

Consultation on Proposals to Develop a Guernsey Green Fund

Closed 1 Jun 2018

Opened 23 Apr 2018

Contact

Emma Bailey

(Director)

Investment Supervision & Policy Division

01481 712706

green@gfsc.gg

Overview

Climate change represents an urgent and potentially irreversible threat to human societies and the environment. It is recognised as a common concern for governments around the world and, as such, there is a global agenda to reduce the harm being done to our planet. In accordance with international climate obligations, sufficient financial resources are required in order to implement policies, strategies and regulations to contribute to the meaningful mitigation of climate change.

Green investments mobilise capital into low-carbon projects, infrastructure and research that can reduce the effects of climate change and make the necessary transition into a green future. The proposals set out in this consultation paper provide a framework upon which green investments can be encouraged and facilitated in the Bailiwick of Guernsey. We wish to assure investors that their investments are contributing to initiatives that have a positive environmental impact on the planet and in so doing inspire confidence that their investments are well regulated. The island has a sterling reputation

as a funds centre and has the ability to attract individuals and institutions who want to put their money into fund vehicles that pursue green objectives.

Why your views matter

The Commission is now seeking feedback and assistance from the financial services industry and other interested parties.

Comments and suggestions on this paper from any party who has an interest in the green investment space will be highly valued.

Feedback is sought no later than midnight on Tuesday 29 May 2018. Detailed information on how to respond is set out below.

Related

 [Consultation Paper on proposals to Develop a Guernsey Green Fund](#)

430.2 KB (PDF document)

 [The Guernsey Green Fund Rules, 2018 \(Draft\)](#)

633.2 KB (PDF document)

Audiences

Financial Services Business FinTech

BLANK PAGE



Guernsey Financial
Services Commission

The Guernsey Green Fund Rules, 2018

TABLE OF CONTENTS

1.	GUERNSEY GREEN FUND	1
2.	SCOPE	1
3.	INVESTMENT CRITERIA.....	1
4.	APPLICATIONS	3
5.	DESIGNATION.....	3
6.	OVERSIGHT OF THE FUND	4
7.	REMOVAL OF DESIGNATION.....	4
8.	PROSPECTUS DISCLOSURES	5
9.	NOTIFICATION AND FILINGS TO BE SUBMITTED TO THE COMMISSION	6
10.	INTERPRETATION.....	7
11.	CITATION AND COMMENCEMENT	8
	SCHEDULE 1	9
	SCHEDULE 2	11
	SCHEDULE 3	17
	SCHEDULE 4.....	18

The Guernsey Green Fund Rules, 2018

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:-

1. GUERNSEY GREEN FUND

There shall be a description of Collective Investment Scheme under the *Law* of “Guernsey Green Fund”

A Guernsey Green Fund may be declared as either level 1 or level 2.

A Collective Investment Scheme that meets, and continues to meet the requirements in these *Rules* may be designated a *Guernsey Green Fund*. Use of the designation (the *Guernsey Green Fund* badge) must be in accordance with Schedule 4.

2. SCOPE

- (1) These *Rules* shall apply to any *Authorised scheme* or *Registered scheme* which has declared that it meets the criteria to be a *Guernsey Green Fund*.
- (2) The *Guernsey Green Fund* must be established with the objective of spreading risk. The criteria for the spread of risk must be specified in the *Guernsey Green Fund's Prospectus*
- (3) The *Guernsey Green Fund* must be established with the objective of seeking a return for investors whilst mitigating climate change and must meet the *green criteria* set out in Schedule 2 of these *Rules*.

Guidance Note

There is no requirement for a *Guernsey Green Fund* to have a Guernsey domiciled *Manager* however, for the purposes of *these Rules* any requirements placed on the *Manager* are only applicable to *Managers* licensed under the *Law*.

3. INVESTMENT CRITERIA

Controllers of a Scheme, the *Designated Administrator* and any *Manager* or *Custodian* shall take all reasonable steps to ensure;

- (1) The property of a *Guernsey Green Fund* shall be invested with the aim of spreading risk and with the ultimate objective of mitigating climate change resulting in a net positive outcome for the environment.
- (2) A *Guernsey Green Fund* shall comprise 75% of assets by value that meet the *green criteria* set out in Schedule 2 of these *Rules*. The remaining 25% by value of the Scheme property must not:
 - (a) lessen or reduce the scheme's overall objective of mitigating climate change.

- (b) comprise an investment in any of the activities specified in Schedule 3.
- (3) A *Guernsey Green Fund* shall only comprise assets permitted to be held under its *principal documents* or *Prospectus* and of a nature or type described in its *Prospectus*.
- (4) A *Guernsey Green Fund* shall not be invested in contravention of limits or restrictions imposed under its *principal documents* or *Prospectus*.
- (5) A *Guernsey Green Fund* shall ensure that the investment criteria contained in these *Rules* are where the Scheme is:
- (a) a company specified in its memorandum of association;
 - (b) a limited partnership specified in the Limited Partnership Agreement;
 - (c) a trust specified in the Trust Deed.

Guidance Note

For the purposes of these *Rules* references to the *Manager* mean either the party responsible for managing the property of the Scheme and licensed under the *Law*, or the *Designated Administrator*.

In the event of a breach of the investment criteria the *Manager* (or if no licensed *Manager* the *Designated Administrator*) should consider the most appropriate course of action taking into account the type of assets in the *Guernsey Green Fund*, the type of investors and the disclosures in the *Prospectus*. Such action could include any of the following non-exhaustive list:

- (a) The suspension of dealing;
- (b) The suspension of promotion;
- (c) The introduction of a risk mitigation programme;
- (d) Any other action necessary to protect investor's interests and the reputation of the Bailiwick;
- (e) The removal of the GGF designation in accordance with section 7 of *these Rules*.

Guidance Note

Responsibilities of the *Manager* and the *Designated Administrator*

The *Designated Administrator's* responsibility is to monitor the adherence of paragraphs (1) to (5). Any breaches should be brought to the attention of the *Manager* and, if a *company Scheme*, the *directors* or, in the case of a *unit trust scheme* with no *Manager*, the *trustee* or, in the case of a limited partnership, the *general partner*. The *Designated Administrator* should also ensure that the *investment adviser* has been informed.

The *Designated Administrator* should monitor the corrective measures that would be required by the *directors, Manager* and/or *trustee or general partner* (where applicable).

4. APPLICATIONS

- (1) The *Designated Administrator* of an *authorised scheme* or *registered scheme* seeking to use the description of *Guernsey Green Fund* shall submit to the *Commission*:
- (a) The appropriate application forms;
 - (b) Final version of the *Prospectus*;
 - (c) In the case of a Level 1 Scheme a Declaration, in accordance with Part 1 Schedule 1 that the Scheme meets the *green criteria* which includes:-
 - (i) A certificate from a suitable third party that the *Prospectus* meets the *green criteria*,
 - (ii) Details of the third party's name, address and experience
 - (d) In the case of a Level 2 Scheme a Declaration, in accordance with Part 2 Schedule 1 that the Scheme meets the *green criteria*;
 - (e) Confirmation of whether the *Guernsey Green Fund* will or will not adopt ESG Principles;
 - (f) The requisite fee as prescribed from time to time;
 - (g) Such other information as the *Commission* may require.

Guidance note on Certification

In the case of a Level 2 Scheme, the declaration can be provided by either the *Designated Administrator* or the *Manager*, if an entity licensed under the *Law*. A declaration can only be provided by a party contractually connected to the *Guernsey Green Fund*. Any changes to those parties would require a new declaration under 4(1)(d) or 4(1)(e).

5. DESIGNATION

- (1) The *Commission* may designate a Scheme to be a *Guernsey Green Fund* if:
- (a) It is satisfied that the Scheme's *principal documents* and *Prospectus* appear to the *Commission* to comply with these *Rules* relating to their contents;
 - (b) A Declaration has been provided in accordance with Schedule 1 to these *Rules* confirming that the *Guernsey Green Fund* meets the *green criteria*.

6. OVERSIGHT OF THE FUND

- (1) The *Designated Administrator* shall ensure that the *Guernsey Green Fund* is monitored against the *green criteria* on a monthly basis and where the Scheme contravenes the *green criteria*:-
- (a) Shall immediately take such steps as are necessary to rectify the position and notify the *custodian* (if appointed).
 - (b) Shall if the position has not been rectified within one month of the date on which the contravention was identified:
 - (i) Notify the Commission
 - (ii) Provide the Commission with proposals to rectify the breach
 - (c) For a period in excess of two months from the date that the contravention was identified the *Licensee* who submitted the Declaration shall forthwith ensure that all investors are informed.
 - (d) *Controllers* of a *Guernsey Green Fund*, the *Designated Administrator* and any *Manager* or *custodian* shall cooperate with the *Licensee* who submitted the Declaration.
 - (e) No Change to the *Licensee* who submitted the Declaration under Schedule 1 shall occur without the written consent of the *Commission*.

Guidance note

Paragraph 6(1)(a) – (c) do not apply to any *Guernsey Green Fund* during the first six months from the date on which persons are invited to become investors in the *Guernsey Green Fund* or until the *Guernsey Green Fund* is fully invested, whichever occurs first.

7. REMOVAL OF DESIGNATION

- (1) Where a *Guernsey Green Fund* continues after a period of 3 months from the date when the contravention was identified not to meet the *green criteria* then the *Licensee* who submitted the Declaration in accordance with paragraph 4 of these *Rules* shall:
- (a) Provide the Declaration of non-compliance under Schedule 1 Part 3 to the Commission
 - (b) Ensure that the Scheme ceases to use the designation of *Guernsey Green Fund* on all documents and other material (electronic or otherwise)
 - (c) Notify all investors of the steps taken under this paragraph

- (d) Place a copy of the Declaration under (a) in a prominent position on the Guernsey Green Fund's website.
- (2) Without prejudice to 7(1) the Commission may remove the designation of a Guernsey Green Fund where:
 - (a) A Guernsey Green Fund remains invested for more than 3 months in breach of the green criteria, or
 - (b) At any stage after a Guernsey Green Fund ceases to meet the green criteria in order to protect:
 - (i) The interests of investors,
 - (ii) The public, or
 - (iii) The reputation of the Bailiwick as a finance centre
- (3) The *Commission* shall take into account the circumstances of the breach and the rectification action taken.
- (4) Where at any point in the life of the Scheme it had been promoted (whether in its *Prospectus* or other marketing material) in accordance with *ESG Principles* then upon the giving of any certificate under 7(1)(a) the Scheme shall cease to so promote itself and paragraphs 7(1)(b) to 7(1)(d) shall be read to likewise apply to its use of *ESG Principles*, unless otherwise agreed in advance with the *Commission*.

8. PROSPECTUS DISCLOSURES

- (1) In addition to the disclosures required in any other rules to which the *Guernsey Green Fund* is subject the *Prospectus* shall at least contain:
 - (a) The fact that the fund has received the designation of a *Guernsey Green Fund*;
 - (b) The *green criteria*;
 - (c) How the *Guernsey Green Fund* will meet its objective;
 - (d) That the *Guernsey Green Fund* is:
 - (i) Level 1, third party certified and which independent party will provide the certification.or
 - (ii) Level 2, whereby the *Manager*, if an entity licensed under the *Law*, or the *Designated Administrator* has provided a Declaration

- (e) Sufficient information regarding the declaration or certification and the methodology used must be disclosed for any intended investor to make an informed judgment on the merits of investing in the *Guernsey Green Fund*.
- (f) If the Board of the *Guernsey Green Fund* and the *Manager* intend incorporating *ESG Principles* into investment analysis and decision making processes, that fact.
- (g) The *Prospectus* shall state any material conflicts of interest that an investor would reasonably require to enable such investor to make an informed judgement about the merits of investing in the *Guernsey Green Fund*.

Guidance Note on third party provider

The third party evaluation may take the form of a certification that the underlying assets of the Scheme are invested in accordance with the Scheme's *Prospectus* and the *green criteria* or it can take the form of a green rating issued by a qualified third party.

9. NOTIFICATION AND FILINGS TO BE SUBMITTED TO THE COMMISSION

Filings

- (1) Without prejudice to any other rules to which the *Guernsey Green Fund* is subject, the *Designated Administrator* shall submit to the *Commission*, within six months of the *Guernsey Green Fund's* accounting year end, Form 143. Such Form shall detail how the Scheme has invested within the *green criteria* to which it is subject.
- (2) The *Designated Administrator* is required to ensure that it is reported to investors on an annual basis how the Scheme meets the *green criteria*.

Guidance Note

Rule 9(2) may be satisfied by a disclosure in the *Guernsey Green Fund's* annual report and accounts.

Notifications

- (3) The *Designated Administrator* of a *Guernsey Green Fund* shall give immediate written notice to the *Commission* of any material change to the disclosures in the *Prospectus* required of Section 8 of these *Rules*.
- (4) The *Designated Administrator* or *Manager* shall ensure that investors are notified of any change referred to in Rule 9.

10. INTERPRETATION

Unless the context otherwise requires, in *these Rules*, expressions defined in the *Law* have the same meaning as they have in the *Law*, and the following have the meanings assigned to them:

“authorised scheme”	means a collective investment scheme that has been declared as an authorised scheme under Section 8 of the <i>Law</i> ;
“collective investment scheme” or “Scheme”	has the meaning set out in the <i>Law</i> ;
“Designated Administrator”	means a designated manager for the purposes of section 8 of the <i>Law</i>
“controllers”	Means in the case of Company, its Directors; in the case of a limited partnership, its General Partner; in the case of a Trust, its Trustees.
“company”	any Scheme constituted as a body corporate, including protected cell companies and incorporated cell companies;
“the Commission”	means the Guernsey Financial Services Commission;
“custodian”	Means a designated custodian for the purposes of section 8 of the <i>Law</i>
“ESG Principles”	means environmental, social and governance issues as set out by the Principles for Responsible Investment: the PRI;
“green criteria”	means the criteria set out in Schedule 2 to these <i>Rules</i>
“Guernsey Green Fund”	means either an authorised Scheme or a registered Scheme designated in accordance with these <i>Rules</i> where it meets the green criteria;
the "Law"	means the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended;

"Licensee"	means the holder of a licence to carry on controlled investment business issued under the <i>Law</i> ;
"Manager"	in the context of these <i>Rules</i> means a manager of a Guernsey Green Fund licensed under The Protection of Investors (Bailiwick of Guernsey) <i>Law</i> , 1987. If the Scheme has no manager licensed in Guernsey then references to manager shall be deemed as reference to the Designated Administrator
	"Provider" means The Designated Administrator or where a Guernsey Licensee the Manager of the Scheme
"Prospectus"	means written particulars of a Guernsey Green Fund prepared, revised and published in accordance with these Rules and any other rules applicable to the Scheme;
"these Rules"	means The Guernsey Green Fund Rules, 2018;
"registered scheme"	means a collective investment scheme that has been declared as a registered scheme under Section 8 of the <i>Law</i> ;
"unit trust scheme"	Means an authorised scheme under which the scheme property is held in trust for the investors

11. CITATION AND COMMENCEMENT

These *Rules*, which may be cited as The Guernsey Green Fund Rules, 2018 are made on XX 2018 and shall come into operation on XX 2018.

SCHEDULE 1

Part 1

Level 1

- I hereby provide a copy of a certification provided by [...insert name here.....] an independent third party that the Prospectus disclosures and the investment criteria of the Scheme meets the green criteria as defined in the Guernsey Green Fund Rules 2018.
- I confirm that I have advised [...insert name here.....] that it is an offence under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 as amended in respect of which the Commission exercises its functions, to knowingly or recklessly provide the Commission with information, which is false or misleading in a material manner.
- I confirm that we, as proposed designated administrator/manager [delete as applicable] of the scheme, have performed sufficient due diligence on the third party certifier to be satisfied that the third party is truly independent from the Scheme and its associated parties and that the third party certifier has adequate experience and resource to provide, and continue to provide, a reliable and accurate assessment of the Scheme's ability to meet the green criteria as defined in the Guernsey Green Fund Rules 2018.
- I confirm that we, the proposed designated administrator/manager [delete as applicable] of the scheme, are content that the disclosures in the scheme's Prospectus and any other marketing material meet the requirements of the Guernsey Green Fund Rules, 2018.
- I confirm that the information supplied is complete and correct to the best of my knowledge and belief at the time of submission and that there are no other facts material to the application of which the Commission should be aware.
- I am aware that it is an offence under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 as amended in respect of which the Commission exercises its functions, to knowingly or recklessly provide the Commission with information, which is false or misleading in a material manner.

Part 2

Level 2

- I confirm that we, as proposed designated administrator/manager [delete as applicable] of the scheme, have performed sufficient due diligence to be satisfied that the objective of the scheme encompasses climate change mitigation and that the scheme's investment criteria meets the green criteria as defined in the Guernsey Green Fund Rules, 2018.
- I confirm that we, the proposed designated administrator/manager [delete as applicable] of the scheme, are content that the disclosures in the scheme's Prospectus and any other marketing material meet the requirements of the Guernsey Green Fund Rules, 2018.

- I confirm that the information supplied is complete and correct to the best of my knowledge and belief at the time of submission and that there are no other facts material to the application of which the Commission should be aware.
- I am aware that it is an offence under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 as amended in respect of which the Commission exercises its functions, to knowingly or recklessly provide the Commission with information, which is false or misleading in a material manner.

Part 3

Declaration of Non-Compliance

- We, as designated administrator/manager [delete as applicable] of the scheme, have assessed the scheme against the disclosures in the Prospectus and the Guernsey Green Fund Rules 2018 in accordance with Sections 3 and 6 of the Guernsey Green Fund Rules 2018 and hereby confirm that the scheme no longer meets the green criteria.
- We, as designated administrator/manager [delete as applicable], hereby confirm that the scheme will no longer use the designation of a Guernsey Green Fund and will ensure that no references are made to it in the Prospectus or marketing material.
- We, as designated administrator/manager [delete as applicable], hereby confirm that all investors in the scheme have been notified that the scheme no longer meets the green criteria and is no longer a designated Guernsey Green Fund.
- I confirm that the information supplied is complete and correct to the best of my knowledge and belief at the time of submission and that there are no other facts material to the declaration of which the Commission should be aware.
- I am aware that it is an offence under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 as amended in respect of which the Commission exercises its functions, to knowingly or recklessly provide the Commission with information, which is false or misleading in a material manner.

SCHEDULE 2

Common Principles for Climate Mitigation Finance Tracking

Table 1 – List of activities eligible for classification as climate mitigation finance

These Principles have been taken from the work done by the major global development finance institutions (the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the Inter-American Development Bank, the International Finance Corporate, World Bank, and the International Development Finance Club). The Principles consist of a set of common definitions and guidelines in addition to the table of activities listed above which can be found at the following link:

<http://climateobserver.org/reports/common-principles-for-climate-mitigation-finance-tracking/>

Category	Sub-category	Example
1. Renewable Energy	1.1 Electricity Generation	Wind power
		Geothermal power (only if net emission reductions can be demonstrated)
		Solar power (concentrated solar power, photovoltaic power)
		Biomass or biogas power that does not decrease biomass and soil carbon pools (only if net emission reductions can be demonstrated)
		Ocean power (wave, tidal, ocean currents, salt gradient, etc.)
		Hydropower plants (only if net emission reductions can be demonstrated)
	1.2 Heat Production or other renewable energy application	Solar water heating and other thermal applications of solar power in all sectors
		Thermal applications of geothermal power in all sectors
		Wind-drive pumping systems or similar
		Thermal applications of sustainability/produced bioenergy in all sectors, incl. efficient, improved biomass stoves
	1.3 Transmission systems, greenfield	New transmission systems (lines, substations) or new systems (e.g., new information and communication technology, storage family, etc.) and mini-grid to facilitate the integration of renewable energy sources into the grid

		Renewable energy power plant retrofits
		Improving existing systems to facilitate the integration of renewable energy sources into grid
2. Lower-carbon and efficient energy generation	2.1 Transmission and distribution systems	Retrofit of transmission lines or substations and/or distribution systems to reduce energy use and/or technical losses, excluding capacity expansion
	2.2 Power Plants	Thermal power plant retrofit to fuel switch from a more greenhouse gas intensive fuel to a different, less greenhouse gas intensive fuel type
		Conversion of existing fossil-fuel based power plant to co-generation technologies that generate electricity in addition to providing heating/cooling
		Waste heat recovery improvements
		Energy efficiency improvement in existing thermal power plant, industrial energy efficiency improvements through the installation of more efficient equipment, changes in processes, reduction of heat losses and/or increased waste heat recovery
3. Energy efficiency	3.1 Brownfield energy efficiency in industry	Installation of co/generation plants that generate electricity in addition to providing heating/cooling
		More efficient facility replacement of an older facility (old facility retired)
	3.2 Brownfield energy efficiency in commercial, public and residential sectors (buildings)	Energy efficiency improvement in lighting, appliances and equipment
		Substitution of existing heating/cooling systems for buildings by co/generation plants that generate electricity in addition to providing heating/cooling
		Retrofit of existing buildings: architectural or building changes that enable reduction of energy consumption
	3.3 Brownfield energy efficiency in public services	Energy efficiency improvement in utilities and public services

		through the installation of more efficient lighting or equipment
		Rehabilitation of district heating systems
		Utility heat loss reduction and/or increased waste heat recovery
		Improvement in utility scale energy efficiency through efficient use, and loss reduction
	3.4 Vehicle energy efficiency fleet retrofit	Existing vehicles, rail or boat fleet retrofit or replacement (including the use of lower-carbon fuels, electric or hydrogen technologies, etc.)
	3.5 Greenfield energy efficiency in commercial and residential sectors (buildings)	Use of highly efficient and architectural designs, energy efficiency and equipment, and building techniques that reduce building energy consumption, exceeding available standards and complying with high energy efficiency certification or rating schemes
	3.6 Energy audits	Energy audits to energy end-users, including industries, buildings and transport systems
4. Agriculture, forestry and land-use	4.1 Agriculture	Reduction in energy use in traction (e.g. efficient tillage), irrigation and other agriculture processes
		Agriculture projects that do not deplete and/or improve existing carbon pools (reduction in fertiliser use, rangeland management, collection and use of bagasse, rice husks, or other agricultural waste, low tillage techniques that increase carbon contents of soil, rehabilitation of degraded lands, etc.)
	4.2 Afforestation and reforestation, and biosphere conservation	Afforestation (plantations) on non-forested land
		Reforestation on previously forested land
		Sustainable forest management activities that increase carbon stocks or reduce the impact of forestry activities
		Biosphere conservation projects (including payments for ecosystem services) targeting reducing emissions

		from the deforestation or degradation of ecosystems
	4.3 Livestock	Livestock projects that reduce methane or other greenhouse gas emissions (manure management with biodigestors, etc.)
	4.4 Biofuels	Production of biofuels (including biodiesel and bioethanol)
5. Non-energy greenhouse gas reductions	5.1 Fugitive emissions	Reduction of gas flaring or methane fugitive emissions in the oil and gas industry
		Coal mine methane capture
	5.2 Carbon capture and storage	Projects for carbon capture and storage technology that intend to prevent release of large quantities of CO ₂ into the atmosphere from fossil fuel use in power generation and process emissions in other industries
	5.3 Air conditioning and refrigeration	Retrofit to existing industrial, commercial and residential infrastructure to switch to cooling agent with lower global warming potential
	5.4 Industrial processes	Reduction in greenhouse gas emissions resulting from industrial process improvements and cleaner production (e.g. cement, chemical), excluding carbon capture and storage
6. Waste and wastewater		Treatment of wastewater if not a compliance requirement (e.g. performance standard or safeguard) as part of a larger project that reduce methane emissions (only if net emission reductions can be demonstrated)
		Waste management and waste-to-energy projects that reduce methane emissions and generate energy (e.g. incineration of waste, landfill gas capture, and landfill gas combustion)
		Waste-recycling projects that recover or reuse materials and waste as inputs into new products or as a resource (only

		if net emission reductions can be demonstrated)
7. Transport	7.1 Urban transport modal change	Urban mass transit
		Non-motorised transport (bicycles and pedestrian mobility)
	7.2 Transport oriented urban development	Integration of transport and urban development planning (dense development, multiple land-use, walking communities, transit connectivity, etc.) leading to a reduction in the use of passenger cars
		Transport demand management measures to reduce GHG emissions (e.g. speed limits, high-occupancy vehicle lands, congestion charging/road pricing, parking management, restriction or auctioning of licence plates, car-free city areas, low-emission zones)
	7.3 Inter-urban transport	Railway transport ensuring a modal shift of freight and/or passenger transport from road to rail (improvement of existing lines or construction of new lines)
		Waterways transport ensuring a modal shift of freight and/or passenger transport from road to waterways (improvement of existing infrastructure or construction of new infrastructure)
8. Low-carbon technologies	8.1 Products or equipment	Projects producing components, equipment or infrastructure dedicated for the renewable and energy efficiency sectors
	8.2 R&D	Research and development of renewable energy or energy efficiency technologies
9. Cross-cutting issues	9.1 Support to national, regional or local policy, through technical assistance or policy lending, fully or partially dedicated to climate change policy or action	Mitigation national, sectoral, or territorial policies/planning/action plan policy/planning/institutions
		Energy sector policies and regulations (energy efficiency standards or certification schemes; energy efficiency procurement schemes; renewable energy policies)

		Systems for monitoring the emissions of greenhouse gases
		Efficient pricing of fuels and electricity (subsidy rationalisation efficient end-user tariffs and efficient regulations on electricity generation, transmission or distribution)
		Education, training, capacity building and awareness raising on climate change mitigation/sustainable energy/sustainable transport; mitigation research
		Other policy and regulatory activities, including those in non-energy sectors, leading to climate change mitigation or mainstreaming of climate action
	9.2 Other activities with net greenhouse gas reduction	Any other activity not included in this list for which the results of an ex-ante greenhouse gas accounting (undertaken according to commonly agreed methodologies) show emission reductions
	9.3 Financing instruments	Carbon markets and finance (purchase, sale, trading, financing and other technical assistance). Includes all activities related to compliance-grade carbon assets and mechanisms, such as CDM, JI, AAUs as well as well-established voluntary carbon standards like the VCS or Gold Standard.

SCHEDULE 3

Exclusion Policy

Sector	Excluded areas
Energy	Uranium mining for nuclear power;
	Any fossil fuel-based power generation including: gas, 'clean' coal and other coal.
Energy efficiency	Efficiency upgrades to greenhouse gas intensive power sources – e.g. cleaner coal technology;
	Energy savings in fossil fuel extraction activities – emission reduction requirements require a rapid phase-out of all fossil fuel usage. Anything that helps to extend the life of fossil fuel usage is excluded.
Waste	Landfill without gas capture;
	Waste incineration without energy capture.
Transport	Rail lines where fossil fuels account for more than >50% of freight.

This policy has been taken from the work done by the Climate Bonds Initiative as part of the Green Bonds Methodology and can be found at the following link:

<https://www.climatebonds.net/files/files/Green%20Bond%20Methodology%202017.pdf>

SCHEDULE 4

To be advised.

DRAFT

BLANK PAGE

Guernsey Financial Services Commission

Consultation Paper on Proposals to Develop a Guernsey Green Fund

Issued 23 April 2018

Contents

FOREWORD

EXECUTIVE SUMMARY

What is the Purpose of the Guernsey Green Fund?

What are the Objectives of the Guernsey Green Fund?

The Development of this Paper

THE GUERNSEY GREEN FUND

Framework

Applying for a Guernsey Green Fund

The Guernsey Green Fund Rules

Certification of the Guernsey Green Fund

The ESG Principles

USING THE GUERNSEY GREEN FUND

Duties of the Designated Administrator

Duties of the Investment Manager

Interests of the Investors

CONSULTATION QUESTIONS

Appendix A. The Guernsey Green Collective Investment Scheme Rules 2018

Responding to the Consultation Paper

Responses to this Consultation Paper are sought by Friday 1st June 2018.

We welcome and strongly encourage respondents to provide feedback or comment on any section and question.

You can send your responses to us using the online submission tool, Citizen Space, accessible on our website at: <https://consultationhub.gfsc.gg/>

Or in writing to:

Emma Bailey
Guernsey Financial Services Commission
Director, Investment Supervision & Policy Division
PO Box 128, Gategny Court,
Gategny Esplanade
St Peter Port
Guernsey
GY1 3HQ

Email: green@gfsc.gg

FOREWORD

Climate change represents an urgent and potentially irreversible threat to human societies and the environment. It is recognised as a common concern for governments around the world and, as such, there is a global agenda to reduce the harm being done to our planet. In accordance with international climate obligations, sufficient financial resources are required in order to implement policies, strategies and regulations to contribute to the meaningful mitigation of climate change.

Green investments mobilise capital into low-carbon projects, infrastructure and research that can reduce the effects of climate change and make the necessary transition into a green future. The proposals set out in this consultation paper provide a framework upon which green investments can be encouraged and facilitated in the Bailiwick of Guernsey. We wish to assure investors that their investments are contributing to initiatives that have a positive environmental impact on the planet and in so doing inspire confidence that their investments are well regulated. The island has a sterling reputation as a funds centre and has the ability to attract individuals and institutions who want to put their money into fund vehicles that pursue green objectives.

Comments and suggestions on this paper from any party who has an interest in the green investment space will be highly valued.

Emma Bailey

Director, Investment Supervision and Policy Division

Guernsey Financial Services Commission

1. Executive Summary

1.1 What is the Purpose of the Guernsey Green Fund?

The Commission seeks to regulate and supervise financial services in the Bailiwick of Guernsey with integrity, proportionality and professional excellence, and in so doing help to uphold the international reputation of the Bailiwick of Guernsey as a finance centre.

Consistent with the Commission's objectives, the proposals in this paper are designed to help ensure that Guernsey is an innovative place in which to do business by creating a structure that caters for the development of informed green investments.

The purpose of this consultation paper is to lay out the Commission's proposed new Guernsey Green Fund Rules ("GGF Rules") to be opted into by green funds so that they may acquire the designation of a Guernsey Green Fund ("GGF").

Global investments are shifting their focus onto the environment. Scientific research reveals that high levels of greenhouse gases in the atmosphere are increasing the earth's temperature causing irreversible damage. The 2015 United Nations Climate Change Conference in Paris ("COP21") secured the co-operation of over 190 countries to prevent the planet warming by two degrees that is leading to jurisdictions around the world developing appropriate mechanisms to build a green future. Transitioning into a greener future is estimated to require \$1 trillion of investments per year. Thus, it is important for financial centres such as Guernsey to adapt to the increasing demand for green investments.

Guernsey is a jurisdiction able to take advantage of what this movement has to offer. By creating the GGF Rules, we can assure investors that their investments are being used for environmental purposes that are established and monitored against a reliable set of standards. Guernsey has the benefit of already being a secure and experienced jurisdiction in which to hold investments and has the wealth of knowledge and expertise necessary to build a green fund platform on top of existing versatile structures. Securing capital for environmental purposes is a strong indication that Guernsey is an innovative and forward-thinking place in which to do business and demonstrates that we are mindful of international climate obligations. For these reasons, the Commission is introducing a new description of a Guernsey Green Fund. Any authorised or registered fund that applies for and meets the criteria required by the GGF Rules will be designated as a GGF.

This Consultation Paper is a working document and does not prejudice any final decision to be made by the Commission. Comments and feedback from all parties who are interested in green investments will be welcomed.

1.2 Objectives of the Guernsey Green Fund

The objective of the GGF is to provide a platform upon which investments into various green initiatives can be made. The GGF will enhance investor access to the green investment space by providing a trusted and transparent product that contributes to the internationally agreed objectives of COP21 and provides certainty, consistency and simplicity for investors.

Investors in a GGF will be able to rely on the GGF designation, provided through compliance with the GGF Rules, to represent a scheme that meets strict eligibility criteria of green investing and will have the objective of a net positive outcome on the planet's environment.

The designated administrator or manager (if a POI licensee) will declare on application that the scheme will meet certain portfolio requirements and the prospectus will be required to contain disclosures to that effect. There will be a continuing obligation to confirm that the GGF meets set criteria chosen from a pre-decided list and the Commission will have in place robust procedures to take action if a GGF does

not or no longer meets the required investment criteria. A GGF will have a continuing obligation to provide investors and the Commission with clear and comparable information about the composition of the portfolio and how it meets its green objectives.

The product will allow Guernsey to be at the forefront of the initiative to mitigate the risks associated with climate change and promote engagement in climate change issues.

1.3 The Development of this Paper

Many governments and financial institutions around the world are pursuing the aim of protecting the environment. In light of growing climate change obligations, there are plenty of opportunities to channel finance into green initiatives in order to fuel the transition into a global low-carbon economy.

The green bond market has picked up pace over the past few years, exemplified in the growing number of global stock exchanges which have specific segments dedicated to listing bonds which finance environmental projects. As an example, at the end of 2017 the London Stock Exchange reported a 57% growth of its listed green bonds in one year, with USD 20.2 billion equivalent raised.¹

In light of the growing green bond market international standards, including the Green Bond Principles and the Climate Bonds Standard, have been developed to align an understanding of what constitutes a green bond, the certain governance procedures that should be in place around a green bond and the disclosures that should be made to participants.

Despite the aforementioned, green funds are at an embryonic stage. Investors remain hesitant to invest in funds which may not ring true to their green label or do not want to sacrifice a good return for the sake of the environment. The GGF Rules use standards developed by international financial institutions with the appropriate scientific background to ensure that the various assets held in a GGF are green within the true meaning of the word. Furthermore, in accordance with these standards, the Commission will require that the appropriate disclosures are made to investors and the Commission to ensure that the fund is being governed appropriately.

The development of the GGF Rules was facilitated through various working strategy groups involving industry and government participation and the Commission is grateful for all the feedback and continued support received from external parties.

¹London Stock Exchange Group 'A stellar month for green bonds in November' 05/12/2017 (see <https://www.lseg.com/markets-products-and-services/our-markets/london-stock-exchange/fixed-income-markets/green-bonds/stellar-month-green-bonds-november>)

2. The Guernsey Green Fund

2.1 The Framework

Any type of fund can apply to be a GGF whether registered or authorised, open-ended or closed-ended. The GGF Rules have been structured in this way in order to encourage all types of funds to apply for a GGF designation if they fall within the green bracket and to provide flexibility around the types of GGFs that may exist. In accordance with section 2, schedule 3 of the Protection of Investors Law, the name of the scheme must not be undesirable or misleading. Therefore, any fund that is not a GGF or is not in the process of applying for a GGF designation will not be permitted to use language that corresponds to that of a GGF.

In order to show that a fund has been awarded the designation of a GGF, there must be information in the fund's prospectus to this effect so that investors are made explicitly aware that the fund carries the GGF designation. The Commission will designate GGFs on its website and is also in the process of investigating the use of a badge that, upon successful application, is provided to a GGF to be used on its various marketing and information materials so that it may clearly display its GGF designation and compliance with the GGF Rules. This badge will be subject to intellectual property interests belonging to the Commission.

The different parts of the GGF are designed to allow the applicant to select the parts that are most relevant to them. Below is a flow chart that depicts the three elements of the GGF.

1. Set up the fund starting with one of the existing products

**Class A/B/Q/ Registered/Authorised/
Closed Ended/ PIF/Rules**

2. Comply with the opt-in GGF Rules that set out the description of fund known as a GGF.

The GGF Rules comprise:

1. **Application** requirements
2. **Disclosure and reporting** requirements, and
3. Compliance with the **green criteria** that the Commission has chosen.

3. Choose from two options regarding how the fund is certified so that the Commission is assured the fund is run in accordance with the GGF Rules.

Level 1

A **third party certification** that the prospectus of the fund meets the abovementioned green criteria.

Level 2

A **self-certification** from the designated administrator or manager that the fund meets the abovementioned green criteria.

Optional

Funds can voluntarily commit to adopting **ESG Principles**.

Additionally, an applicant can voluntarily commit the fund to Environmental, Social and Governance (“ESG”) Principles. For ease of reference, the proposed GGF Rules that govern the above process are appended to this Paper.

2.2 Applying for a Guernsey Green Fund

Applying for a GGF will consist of three elements as detailed above.

Firstly, as previously stated, any fund, new or existing, can apply for GGF status. In accordance with section 6 of the GGF Rules, applicants will be required to submit the appropriate application forms to the Commission. In addition, the designated administrator of a fund seeking to use the description of a GGF must submit:

- A final version of the Prospectus,
- In the case of a Level 1 Scheme, a declaration in accordance with Part 1 Schedule 1 of the GGF Rules that the fund meets the Green Criteria,
- In the case of a Level 2 Scheme, a declaration in accordance with Part 2 Schedule 1 that the fund meets the Green Criteria,
- The requisite fee, and
- Such other information that the Commission may require.

Processing the application will vary according to the type of fund that has applied for GGF status. For new funds, the usual timeframes (as detailed on the GFSC website) will apply depending on whether the fund is applying through the authorised or fast track route and up to five days will be taken to process the GGF application. For existing funds, up to five days will be taken to process the GGF application. It is proposed that a £500 administration fee for all GGF applications will be inserted into The Financial Services Commission (Fees) Regulations, which will come into effect next year. Until the fee regulations are amended there will be no administration fee charged for the submission of a green fund notification. For the avoidance of doubt the application fees for authorisation or registration of the schemes will still apply.

The Commission will designate a fund to be a GGF if it is satisfied that:

- The fund’s principal documents and prospectus appear to comply with the GGF Rules, and
- A declaration has been provided in accordance with Schedule 1 of the GGF Rules that the GGF meets the selected green criteria.

2.3 The Guernsey Green Fund Rules

Upon successful application, the fund must comply with the GGF Rules. A fund opts into compliance with the GGF Rules and thereon is a designated Guernsey Green Fund. The Rules provide details on:

- The scope of the Rules (section 2),
- The Investment Criteria (section 3),
- The application process (section 4),
- Details relating to designation (section 5),
- Obligations relating to oversight of the fund (section 6),
- Removal of designation (section 7),
- Prospectus disclosures (section 8), and
- Notifications and filings to be submitted to the Commission (section 9).

As referenced in the Investment Criteria, the Rules contain Schedule 2 which consists of the green criteria that the Commission has selected. In order to comply with the Rules, 75% of the assets in a

GGF must be held in accordance with the green criteria set out in the Schedule. The Commission is open to suggestions for other green criteria that could be adopted by the Rules.

Currently, there is only one green criteria provided which is The Common Principles for Climate Mitigation Finance Tracking that have been designed to increase transparency and credibility of climate mitigation finance reporting. The Principles have been developed by the Joint Climate Finance Group of Multilateral Development Banks (MDBs) and the International Development Finance Club (IDFC) and have been selected by the Commission due to their experience with the topic and their intention to share these principles with other institutions that are looking for common approaches to climate change mitigation.

Within the Principles, there are a number of categories that green investments must fall into and are listed as follows:

- Renewable energy
- Lower carbon and efficient energy generation
- Energy efficiency
- Agriculture, forestry and land-use
- Non-energy greenhouse gas reductions
- Waste and wastewater
- Transport
- Low-carbon technologies
- Cross-cutting issues
- Miscellaneous

Under each category exists a list of activities to give an indication into the types of assets that may be held in a GGF. Therefore, the Principles focus on the type of activity to be executed as opposed to the actual results. The Principles also contain a list of definitions and guidelines that provide detail around what constitutes climate change mitigation and how mitigation activities may be structured; please see Annex 1 for the Principles in full.

The Commission has selected these Principles as they provide a flexible framework for entities to adopt and provide a comprehensive understanding of what encompasses climate change mitigation. As the Principles are activity based, they do not measure the management of funds and therefore leave it to the respective parties to operate the funds as they see fit. At this stage, the Rules will set out the principles as they stand at the time of launch in order to maintain control and oversight. The Commission will continuously monitor the Principles and any other criteria that may apply. Any future updates will be subject to transitional provisions.

The remaining 25% of investments in the fund must not be invested in a manner that would lessen the scheme's objective of mitigating climate change. The Commission has selected an exclusion policy that sets out a non-exhaustive lists of activities that are banned from use in the GGF and are listed as follows:

Sector	Excluded areas
Energy	Uranium mining for nuclear power;
	Any fossil fuel-based power generation including: gas, 'clean' coal and other coal.
Energy efficiency	Efficiency upgrades to greenhouse gas intensive power sources – e.g. cleaner coal technology;
	Energy savings in fossil fuel extraction activities – emission reduction requirements require a rapid phase-out of all fossil fuel usage. Anything that helps to extend the life of fossil fuel usage is excluded.

Waste	Landfill without gas capture;
	Waste incineration without energy capture.
Transport	Rail lines where fossil fuels account for more than >50% of freight.

The exclusion policy has been drawn from the Green Bonds Methodology of the Climate Bonds Initiative which specifically checks for any assets that fall outside the appetite for green bonds. It provides a clear indication on the types of activities that are considered inappropriate for green investments.

The Commission may update and add exclusion policies as it sees fit in order to remain abreast of changing environmental standards. Transitional provisions may also be added in the circumstance where a GGF holds an asset that falls within scope of an exclusion policy and no longer complies with the Rules. This will allow a GGF appropriate time to dispose of assets that are excluded. Such amendments would be subject to consultation.

The Commission is proposing that the investment criteria contained in the GGF Rules must where the fund is:

- (i) A company be specified in its memorandum of association
- (ii) A limited partnership be specified in the Limited Partnership Agreement
- (iii) A trust be specified in the Trust Deed

This will ensure that the fund is complying with the investment criteria, importantly the green criteria, as set out in the GGF Rules and its working documents. This will provide investors with a level of certainty that the fund is invested in strict accordance with its investment objectives.

2.4 Certification of the Guernsey Green Fund

The fund will need to acquire certification of the fund in one of two ways and provide such a certification to the Commission upon application:

- Level 1: a declaration from the designated administrator or manager (if a POI licensee) that the fund meets the green criteria. A copy will be provided to the Commission in the form of a signed document from the designated administrator. In addition, the designated administrator will have to provide the Commission with a certificate from a suitable third party that the prospectus meets the green criteria. Details of the relevant third party must be provided to the Commission including the party's name, address and experience.
- Level 2: a declaration from the designated administrator or manager (if a POI licensee) that the fund meets the green criteria. A copy will be provided to the Commission in the form of a signed document from the designated administrator.

The purpose of certification is to provide certainty to investors that the GGF is invested in accordance with regulated green standards. Level 2 will require additional work from the designated administrator to confirm that the fund is invested in the way that the prospectus prescribes. Level 1 will come at an increased cost and, therefore, will provide the fund with a well-established certification from a third party that the fund is invested in accordance with the prospectus and possibly other details relating to the environmental impacts of the fund. The designated administrator will be required to assess the experience and expertise of the third party certifier before accepting a certificate. Examples of parties who might be acceptable third party certifiers would be qualified audit firms or rating agencies.

2.5 The ESG Principles

A GGF can voluntarily commit to adopt Environmental, Social and Governance (“ESG”) Principles. This will be done by declaring on application that the fund will consider the ESG Principles selected by the Commission and a disclosure in the prospectus to this effect.

The ESG Principles selected are the Principles of Responsible Investment (“the PRI”). The PRI are a voluntary and aspirational set of investment principles that offer a method of incorporating ESG issues into investment practice, and read as follows:

Principle 1: We will incorporate ESG issues into investment analysis and decision-making processes.

Principle 2: We will be active owners and incorporate ESG issues into our ownership policies and practices.

Principle 3: We will seek appropriate disclosure on ESG issues by the entities in which we invest.

Principle 4: We will promote acceptance and implementation of the principles within the investment industry.

Principle 5: We will work together to enhance our effectiveness in implementing the principles.

Principle 6: We will each report on activities and progress towards implementing the principles.

It will be the joint responsibility of the board of the fund (where applicable) and the investment manager to incorporate these principles into their investment analysis and decision-making processes. Additionally, these parties will have to confirm to the Commission on an annual basis that the fund continues to adopt the Principles, or if they decide to discontinue adoption of the principles, to make a declaration to that effect.

The Commission does not propose to monitor the implementation of the ESG Principles. Instead, it is the role of the Investment Manager (see s3.2) to implement the Principles in a way that is considered appropriate for the fund. If a fund ceases to adopt ESG Principles, unless declared as above, this will be a breach of the fund’s prospectus and will need to be disclosed as such to the Commission. The declaration of the fund will be renewed to reflect this change.

3. Using the Guernsey Green Fund

3.1 Duties of the Designated Administrator

The designated administrator has the shared responsibility to ensure that the GGF is invested in accordance with the investment criteria in the GGF Rules. Any breach should be notified to the relevant parties specified in the GGF Rules and the designated administrator should monitor the corrective measures required.

In addition, the designated administrator must ensure that the fund is monitored against the green criteria on a monthly basis and, where there is a contravention, take such steps as are necessary to remedy the position. If the position is not rectified within a month, the Commission must be notified and provided with proposals to rectify the breach. If the position does not change for two months, investors must also be informed of the breach. It is worth noting that for the first six months from the date on which persons are invited to become investors in the GGF or until the GGF is fully invested (whichever is sooner) the obligations relating to any contraventions do not apply.

Without prejudice to any other rules to which the GGF is subject to, the designated administrator shall submit to the Commission, within 6 months of the GGF's year-end, a notification providing details on how the fund is invested within the green criteria. Additionally, the designated administrator must take reasonable steps to ensure that the GGF makes the notifications set out in the GGF Rules.

3.2 Duties of the Investment Manager

There is no requirement in the GGF Rules to have a Guernsey domiciled manager however, for the purposes of the Rules, any requirements placed on the manager are only applicable to managers licensed under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (as amended).

The investment manager has the shared responsibility to ensure that the GGF is invested in accordance with the investment criteria in the GGF Rules. In the event of a breach, the investment manager should consider the most appropriate course of action taking into account the type of assets in the GGF, the type of investors and the disclosures in the prospectus.

If a GGF chooses to adopt the ESG Principles, it will be the responsibility of the investment manager to incorporate the Principles into the investment analysis and decision-making processes of the fund. This must be provided in the Prospectus of the GGF.

3.3 Interests of the Investors

The GGF is designed to be flexible for investors as well as to protect their interests. As is the case with any other Fund Rules, the prospectus must contain all material information that an investor would reasonably require in order to make informed investment decisions. It may be necessary to provide prospective investors with other documents that are material to the nature of the GGF.

In addition to the notification requirements in the GGF Rules, if a breach of the GGF Rules is not rectified within three months, the licensee who submitted the declaration of compliance with the green criteria shall:

- Provide a declaration of non-compliance to the Commission,
- Ensure that the fund ceases to use the designation of a GGF on all documents and other material,
- Notify all investors of the steps taken under this paragraph, and
- Place a copy of the declaration of non-compliance in a prominent position on its website.

The Commission reserves the right to remove the designation of a GGF where a GGF:

- remains in breach of the green criteria for a period in excess of three months, or
- at any stage ceases to meet the green criteria in order to protect:
 - o the interests of investors,
 - o the public, or
 - o the reputation of the Bailiwick as a finance centre.

In addition to the above, if the fund had been promoted in accordance with ESG Principles, then it shall cease to so promote itself, unless otherwise agreed in advance with the Commission.

All green funds will be listed on the GFSC website for the information of prospective investors.

DRAFT

4. Consultation Questions

Question 1

Do you have any consultation feedback on the proposed GGF and the GGF Rules?

Question 2

Do you have any comments on the proposed framework of the GGF?

Question 3

Do you have any comments on the proposals relating to how a GGF designation is communicated to investors, as well as the creation of a GGF badge?

Question 4

Do you have any comments on the proposals relating to the application process of the GGF?

Question 5

Do you have any comments on the proposals relating to the Green Fund Rules and/or their application?

Question 6

Do you have any comments on the proposals relating to the Green Criteria in the Green Fund Rules?

Question 7

Do you have any comments on the proposals relating to the Exclusionary Policy in the Green Fund Rules?

Question 8

Do you have any comments on the proposals to incorporate the investment criteria in the memorandum of association, limited partnership agreement and trust deed of a scheme?

Question 9

Do you have any comments or suggestions on the proposals relating to Level 1 and Level 2 certification?

Question 10

Do you have any comments or suggestions on the proposals relating to the voluntary opt-in ESG Principles?

Question 11

Do you have any comments on the proposals relating to the responsibilities of the designated administrator of the GGF?

Question 12

Do you have any comments on the proposals relating to the responsibilities of the investment manager of a GGF?

Question 13

Do you have any further comment or suggestion on the topics raised in this Consultation Paper?