



# **THE AUTHORISED CLOSED-ENDED INVESTMENT SCHEMES RULES 2008**

**THE GUERNSEY FINANCIAL SERVICES COMMISSION**

**THE AUTHORISED CLOSED-ENDED INVESTMENT  
SCHEMES RULES 2008 (“Authorised Closed-ended Rules”)**

**GUIDANCE NOTES**

These Guidance Notes, which are intended to assist existing and potential promoters and managers of Authorised Closed-ended investment schemes with an understanding of the Commission’s policy and practice and should be read in conjunction with the Authorised Closed-ended Rules.

1. The Law has been amended to include closed-ended investment schemes and as such closed – ended investment schemes will be declared as authorised or registered by the Commission under Section 8 of the Law. For the avoidance of doubt these rules will only cover those collective investment schemes authorised under the Law and does not extend to those registered under the Law.
2. Authorised Closed-ended investment schemes will be subject to continuing supervision by the Commission and this should enhance the ability of promoters to market Authorised Closed-ended investment schemes in other jurisdictions. The Authorised Closed-ended Rules seek to provide a clear and concise set of requirements for the disclosure of information to investors and matters requiring notification to the Commission regarding Authorised Closed-ended investment schemes.
3. The following summarises the key features of the Authorised Closed-ended Rules -
  - (a) Each scheme must be authorised under the Law and is subject to continuing supervision by the Commission.
  - (b) Authorised Closed-ended investment schemes may be established as companies (including protected cell and incorporated cell companies), unit trusts or limited partnerships or such vehicle or entity as may be approved by the Commission.
  - (c) The Authorised Closed-ended investment scheme must be established with the objective of spreading risk. The criteria for the spread of risk must be specified in the Authorised Closed-ended investment scheme’s information particulars.
  - (d) The Authorised Closed-ended Rules make provision for disclosures which must be made to investors in the Authorised Closed-ended 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 Authorised Closed-ended investment scheme, financial statements and statistical information are also included within the Authorised Closed-ended Rules.

4. In the case of Authorised Closed-ended investment schemes, the Commission is willing to consider the appointment of a Custodian/Trustee domiciled outside Guernsey. For the avoidance of doubt an Authorised Closed-ended investment scheme is not required to appoint a custodian.
5. The Commission's existing policy of selectivity will continue in respect of all Guernsey authorised collective investment schemes.
6. 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 Authorised Closed-ended investment schemes, whether authorised or proposed.

Enquiries should be directed to the Investment Business Division of the Commission.

# THE AUTHORISED CLOSED-ENDED INVESTMENT SCHEMES RULES 2008

## CONTENTS

	<b>PART 1 – INTRODUCTION</b>	<b>6-11</b>
1.01	Citation and commencement	6
1.02	Interpretation	6-11
1.03	Umbrella funds	11
	<b>PART 2 – ADMINISTRATION AND CUSTODY</b>	<b>11-12</b>
2.01	Administration of the scheme	11
2.02	Custody of scheme property	12
2.03	General provisions applicable to the designated manager	12
	<b>PART 3 – CONFLICTS OF INTEREST</b>	<b>12-14</b>
3.01	Conflicts of interest	12-14
	<b>PART 4 – CONTENTS OF INFORMATION PARTICULARS</b>	<b>15-18</b>
4.01	Preparation of information particulars	15
4.02	False or misleading information particulars	15
4.03	Contents of information particulars	15-18
	<b>PART 5 – NOTIFICATION</b>	<b>19-20</b>
5.01	Immediate Notifications	19-20
5.02	Annual audited reports and financial statements	20
5.03	Quarter-end statistical information	20
	<b>PART 6 – AUTHORISATION OF AUTHORISED CLOSED-ENDED INVESTMENT SCHEMES</b>	<b>21-22</b>
6.01	Application for authorisation of an Authorised Closed- ended investment scheme	21
6.02	Authorisation declarations	21
6.03	Derogations	21-22

**PART 7 – TRANSITIONAL PROVISIONS** **22-23**

7.01	Application	22
7.02	Continued authorisation of existing closed-ended collective investment schemes	22
7.03	Amendment of principal documents and information particulars	23

The Guernsey Financial Services Commission (“the Commission”), in exercise of the powers conferred on it by sections 12, 14, 15, 16, 18 and 20 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 Authorised Closed-ended investment schemes Rules 2008 (“the Authorised Closed-ended Rules”), with the exception of Part 7 (“Transitional provisions”) shall come into operation on the effective date 15 December 2008.

### **1.02 Interpretation**

- (1) Unless the context otherwise requires, in these Authorised Closed-ended 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 an Authorised Closed-ended investment scheme to discharge its duties.

**“annual accounting period”** is the period, normally of 12 months, as specified by the governing law or specified in the information particulars or principal documents;

**“approved derivative”** a derivative which is traded or dealt in on a regulated derivatives market;

**“approved security”** a transferable security that is admitted to official listing on the Channel Islands Stock Exchange or in an EEA State or is traded on or under the rules of a regulated securities market ;

**“associate”**, in relation to any person means

- (a) The spouse or child of that person;
- (b) any company of which that person is a director;
- (c) any person who is an employee or partner of that person;
- (d) if that person is a company:
  - (i) any director or subsidiary of that company; and
  - (ii) any director or employee of any such subsidiary; and
- (e) if that person has with any other person an agreement or arrangement as to the acquisition, holding or disposal of shares or other interests in a company or under which they undertake to act together in exercising their voting power in relation to a company, that other person;

**“Authorised Closed-ended investment scheme”** means a Closed-ended investment scheme as defined in the Law which is declared by the Commission to be an authorised closed-ended investment scheme ;

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

**“custodian”** in relation to an Authorised Closed-ended investment scheme, means the custodian of an Authorised Closed-ended investment scheme other than a unit trust;

**“custodian agreement”** means an agreement under which a body corporate is appointed to hold the property of an Authorised Closed-ended investment scheme (other than a unit trust );

**“designated manager”** in relation to an Authorised Closed-ended investment scheme, means the person appointed to discharge the duties contemplated by an administration agreement;

**“directors”** 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 that incorporated body;

**“financial instrument”** means instruments specified in Section C of Annex I of MiFID, that is:

- (a) transferable securities;
- (b) money-market instruments;
- (c) units in collective investment undertakings;
- (d) options, futures, swaps, forward rate agreements and other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash;
- (e) options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of default or other termination event);
- (f) options, futures, swaps and any other derivative contracts relating to commodities that can be physically settled provided that they are traded on a regulated market and/or a multilateral system, operated by an investment firm or a market operator; which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract in accordance with the provisions of Title II of MiFID;

- (g) options, futures, swaps, forwards and any other derivative contracts relating to commodities that can be physically settled not otherwise mentioned in paragraph (f) and not being for commercial purposes, which have characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls (see Articles 38(1), (2) and (4) of the MiFID Regulation);
- (h) derivative instruments for the transfer of credit risk;
- (i) financial contracts for differences; and
- (j) options, futures, swaps, forward rate agreements and any other derivative contracts relating to:
  - (i) climatic variables;
  - (ii) freight rates;
  - (iii) emission allowances;
  - (iv) inflation rates or other official economic statistics;
  - (v) telecommunications bandwidth;
  - (vi) commodity storage capacity;
  - (vii) transmission or transportation capacity relating to commodities, whether cable, pipeline or other means;
  - (viii) an allowance, credit, permit, right or similar asset which is directly linked to the supply, distribution or consumption of energy derived from renewable resources;
  - (ix) a geological, environmental or other physical variable;
  - (x) any other asset or right of a fungible nature, other than a right to receive a service, that is capable of being transferred; and
  - (xi) an index or measure related to the price or value of, or volume of transactions in, any asset, right, service or obligation,

where the conditions in Articles 38(3) and (4) of the MiFID Regulation are met;

[Note: Article 4(1)(17) and Section C of Annex I to MiFID and Articles 38 and 39 of the MiFID Regulation]

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



**“holder”** in relation to a share in an Authorised Closed-ended investment scheme, means the person who is entered in the register as the holder of the share, unit or partnership interest or the first named holder in the case of joint holders;

**“information particulars”** means particulars of an Authorised Closed-ended investment scheme prepared in accordance with Part 4 and includes a prospectus, scheme particulars, offering memorandum, explanatory memorandum, term sheet, admission document, subscription agreement, listing particulars, application form, 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, the general partner of a limited partnership and the manager or trustee of a unit trust of an Authorised Closed-ended investment scheme with advice as to the merits of investment opportunities available to an Authorised Closed-ended investment scheme whether or not he regularly exercises a discretionary power over investments for the account of that Authorised Closed-ended investment 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 limited partnership in accordance with relevant legislation;

**“manager”** means the person appointed manager (if any) of an Authorised Closed-ended investment scheme, including the general partner (appointed under a limited partnership agreement), the manager of a unit trust (appointed under a unit trust instrument) or appointed by the trustee (under a management agreement), to discharge the duties under a management agreement;

**“management agreement”** means an agreement under which a person is appointed manager of an Authorised Closed-ended investment scheme to discharge the duties;

**“market operator”** means a person who manages and/or operates the business of a regulated market. The market operator may be the regulated market itself;

**“MiFID”** means The European Parliament and Council Directive on markets in financial instruments (No. 2004/39/EC)

**“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 and the management agreement (if any);
- (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 partnership, means the limited partnership agreement, the partnership agreement, the partnership administration agreement, the partnership management agreement and the custodian agreement (if applicable);
- (d) an Authorised Closed-ended 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 and administration agreement and custodian agreement (if applicable).

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

- (a)
  - (i) The Institute of Chartered Accountants in England and Wales; or
  - (ii) The Institute of Chartered Accountants of Scotland; or
  - (iii) The Institute of Chartered Accountants in Ireland; or
  - (iv) The Association of Chartered Certified Accountants; or
- (b) 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 paragraph (a);

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) and (b) above.

**“regulated market”** means in accordance with Article 4(1)(14) of MiFID, a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the provisions of Title III of MiFID.

**“scheme property”** means the property of an Authorised Closed-ended investment scheme ;

**“share”** means a share or unit or limited partnership interest or similar interest in an Authorised Closed-ended investment scheme;

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

**“trustee”** in relation to an Authorised Closed-ended investment scheme, means the trustee of a unit trust;

**“umbrella fund”** means an Authorised Closed-ended 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 whether or not investors in each separate part may exchange rights in one part for rights in another; and

- (2) The Interpretation (Guernsey) Law, 1948 applies to the interpretation of these rules.
- (3) References to enactments shall include reference to any modifications or re-enactments thereof for the time being in force.

### 1.03 **Umbrella funds**

The following rules shall apply in the case of an umbrella fund as if each reference to an Authorised Closed-ended 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 - ADMINISTRATION AND CUSTODY**

### 2.01 **Administration of the Authorised Closed-ended investment scheme**

- (1) It is the duty of the designated manager to administer the Authorised Closed-ended investment 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 proper directions from time to time given by the directors and in the case of a limited partnership subject to any direction given from time to time by the general partner or corporate trustee or manager of a unit trust as applicable.
- (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) Subject to any restriction in the principal documents, the designated manager may at its discretion and, in the case of a company subject to any directions given by the directors, 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 any applicable Commission guidance on outsourcing.

## **2.02 Custody of Scheme Property**

- (1) Upon full disclosure of the provisions that are in place to ensure the assets of the Authorised Closed-ended investment scheme are adequately safeguarded, the Commission will give consideration to the appointment of a custodian/trustee that is not domiciled in Guernsey. Full details of the custodian shall be disclosed to the Commission upon application for the scheme to be authorised under the Law. In the absence of an appointed 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 authorised under the Law. The designated manager of an Authorised Closed-ended investment scheme may provide safekeeping facilities to the Authorised Closed-ended investment scheme.

## **2.03 General provisions applicable to the designated manager**

- (1) The designated manager of an Authorised Closed-ended investment scheme shall be licensed under the Law and operate, and have a place of business, in Guernsey;
- (2) The duties of the designated manager and, the directors of a company, the general partner of a limited partnership, and, the trustee of a unit trust as relevant, 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 3 – CONFLICTS OF INTEREST**

## **Conflicts of interest**

- 3.01 (1) The directors, the general partner and the trustee, (as relevant), 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 the unit trust, the trustee;
  - (c) any investment adviser;
  - (d) any manager;
  - (e) in the case of a company, the company;
  - (f) in the case of a company, a director of the company;
  - (g) the directors or partners of the general partner;
  - (h) the custodian, and
  - (i) any associate of any person described above.
- (2) Cash forming part of the Authorised Closed-ended scheme property may be placed in any current, deposit or loan account with a relevant person only if the arm's length requirement in paragraph (9) is satisfied.
- (3) A relevant person may lend money to the Authorised Closed-ended investment scheme only if the arm's length requirement in paragraph (9) is satisfied. For the avoidance of doubt loans that form part of an investor's commitments do not fall into this category.
- (4) A relevant person may not sell or deal in the sale of property to the Authorised Closed-ended investment scheme unless the arm's length requirement in paragraph (9) and paragraph (10) are 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 Authorised Closed-ended investment scheme.
- (5) A relevant person may not purchase scheme property from an Authorised Closed-ended 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 Authorised Closed-ended investment scheme is made available to the relevant person by the trustee/custodian.
- (6) A relevant person may not vest property in the Authorised Closed-ended 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 Authorised Closed-ended investment scheme.

- (7) A relevant person may not enter into stock lending transactions in relation to the Authorised Closed-ended investment scheme unless the arm's length requirement in paragraph (9) is satisfied.
- (8) A relevant person within paragraph (1) above may not provide services for the Authorised Closed-ended 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 Authorised Closed-ended investment scheme are at least as favourable to the Authorised Closed-ended 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 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 Authorised Closed-ended investment 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 or, the general partner or, the manager or trustee (as relevant), 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 4 – INFORMATION PARTICULARS**

### **4.01 Preparation of information particulars**

- (1) Information particulars shall at least contain the matters set out in 4.03(1) to (15) below.
- (2) Changes in the contents of information particulars must be notified to holders either immediately or in the subsequent annual report and copied to the Commission forthwith.

### **4.02 False or misleading information particulars or omission of information**

The directors or the general partner or trustee (as relevant), is/are to be treated as responsible for the information particulars of an Authorised Closed-ended investment scheme and shall take all reasonable steps to ensure that they do not contain any false or misleading statements or omit facts which would make misleading any statement in the information particulars.

### **4.03 Contents of information particulars**

The following shall be stated:

#### **Name and structure of the Authorised Closed-ended investment scheme**

- (1)
  - (i) That the scheme is an Authorised Closed-ended investment scheme
  - (ii) Whether the Authorised Closed-ended investment scheme is a company, unit trust, a limited partnership or a protected cell company (or other).
  - (iii) Where the Authorised Closed-ended investment scheme is domiciled.
  - (iv) Whether the Authorised Closed-ended investment scheme is an offer for subscription, a placing (or other).
  - (v) Any pre-existing commitments – e.g., debt issued or proposed to be issued.
  - (vi) Whether the Authorised Closed-ended investment scheme is to be listed or traded on a stock exchange and, if so, which exchange.

#### **The parties to the Authorised Closed-ended investment scheme**

- (2) Names and addresses of the following (as applicable):-

- (i) the promoter;
- (ii) the manager or general partner;
- (iii) the custodian/trustee (if applicable)(by whatever name known as);
- (iv) the designated manager ;
- (v) the investment manager ;
- (vi) the investment adviser ;
- (vii) the registrar;
- (viii) the qualified auditor;
- (ix) the directors.

**The investment objectives of the Authorised Closed-ended investment scheme**

- (3) (i) Specific details relating to the objectives; and
- (ii) details of powers to change the investment objectives including requirements to submit proposals to a holder vote.
- (iii) any borrowing, gearing or hedging powers that may apply.

**Investment policy**

- (4) (i) The investment restrictions that will apply; and
- (ii) how the spread of risk will be achieved; and
- (iii) any borrowing or gearing powers that will apply.
- (iv) details of any powers to change to (i), (ii) or (iii) above, including any requirements to submit proposals to a vote of holders.

**The duration of the Authorised Closed-ended investment scheme**

- (5) (i) any provision for the early termination of the Authorised Closed-ended investment scheme's life; and
- (ii) any provision for the extension of the Authorised Closed-ended investment scheme's life; and
- (iii) the exit strategy at the term of the Authorised Closed-ended



investment scheme's life, including the manner in which assets will be repaid; and

- (iv) any provisions for the re-purchase of shares in the Authorised Closed-ended investment scheme.
- (v) the provisions that will apply should the initial raising of monies not be successful.

**Periodic accounting or reporting**

- (6)
  - (i) the accounting standards that will be applied to the preparation of the Authorised Closed-ended investment scheme's accounts; and
  - (ii) the duration of the first accounting period; and
  - (iii) the accounting date of the Authorised Closed-ended investment scheme; and
  - (iv) when reports will be published and distributed to holders in relation to the accounting date of the Authorised Closed-ended investment scheme.

**Subscription procedure**

- (7) The minimum subscription amount (if any)

**The valuation procedure (if any)**

- (8)
  - (i) the basis of the valuation, particularly if the underlying investments are not listed and whether a net asset value per share is to be calculated; and
  - (ii) provision for the publication of the net asset value; and
  - (iii) the availability of the net asset value if this is not to be published;

**Shareholders' rights (this shall include unitholders or limited partners in appropriate structures)**

- (9) In addition to (3) and (4) above;
  - (i) The arrangements that will exist for general meetings; and
  - (ii) any class rights that will exist; or
  - (iii) the voting rights that will be exercisable at meetings of holders.

### **The distribution policy**

- (10) (i) The distribution policy and indicative distribution date; and
- (ii) if appropriate, the policy relating to the distribution of capital and distribution *in specie*.

### **Directors' interests and the interests of the parties to the Authorised Closed-ended investment scheme**

- (11) The information particulars should include a statement showing the interests of each director and of the parties listed under 4.03(2) above in the shares of the Authorised Closed-ended investment scheme, together with the level of the directors' remuneration and expenses. Details of any other directorships that are held and have been held in the past five years by the directors will be made available to any potential holder at the registered office of the Authorised Closed-ended investment scheme. Any potential conflicts of interest must be disclosed for any intended holder to make an informed judgement on the merits of investing in the Authorised Closed-ended investment scheme.

### **Fees and expenses**

- (12) The nature of all fees, material charges and expenses payable out of the Authorised Closed-ended investment scheme property and, where applicable, how their amounts will be determined.

### **Risk warnings**

- (13) Sufficient risk warnings must be disclosed for any intended holder to make an informed judgement on the merits of investing in the Authorised Closed-ended investment scheme.

### **Tax**

- (14) (i) The entity's tax status; and
- (ii) The tax treatment applicable in jurisdictions where the entity is to be marketed (in this respect, the Commission is prepared to accept general disclosure or, if specific countries have been targeted, information that is relevant to investors in those countries. Such information should be correct at the time of the initial issue and indicate that potential investors should seek tax advice specific to their own circumstances).

### **Additional information**

- (15) The prospectus shall state any other material information that an investor would reasonably require to enable the person to make an informed

judgement about the merits of investing in the securities, limited partnership interests or shares offered.

## **PART 5 – NOTIFICATION**

### **Immediate Notifications**

- 5.01 The designated manager must give written notice forthwith to the Commission in respect of the following:-
- (1) a proposed material change of any of the following:-
    - (i) the constitutive documents that is, the articles of incorporation, trust instrument or partnership agreement;
    - (ii) the information particulars;
  - (2) or a proposed change of any of the following (as applicable):-
    - (i) the manager or general partner;
    - (ii) the designated manager ;
    - (iii) the secretary;
    - (iv) the registrar;
    - (v) the custodian or trustee;
    - (vi) the investment adviser or investment manager;
    - (vii) the directors;
    - (viii) the qualified auditor.
  - (3) a proposed material delegation of the duties of any of the parties listed in 5.01(2)(i) to (vi);
  - (4) any change in the name or of the ultimate or intermediate beneficial ownership of any of the parties listed in 5.01(2)(i) to (vi);
  - (5) any alteration to the material agreement(s) under which an entity licensed under The Protection of Investors (Bailiwick of Guernsey) Law, 1987 as amended is providing management, administration or custodian services to the scheme;
  - (6) any proposed material alteration to the Authorised Closed-ended investment scheme, including its name and its investment, borrowing and hedging powers;

### **Changes to the duration of the Authorised Closed-ended investment scheme**

- (7) any proposal to reconstruct, amalgamate, terminate prematurely or extend the life of the Authorised Closed-ended investment scheme;

### **Listing on stock exchanges**

- (8) any proposal to list or de-list the Authorised Closed-ended investment scheme on a stock exchange.

- (9) **Litigation**

the bringing of, or the intention to bring, against or by the Authorised Closed-ended investment scheme any legal action or proceedings, or any arbitration to which the Authorised Closed-ended investment scheme is a party, relating to finance business.

### **Periodic Notifications**

#### **5.02 Annual reports and financial statements**

- (i) The designated manager shall submit to the Commission copies of the audited annual report and accounts for the Authorised Closed-ended investment 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 audited report and accounts are sent to the Commission any principal documents or other agreements which have been materially amended and not previously submitted to the Commission should be submitted.

#### **5.03 Quarter-end statistical information**

The designated manager shall submit to the Commission a statistical return relevant to the Authorised Closed-ended investment 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 6 – AUTHORISATION OF AUTHORISED CLOSED-ENDED INVESTMENT SCHEMES**

### **6.01 Application for authorisation of an Authorised Closed-ended investment scheme**

The designated manager of an Authorised Closed-ended investment scheme seeking a declaration of authorisation 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 Authorised Closed-ended investment 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.

### **6.02 Authorisation declarations**

- (1) The Commission may grant a closed-ended investment scheme that complies with 6.01 an authorisation declaration, if it is satisfied:
  - (i) that the scheme's principal documents and information particulars appear to the Commission to comply with all of these rules relating to their contents;
  - or
  - (ii) that it is unnecessary in the interests of investors for the scheme's principal documents and/or information particulars to comply with any of these rules relating to their contents with which they do not comply.
- (2) An Authorised Closed-ended investment scheme declaration granted in the circumstances set out in sub-paragraph (1)(ii) shall specify the rules with which the scheme's principal documents and/or information particulars do not comply.

### **6.03 Derogations**

- (1) The Commission may, by notice in writing to the designated manager of an Authorised Closed-ended investment scheme, exclude or modify the application of any provision of those rules in relation to that Authorised Closed-ended 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.

#### **6.04 Undertakings**

As a condition of the authorisation of a scheme as an Authorised Closed-ended 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.

### **PART 7 – TRANSITIONAL PROVISIONS**

#### **7.01 Application**

This Part applies to all existing closed-ended collective investment schemes.

#### **7.02 Continued authorisation of existing closed-ended collective investment schemes**

- (1) An existing closed-ended collective investment scheme is deemed to have been granted an authorisation declaration in accordance with section 8 of the Law and rule 6.02 of the Authorised Closed-ended Investment Schemes Rules 2008 on the date when it in fact obtained consent under the Control of Borrowing (Bailiwick of Guernsey) Ordinances 1959 to 1989, as if these rules had been in operation on that date.
- (2) An existing closed-ended collective investment scheme may elect within four months of the commencement of the Registered CIS Rules to be treated as a Registered closed-ended collective investment scheme under these rules and is deemed to have been granted a registration in accordance with section 8 of the Law and rule 7.02 of the Registered CIS Rules.
- (3) Anything done under the Control of Borrowing (Bailiwick of Guernsey) Ordinances 1959 to 1989 before these rules come into operation in relation to a Registered closed-ended collective investment scheme which could be done under these rules is deemed to have been done under these rules as if they had been in operation when it was done.

### **7.03 Amendment of principal documents and information particulars**

- (1) Subject to rule 5.01, the principal documents of an existing closed-ended collective investment scheme must be revised to comply with all of the rules relating to their contents either on the next occasion when any amendment to the principal documents is required to be approved by the holders in the collective investment scheme or by not later than two years from the commencement date.
- (2) Subject to rules 4.01 and 6.02, the information particulars of an existing closed-ended collective investment scheme if revised following the commencement of these rules, must be revised to comply with these rules.
- (3) Subject to 7.03(1) and 7.03(2) and to rule 6.02, no amendment may be made to the principal documents or information particulars of an existing closed-ended collective investment scheme unless the amendment complies with these rules relating to their contents.