



# **THE REGISTERED COLLECTIVE INVESTMENT SCHEME RULES 200[\*]**

# **THE GUERNSEY FINANCIAL SERVICES COMMISSION**

## **THE REGISTERED COLLECTIVE INVESTMENT SCHEME RULES 200[\*]**

### **GUIDANCE NOTES**

These Guidance Notes are intended to aid the understanding of the Commission’s policy and practice and should be read in conjunction with the Registered Collective Investment Scheme Rules 200[\*] (“the Registered CIS Rules”).

1. The Registered Collective Investment Scheme Rules seek to provide a clear and concise set of requirements for Registered Open-ended and Registered Closed-ended Collective Investment Schemes. Registered collective investment schemes are not regulated and therefore are not subject to ongoing supervision by the Commission.
2. The following summarises the key features of the Registered CIS Rules -
  - (a) Each scheme must be registered under the Law with the Commission.
  - (b) Registered collective investment schemes may be established as companies (including protected cell and incorporated cell companies), unit trusts or limited partnerships.
  - (c) The property of the scheme must be subject to a spread of risk which will be at the discretion of the manager and, as disclosed in the information particulars, in the case of a company, the company and, in the case of a unit trust, the Trustee. The criteria for spread of risk must be specified in the scheme’s information particulars.
  - (d) The Prospectus Rules 200[\*] make provision for disclosures which must be made to investors in the registered collective investment scheme’s information particulars.

- (e) Provisions regarding both immediate and periodic notifications that are to be made to the Commission regarding changes to the registered collective investment scheme, financial statements and statistical information are also included within the Registered CIS Rules.
  - (f) Registered collective investment schemes must not be offered directly to the public in Guernsey.
3. In the case of a Registered Open-ended investment scheme, a Designated Manager and a Designated Trustee or Designated Custodian licensed under the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended and domiciled in Guernsey must be appointed.

In the case of a Registered Closed-ended investment scheme, a Designated Manager licensed under the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended and domiciled in Guernsey must be appointed. The Commission is willing to consider the appointment of a Custodian/Trustee that is domiciled outside Guernsey for a Registered Closed-ended collective investment scheme.

4. The Commission's existing policy of selectivity will continue in respect of all Guernsey registered investment schemes.
5. As with all other types of investment business, the Commission is always prepared to meet managers, potential promoters or their professional advisers in order to discuss matters of policy and practice regarding the disclosure requirements as set out in these rules.

Enquiries should be directed to the Director or Deputy Director of Investment Business.

# REGISTERED COLLECTIVE INVESTMENT SCHEME RULES 200[\*]

## CONTENTS

	<b>PART 1 – INTRODUCTION</b>	<b>6-12</b>
1.01	Citation and commencement	6
1.02	Interpretation	6-12
1.03	Umbrella funds	12
	<b>PART 2 – APPLICATION OF RULES</b>	<b>12</b>
2.01	Application of rules	12
	<b>PART 3 – ADMINISTRATION AND CUSTODY</b>	<b>12-14</b>
3.01	Administration of the scheme	12-13
3.02	Custody of the scheme property	13-14
3.03	General provisions applicable to the designated manager and designated custodian or designated trustee of a registered open-ended investment scheme and designated manager of a closed-ended investment scheme	14
	<b>PART 4 – CONFLICTS OF INTEREST</b>	<b>15-18</b>
4.01	Conflicts of interest	15-18
	<b>PART 5 – INFORMATION PARTICULARS</b>	<b>18-19</b>
5.01	Preparation of information particulars	18
5.02	Statements to be included in the information particulars	18-19
5.03	False or misleading information particulars	19
	<b>PART 6 – NOTIFICATIONS</b>	<b>20-21</b>
6.01	Immediate notifications	20
6.02	Annual notification	20
6.03	Annual reports and financial statements	21
6.04	Quarter-end statistical information	21
	<b>PART 7 – REGISTRATION OF OPEN-ENDED OR CLOSED-ENDED INVESTMENT SCHEMES</b>	<b>21-24</b>
7.01	Application for registration of an open-ended investment scheme or a closed-ended investment scheme	21-22

7.02	Registration declarations	22
7.03	Proposal to add additional classes, sub-funds or cells to a registered investment scheme	22-23
7.04	Derogations	23
7.05	Undertakings	24

The Guernsey Financial Services Commission (“the Commission”), in exercise of the powers conferred on it by sections 12, 14, 16 and 18 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 as amended (“the Law”) hereby makes the following rules:-

## **PART 1 – INTRODUCTION**

### **1.01 Citation and commencement**

These rules, which may be cited as the Registered Collective Investment Scheme Rules 200[\*] (“the Registered CIS Rules”), are made on [●] [●] 200[\*].

### **1.02 Interpretation**

- (1) Unless the context otherwise requires, in these Registered CIS 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:

**“administration agreement”** means an agreement under which a person is appointed designated manager of a registered investment scheme to discharge the duties of the administration of the scheme and shall include any agreement whereby the designated manager has delegated the performance of some or all of its duties;

**“annual accounting period”** is the period of 12 months between dates specified for that purpose or ending on a particular day in any calendar year specified in the information particulars or principal documents;

**“annual notification”** means the notification to be submitted to the Commission in accordance with Rule 6.02;

**“approved bank”** means a person who is registered under the Banking Supervision (Bailiwick of Guernsey) Law, 1994 or under the Depositors and Investors (Prevention of Fraud) (Jersey) Law 1967 or is authorised to carry on a deposit-taking business under the United Kingdom Banking Act 1987 or under the law of any other jurisdiction as may be approved by the Commission;

**“closed-ended investment scheme”** means a collective investment scheme under which the investors are not entitled under the terms of the scheme:

- (a) to have their units redeemed or repurchased by, or out of funds provided by, the scheme, or
- (b) to sell their units on an investment exchange,

at a price related to the value of the property to which they relate;

**“collective investment scheme” or “investment scheme”** means any arrangement such as is identified as described in paragraph 1 of Schedule 1 of *the Law*;

**“company”** means any body corporate (whether or not incorporated, and whenever incorporated or constituted) which is not a public sector body;

**“custodian agreement”** means an agreement under which a body corporate is appointed to hold the property of a collective investment scheme (other than a unit trust) and to discharge the duties imposed by these rules on the custodian;

**“designated custodian”** in relation to a registered investment scheme other than a unit trust, means the custodian of the scheme;

**“designated manager”** in relation to a registered investment scheme, means the person appointed to discharge the duties contemplated by an administration agreement; this shall include any agreement whereby the administrator has delegated the performance of some or all of its functions. In such case the designated manager remains responsible;

**“designated trustee”** or **“trustee”** in relation to a registered investment scheme that is a unit trust, means the trustee of the unit trust;

**“general partner”** means a person who is so appointed under a partnership agreement and who has unlimited liability for all debts of the partnership;

**“holder”** in relation to a share in a registered investment scheme, means the person who is entered in the register as the holder of the share or the first named holder in the case of joint holders;

**“information particulars”** means particulars of a registered investment scheme prepared in accordance with Part 5 and includes a prospectus, scheme particulars, offering memorandum, explanatory memorandum, term sheet, application form, subscription agreement or any other similar documents or any combination of the foregoing;

**“investment adviser”** means a person who, under a commercial arrangement not being a mere contract of employment, provides the manager or the board of directors of a registered investment scheme with advice as to the merits of investment opportunities available to such registered investment scheme whether or not he regularly exercises a discretionary power over investments for the account of that scheme;

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



**“limited partnership”** means a partnership, wherever domiciled, which is for the time being registered as a limited partnership in accordance with the relevant legislation.

**“manager”** means the person appointed manager of a registered investment scheme to discharge the duties under a management agreement;

**“management agreement”** means an agreement under which a person is appointed manager of a registered investment scheme other than a unit trust or limited partnership to discharge the duties and shall include any agreement whereby the manager has delegated the performance of some or all of its functions;

**“open-ended investment scheme”** means a collective investment scheme under which the investors are entitled under the terms of the scheme:

- (a) to have their units redeemed or repurchased by, or out of funds provided by, the scheme, or
- (b) to sell their units on an investment exchange,

at a price related to the value of the property to which they relate;

**“partnership administration agreement”** means an agreement under which an administrator is appointed administrator of a registered investment scheme that is a limited partnership and includes any agreement whereby the administrator has delegated the performance of some or all of its functions;

**“partnership agreement”** means an agreement in writing of the partners as to the affairs of a limited partnership and the conduct of its business;

**“principal documents”** in relation to:

- (a) a unit trust, means the trust instrument;
- (b) a company, means the articles of incorporation of a Guernsey company (or an equivalent document under the applicable law of a non-Guernsey body corporate), the administration agreement and the custodian agreement (if applicable);
- (c) a limited partnership, means the partnership agreement, the partnership administration agreement and the custodian agreement;
- (d) a registered investment scheme other than a unit trust, a company or a limited partnership means the documents dealing collectively with the same or similar obligations and duties as the principal documents constituting a unit trust, a company or a limited partnership;

**“public”** for the purposes of the Registered CIS Rules means any person not regulated under any of Guernsey’s financial services regulatory laws;

**“registered investment scheme”** means a collective investment scheme declared in a registration issued by the Commission under section 8 to be a registered collective investment scheme for the purposes of the Law, and **“registration”** and related expressions shall be construed accordingly;

**“share”** means a share or unit or similar interest in a registered investment scheme;

**“scheme property”** means the property of a registered investment scheme but there shall be disregarded any property attributable to management securities, if any;

**“trust instrument”** means a written instrument, whether or not under seal, constituting the unit trust and includes supplemental instruments;

**“umbrella fund”** means a registered investment scheme which provides that the contributions of investors and the profits or income out of which payments are to be made to them are pooled in separate parts of the property and that investors in each separate part may exchange rights in one part for rights in another;

**“unit trust”** means a registered investment scheme (other than a limited partnership) under which the property of the scheme is held in trust for the investors.

- (2) The Interpretation (Guernsey) Law, 1948 applies to the interpretation of these Rules.

### 1.03 **Umbrella funds**

The following rules shall apply in the case of an umbrella fund as if each reference to a registered investment scheme were a reference to each constituent part within the umbrella fund but subject to any modification set out in any particular rule.

## **PART 2 – APPLICATION OF RULES**

### **2.01 Application of rules**

Unless specifically agreed otherwise by the Commission, all of the Registered CIS Rules apply to:

- (a) Registered Open-ended collective investment schemes; and
- (b) Registered Closed-ended collective investment schemes.

## **PART 3 – ADMINISTRATION AND CUSTODY**

### **3.01 Administration of the scheme**

- (1) It is the duty of the designated manager of a registered investment scheme, to administer the scheme in accordance with:
  - (a) the principal documents; and
  - (b) these rules; and
  - (c) the most recently published information particulars; and
  - (d) in the case of a company, subject to any directions from time to time given by the directors.
- (2) In the case of a company, it is the duty of the directors not to give any directions or exercise any powers, duties or discretions which would or might cause the company to operate otherwise than in accordance with the principal documents and information particulars or these rules.

- (3) The designated manager may at its discretion delegate any function to any person provided that the designated manager is satisfied at the outset, and continues to remain satisfied, that the delegate is competent to undertake the function in question. Any such arrangement must be done in accordance with the Commission's Guidance on Outsourcing.

### 3.02 **Custody of the scheme property**

- (1) The designated manager and the designated custodian or designated trustee of a registered open-ended investment scheme shall:
  - (a) be different persons and act independently of each other;
  - (b) each be incorporated, administered, and have a place of business, in Guernsey;
  - (c) each be licensed under the Law;
  - (d) not be a subsidiary of the other; and
  - (e) not have executive directors or other officers in common.
- (2) In the case of a registered investment scheme that is a company, the designated custodian shall not have executive directors or other officers in common with those of the registered investment scheme.
- (3) The designated custodian or designated trustee of a registered open-ended investment scheme shall take into its custody or under its control all the scheme property and hold it in trust in accordance with the information particulars.

- (4) It is the duty of the designated custodian or designated trustee of a registered open-ended investment scheme to take reasonable care to ensure that the scheme property is managed by the designated manager in accordance with the information particulars.
  
- (5) Upon full disclosure of the provisions that are in place to ensure the assets of the scheme are adequately safeguarded, the Commission will give consideration to the appointment of a custodian or trustee that is not domiciled in Guernsey for a registered closed-ended investment scheme. Full details of the custodian or the trustee shall be disclosed to the Commission upon application for the scheme to be registered under the Law. In the absence of a custodian, the Commission shall be advised of the relevant provisions that will apply in respect of the scheme property. This shall be done upon application for the scheme to be registered under the Law.

**3.03 General provisions applicable to the designated manager and designated custodian or designated trustee of a registered open-ended investment scheme and designated manager of a closed-ended investment scheme**

The duties of the designated manager and designated custodian or designated trustee and, if applicable, in the case of a company, the directors and, in the case of a limited partnership, the general partner and, in the case of a unit trust, the trustee imposed on them by these rules and by the principal documents and the information particulars are in addition to and not in derogation from the duties which are otherwise imposed on them by applicable law.

## PART 4 – CONFLICTS OF INTEREST

### Conflicts of interest

- 4.01 (1) In the case of a company, the directors and, in the case of a limited partnership, the general partner and, in the case of a unit trust, the trustee must each take all reasonable steps to ensure that there is no breach of any of the following requirements of this rule by any “relevant person”, meaning:
- (a) the designated manager;
  - (b) in the case of a unit trust, the trustee;
  - (c) any investment adviser;
  - (d) in the case of a company, the company;
  - (e) in the case of a company, a director of the company;
  - (f) the custodian; and
  - (g) any associate of any person described above.
- (2) Cash forming part of the scheme property may be placed in any current, deposit or loan account with a relevant person only if it is an approved bank and the arm’s length requirement in paragraph (9) is satisfied.
- (3) A relevant person may lend money to the registered investment scheme only if it is an approved bank and the arm’s length requirement in paragraph (9) is satisfied.
- (4) A relevant person may not sell or deal in the sale of property to the registered investment scheme unless the arm’s length requirement in paragraph (9) is satisfied and, for the purpose of this paragraph, a sale shall

include any lease or other transaction under which scheme property is made available by the registered investment scheme.

- (5) A relevant person may not vest property in the registered investment scheme against the issue of shares, unless:
  - (a) the arm's length requirement in paragraph (9) is satisfied; or
  - (b) it is vested for the purpose of arrangements whereby the whole or part of such property becomes the initial scheme property of the registered investment scheme.
- (6) A relevant person may not purchase scheme property from a registered investment scheme unless the arm's length requirement in paragraph (9) is satisfied and, for the purpose of this paragraph, a purchase shall include any lease or other transaction under which the scheme property of the registered investment scheme is made available to the relevant person by the trustee/custodian.
- (7) A relevant person may not enter into stock lending transactions in relation to the registered investment scheme unless the arm's length requirement in paragraph (9) is satisfied.
- (8) A relevant person within paragraph (1)(a), (1)(c), or (1)(e) above may not provide services for the registered investment scheme unless the services are provided on terms which satisfy the arm's length requirement in paragraph (9).
- (9) The arm's length requirement is that the arrangements between the relevant person and the registered investment scheme are at least as favourable to the registered investment scheme as would be any comparable arrangement



effected on normal commercial terms negotiated at arm's length between the relevant person and an independent party.

(10) The arm's length requirement set out in sub-paragraph (9) shall be deemed to be satisfied where the transaction with the relevant party satisfies any of the criteria set out in sub-paragraphs (11) or (12).

(11) The transaction satisfies the criteria for best execution on-exchange if:

- (a) the property is an approved security or an approved derivative; and
- (b) the transaction is effected with or through a member of the relevant exchange under the rules of that exchange; or
- (c) there is evidence in writing of the effecting of the transaction and of its terms; and
- (d) the manager has taken all reasonable steps to effect the transaction or to ensure that it is effected on the terms which are the best available for the registered scheme in the circumstances.

(12) The transaction satisfies the criteria for independent valuation if:

- (a) the value of the property is certified in writing for the purpose of the transaction by a person selected or approved by the directors in the case of a company or, in the case of a limited partnership, the general partner or, in the case of a unit trust, the manager or trustee as:
  - (i) independent of any relevant person; and
  - (ii) qualified to value property of the relevant kind; and
- (b) the directors are of the opinion that the terms of the transaction are not likely to result in any material prejudice to holders.

- (13) Paragraphs (2) to (7) are subject to any provision in the principal documents or the information particulars forbidding the taking of advantage of all or any of them.

## **PART 5 – INFORMATION PARTICULARS**

### **5.01 Preparation of information particulars**

- (1) In connection with the launch of a registered investment scheme, the designated manager or, in the case of a company, the directors or, in the case of a limited partnership, the general partner or, in the case of a unit trust, the manager or trustee shall prepare information particulars which shall at least contain the matters set out in the Prospectus Rules 200[\*].
- (2) In the case of a registered open-ended investment scheme, the information particulars shall be revised to reflect any significant change which occurs in the matter stated therein, and such revision may take the form of a complete substitution for the previous document or of a supplement to that document.
- (3) A copy of the revised information particulars must be sent to the Commission with the annual notification.
- (4) Changes in the contents of information particulars must be notified to holders either immediately or in the subsequent annual report.

### **5.02 Statements to be included in the information particulars**

The information particulars must include the following statements:-

“The Company is a Registered Closed-[Open-]ended Investment Fund registered pursuant to the Registered Collective Investment Scheme Rules 2008 issued by

the Guernsey Financial Services Commission (the “Commission”). The Commission in granting registration has relied upon specific warranties provided by [ ● ], the Company’s administrator.”

“Under the Registered Collective Investment Scheme Rules 2008, the Guernsey Financial Services Commission has not reviewed this [document].”

“The Guernsey Financial Services Commission takes no responsibility for the financial soundness of the Fund or for the correctness of any of the statements made or opinions expressed with regard to it.”

“A registered collective investment scheme is not permitted to be offered to the public in Guernsey”

### 5.03 **False or misleading information particulars**

In the case of a company, the directors or, in the case of a limited partnership, the general partner or, in the case of a unit trust, the manager or trustee of a registered investment scheme is/are to be treated as responsible for the information particulars and shall take all reasonable steps to ensure that they do not contain any untrue or misleading statements.

## **PART 6 – NOTIFICATIONS**

### **6.01 Immediate notifications**

The designated manager of a registered investment scheme must give written notice forthwith to the Commission in respect of the following:-

- (1) Any proposed change of:
  - (a) designated manager; or
  - (b) designated custodian or designated trustee (in the case of a registered open-ended investment scheme).
- (2) Any proposal to reconstruct, amalgamate, terminate prematurely, wind-up or extend the life of the registered investment scheme.

### **6.02 Annual notification**

- (1) A designated manager of a registered investment scheme must notify the Commission in writing each year of any change in respect of the information contained in the application form submitted for registration as a registered investment scheme or, in the absence of any change, notify the Commission by way of confirmation of no change.
- (2) The first such notification must be submitted to the Commission within 12 months of the date on which a declaration of registration was issued and thereafter at intervals of not more than 12 months.

### **6.03 Annual reports and financial statements**

The designated manager of a registered investment scheme must submit to the Commission copies of the annual report and accounts for the scheme in line with the information particulars, no later than six months following the end of the annual accounting period. At such time as the annual report and accounts are sent to the Commission any principal documents or other agreements which have been amended and not previously submitted to the Commission must be submitted.

### **6.04 Quarter-end statistical information**

The designated manager of a registered investment scheme must submit to the Commission a statistical return relevant to the scheme for each quarter. The information to be contained in such statistical return is as required by the Commission from time to time and must be within the Commission's agreed timeframes.

## **PART 7 – REGISTRATION OF OPEN-ENDED OR CLOSED-ENDED INVESTMENT SCHEMES**

### **7.01 Application for registration of an open-ended investment scheme or a closed-ended investment scheme**

The designated manager of an open-ended investment scheme or a closed-ended investment scheme seeking a declaration of registration from the Commission shall submit the appropriate application form to the Commission and shall also provide:

- (a) signed or certified copies of the principal documents, information particulars and other agreements material to the scheme; and

- (b) the application fee as prescribed from time to time by Regulations made under Section 22 of the Law; and
- (c) such other information as the Commission may require.

#### 7.02 **Registration declarations**

- (1) The Commission may grant registration to an open-ended investment scheme or a closed-ended investment scheme that complies with 7.01(a) and (c) by declaration, if it is satisfied:
  - (a) that the scheme's principal documents and information particulars appear to the Commission to comply with all of the Prospectus Rules 200[\*] relating to their contents; or
  - (b) that it is unnecessary in the interests of investors for the scheme's principal documents and/or information particulars to comply with any of the Prospectus Rules relating to their contents with which they do not comply.
- (2) A declaration granted in the circumstances set out in sub-paragraph (1)(b) shall specify the rules with which the registered investment scheme's principal documents and/or information particulars do not comply.

#### 7.03 **Proposal to add additional classes, sub-funds or cells to a registered investment scheme**

- (1) The designated manager of a registered investment scheme shall give prior written notice to the Commission of any proposal to add additional classes, sub-funds or cells to a registered investment scheme together with:

- (a) signed or certified copies of any amended or additional, information particulars, principal documents or other agreements material to the addition of the class, sub-fund or cell;
  - (b) the application fee as prescribed from time to time by Regulations made under Section 22 of the Law; and
  - (c) such other information as the Commission may require.
- (2) No effect shall be given to the proposal in (1) above unless:
- (a) the Commission has given its approval to the proposal; or
  - (b) One month has elapsed since the notice was given without the Commission having notified the person serving the notice that the proposal is not approved.

#### 7.04 **Derogations**

- (1) The Commission may, by notice in writing to the designated manager of a registered investment scheme, exclude or modify the application of any provision of those rules in relation to that scheme if the Commission is satisfied that compliance with that provision is not necessary in the interests of investors.
- (2) An exclusion or modification under paragraph (1) may be in such terms (as to notification of investors, revision of information particulars or otherwise) as the Commission may specify.

#### 7.05 **Undertakings**

As a condition of the registration of a scheme as a registered investment scheme, the Commission shall be entitled to require such undertakings, indemnities, bonds, guarantees and assurances as the Commission may determine to secure compliance with these rules.