Deputy Director of Investment Business
Guernsey Financial Services Commission
La Plaiderie Chambers
La Plaiderie
St Peter Port
Guernsey, GY1 3HQ

or by e-mail to:

crosumek@gfsc.gg

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