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Director of Investment Business

TO: POI LICENSEES, ADVOCATES, AUDITORS

FROM: DIRECTOR OF INVESTMENT BUSINESS

DATE: 3 APRIL 2001

**SUBJECT: PROTECTION OF INVESTORS (BAILIWICK OF GUERNSEY) LAW 1987
PROMOTIONAL ACTIVITIES – POLICY GUIDANCE**

1. Under the Protection of Investors (Bailiwick of Guernsey) Law, 1987, (“the POI Law”), **promotion of investment products and services** is a restricted activity, which requires a licence. The POI Law defines promotion as :-
 - a) advertising;
 - b) issuing a prospectus, application form or proposal form;
 - c) circulating or making available promotional material.
2. It is apparent that overseas promoters regularly visit the Bailiwick for the purpose of marketing investment products and services, and are often doing so without a licence. The Commission has no wish unnecessarily to restrict the range of investment vehicles and services available to Guernsey investors, and is aware that contact with overseas promoters can provide useful information. The Commission is mindful, however, that its primary role in relation to the POI Law is that of investor protection. The following statement is therefore issued for the guidance of promoters.

Overseas Funds

3. Promotion of certain categories of open-ended fund is exempted from the licensing requirements of the POI Law.
4. The Investor Protection (Designated Countries and Territories) Regulations 1989 and 1992 permit promotion in the Bailiwick of Guernsey of :-

UK	authorised collective investment schemes;
Jersey	recognised funds;
Isle of Man	authorised collective investment schemes; and
Republic of Ireland	authorised UCITS funds.

In addition, bilateral agreements providing for mutual recognition of funds have been reached with certain other jurisdictions.

5. These arrangements do **not** constitute an automatic right to promote into Guernsey. Just as Guernsey-authorized Class A schemes may be promoted into other jurisdictions provided the host country regulators have been notified of the intention to promote and any applicable registration fee has been paid, so authorized schemes from jurisdictions such as those listed above may be promoted in Guernsey only if they have been registered with the Commission and, where applicable, the fee paid. Promotion of unregistered funds constitutes an unlicensed promotion, with the consequences set out in paragraph 9 below. **A listing on the Channel Islands Stock Exchange does not constitute registration with the Commission for this purpose.**

UK Public Offers

6. In November 2000, the Commission issued guidance on the circulation in Guernsey of UK Public Offers. That guidance, with minor clarifications, is reissued herewith.

Promotion to licensed institutions

7. Promotion of investment products and services **other than those referred to in paragraphs 4, 5 and 6**, will not be regarded as an activity requiring a licence under the POI Law provided that the promoters have taken – and can demonstrate that they have taken – steps to ensure that any such promotion will be directed only to those holding a licence under the POI Law, the Banking Law, and the Insurance Law, and to prospective licensees under the Fiduciaries Law. In these circumstances promotional material must make it clear that it is not for distribution to private investors, and invitations to promotional seminars must not be directed to private investors.

Promotion to private investors

8. Promotion to private investors remains an activity requiring a licence under the POI Law although, as already noted, there are exceptions for certain categories of fund and for certain types of prospectus. Overseas promoters whose products do not fall within the exceptions and who wish to sell direct to Guernsey investors will need either to be licensed themselves or to arrange that their promotion is conducted under the auspices of a Guernsey entity already holding the appropriate category of POI licence.

Consequences of unlicensed promotion

9. The Commission would remind the investment community that, in addition to the direct penalties for unlicensed promotion set out in the POI Law, any contract with an investor which is agreed in contravention of the Law is unenforceable and the investor is entitled to a return of any subscription monies paid.