

Guernsey Financial Services Commission

**Consultation Paper on Unclaimed Money under the Protection of  
Investors (Bailiwick of Guernsey) Law, 2020**

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**Contents**

Background ..... 5

What is Unclaimed Money? ..... 5

International Standards ..... 6

Current Rules ..... 6

Key Policy Proposals..... 7

Schemes in Wind Down ..... 11

Application ..... 11

Providing Feedback ..... 12

Next Steps ..... 12

Glossary	
Term	Description
Board of the Scheme/Scheme Board	Refers to the governing body of a Scheme, i.e. it includes a general partner to a limited partnership.
CDD	Customer Due Diligence.
Class B Rules	The Authorised Collective Investment Schemes (Class B) Rules and Guidance, 2021.
Client Money	Refers to Client Money as defined under section 9.2 of the Conduct of Business Rules.
The Commission	The Guernsey Financial Services Commission.
Conduct of Business Rules	The Licensees (Conduct of Business) Rules and Guidance, 2021.
Designated Administrator	The Designated Administrator, as defined within the POI Law, appointed to a Scheme.
FCA	Financial Conduct Authority.
The Handbook	The Handbook on Countering Financial Crime and Terrorist Financing.
Licensee	Refers to an entity licensed under the POI Law.
Money/Monies	Cash or cash equivalents.
POI Law	The Protection of Investors (Bailiwick of Guernsey) Law, 2020.
Scheme	Collective Investment Scheme, as defined within the POI Law.
Scheme Particulars	Refers to particulars of a Scheme prepared in accordance with relevant legislation and includes a prospectus, offering memorandum, explanatory memorandum, term sheet, admission document, subscription agreement, information memorandum, listing particulars, application form or any other similar documents or any combination of.
Thematic Review	Refers to the Thematic Review of Unclaimed Client Money of Collective Investment Schemes published on the Commission's website on 21 July 2023.
Unclaimed Money/Monies	See proposed definition on page 5.

Responses to this Consultation Paper are sought by 20 June 2024.

We welcome and strongly encourage respondents to provide feedback or comment on any section and question. Feedback may be provided via the Consultation Hub section of the Commission's website ([www.gfsc.gg](http://www.gfsc.gg)).

## Background

During 2022 and Q1 2023 the Commission undertook a Thematic Review regarding Unclaimed Money<sup>1</sup>; the Thematic Review focussed on how these monies are dealt with by the various relevant parties, primarily being the Designated Administrators, Scheme Boards and Liquidators. The scope of the Thematic Review was limited to authorised and registered schemes, which included Schemes whose authorisation/registration had been suspended but not those which had been surrendered. Therefore, whilst the Thematic Review identified that as a proportion of the Collective Investment Scheme industry's overall NAV, Unclaimed Money does not represent a significant percentage, the Commission is mindful that, in many cases, Unclaimed Money will only be identified at the end of the Scheme's life.

One of the main findings from the Thematic Review was that Unclaimed Money is not dealt with in a consistent manner within the Collective Investment Scheme industry, and the Commission is mindful that, other than in the Class B Rules, there is no guidance or rules relating to Unclaimed Money for Guernsey Schemes.

This consultation paper proposes the creation of a new policy and seeks industry's views on key points which would be covered by the policy. This consultation paper also seeks industry's views on the current rules regarding Unclaimed Money.

This consultation paper is a working document and does not prejudice any final decision to be made by the Commission.

### What is Unclaimed Money?

The Commission proposes defining Unclaimed Money as unclaimed investor money amounts where the rightful owner is known but contact has been lost, or other investor money which remains unpaid because meaningful engagement with the investor can no longer be obtained, often due to inadequate CDD documentation.

The underlined emphasis above is to highlight changes to the definition used at the time of the Thematic Review; these changes are proposed in order to provide additional clarity.

**Q1: Do you agree with this definition? Please provide your comments below:**

Unclaimed Money may arise as a result of losing contact with the investor because, for example, the investor has changed address without first notifying the Designated Administrator, however the Commission identified that the most common cause of Unclaimed Money is outstanding CDD

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<sup>1</sup> See report published here: <https://www.gfsc.gg/news/thematic-review-unclaimed-client-money-collective-investment-schemes>

whereby up to date CDD has not been provided by the investor therefore, in line with 4.7 of the Handbook, money cannot be paid out.

## International Standards

In 2017, International Organization of Securities Commissions (“IOSCO”) published a report<sup>2</sup> on Good Practices for the Termination of Investment Funds. This focusses on funds in wind down and the Commission has taken this report into account in drafting this consultation paper. The IOSCO Report notes the following good practice:

- “Investment fund documentation should set out how the responsible entity<sup>3</sup> will deal with investors who are not contactable at the time a responsible entity decides to terminate an investment fund.”
- “The responsible entity also should have clear procedures around trying to make contact with the investors.”
- “While the investor should take reasonable care to ensure that they avoid loss of contact, the responsible entity should detail within the investment fund documentation (i) the procedure to be applied by the responsible entity when attempting to make contact with investors, (ii) how unclaimed amounts will be treated including duration for which these Unclaimed Monies will be held, and (iii) the procedure to be followed once this period has elapsed in accordance with the fund’s documentation and applicable laws and regulations.”
- “It is not considered good practice for unclaimed amounts to be transferred in a manner where they cannot be returned to the investor if he or she subsequently appears within a reasonable time period, unless such transfers are required by law.”

The Commission agrees with the above overarching principles and seeks to adopt these in its proposed policy.

## Current Rules

The Class B Rules are the Commission’s only rules made under the POI Law which contain provisions for Unclaimed Money. The Class B Rules note the principal documents of the relevant Scheme should take precedence but, in the absence of any provisions within the principal documents, Unclaimed Money should be transferred to the Scheme after a period of six years. After this time, the investor will not have any claim to it:

“Any distribution payment which remains unclaimed must be dealt with in accordance with the provisions of the principal documents or, if there are no such provisions, after a period of six years from the date of payment must then be transferred to and become part of the scheme property after which point neither the payee, the holder, or any successor in title, will have any right to except as

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<sup>2</sup> <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD588.pdf>

<sup>3</sup> The IOSCO Report describes “responsible entity” to mean “the entity/entities responsible for the overall operation of the investment fund and in particular its compliance with the legal/regulatory framework in the respective jurisdiction”.

part of the scheme property.”

The Commission is mindful that returning Unclaimed Money to the Scheme may have unintended consequences on the Scheme, such as overinflating performance, and it is also mindful of the IOSCO Report which states that it is not good practice for Unclaimed Money to be transferred in a manner where it cannot be returned if the investor subsequently appears within a reasonable time period. It is therefore proposed that the provisions related to Unclaimed Money in the Class B Rules are removed, specifically Rules 5.2(2) and 8.3(3). It is further proposed that the Commission will implement a broader policy applicable to all authorised and registered Schemes on Unclaimed Money.

**Q2: Do you agree that the Class B Rules should be amended as proposed? Please provide your comments below:**

**Q3: Do you agree that the Commission should implement a broader policy applicable to all authorised and registered Schemes on Unclaimed Money? Please provide your comments below:**

## Key Policy Proposals

The Commission’s proposals in this consultation paper centre on three key points:

1. that the Board of the Scheme adopts a policy regarding Unclaimed Money;
2. that there is a responsible entity in charge of implementing the aforementioned policy; and
3. that there are appropriate disclosures to investors within the Scheme Particulars.

Throughout this consultation paper, the Commission will refer to the “responsible entity”; the Commission envisages that in most cases the responsible entity will be the Designated Administrator of the Scheme as it has observed that generally, in practice, the Designated Administrator holds or controls the Unclaimed Money. Nevertheless, it is recognised that the Board of the Scheme plays a pivotal role in any decision-making regarding the Unclaimed Money so it is likely that the proposals will require input from both parties.

In any case, the Commission proposes that where there is Unclaimed Money belonging to an investor in a Scheme (with the exception of a Scheme which has entered the liquidation process),

there should be a responsible regulated entity in control of the funds.

The focus of the Commission's proposed policy is authorised and registered schemes, i.e. those within its direct regulatory remit, however as discussed earlier, the Commission is mindful that Unclaimed Money may only be identified or arise at the end of a Scheme's life. It is hoped that providing greater clarity around the treatment of Unclaimed Money at the start of a Scheme's life will reduce the likelihood of uncertainty following the surrender of a Scheme's authorisation or registration.

**Q4: Do you consider the proposed scope is appropriate? Please provide your comments below:**

### *Scheme Unclaimed Money Policy*

It is proposed that Schemes must have a policy on Unclaimed Money, approved by the Scheme Board, covering at least the following points:

#### Identification of the responsible entity

The policy should identify who the responsible entity is, i.e. the entity in charge of implementing the policy. This should be decided by the Board in conjunction with relevant parties prior to the launch of the Scheme.

The responsible entity may change, for example if a Scheme changes its Designated Administrator or if a liquidator is appointed; where this occurs, it should be documented appropriately and communicated to all relevant parties.

#### Contact Policy and Applicable Timeframe

The policy should prescribe a timeframe during which the responsible entity will make reasonable efforts to attempt to contact the investor(s) with Unclaimed Money. It is proposed that, after this timeframe, it would be acceptable for the responsible entity to cease efforts to trace the investor. The timeframe should take into account the value of the Unclaimed Money, the type of Scheme, the type of investor, and any other relevant factors.

Notwithstanding the aforementioned factors to consider, the Commission would generally consider *reasonable efforts* to include at a minimum an attempt to contact the relevant investor(s) once per year, whether that is a direct attempt using the latest contact details, or an indirect attempt by issuing a stock exchange announcement or including a note within the audited financial statements.

Further, the Commission's Thematic Review identified that six years was the average length of time Licensees considered appropriate to continue attempting to contact the investor(s); this timeframe is in line with the applicable Class B Rule. Whilst the Commission is not intending to



be prescriptive regarding the timeframe in its policy, it would not expect Licensees to cease making reasonable efforts to contact the investor(s) prior to six years after the first contact attempt.

**Q5: Do you agree this is a reasonable timeframe? Please provide your comments below:**

### Communication with Scheme Boards

As the Board of the Scheme is likely to play a pivotal role in any decision-making regarding Unclaimed Money, and as it is likely that the Designated Administrator will be the first party to identify money being unclaimed within the Scheme, the Commission considers it imperative that the Designated Administrator keeps the Board of the Scheme updated on Unclaimed Money on a regular basis throughout the life of the Scheme.

It would be prudent for the Scheme's policy to detail how the Board of the Scheme will be kept informed of Unclaimed Money in relation to the Scheme, for example this could be through the Designated Administrator's quarterly report to the Board.

### De Minimis Amounts

Steps taken to contact and trace investors should be proportionate to the sum of the investment. The policy may specify a *de minimis* amount per investor below which the responsible entity is not required to follow the Unclaimed Money contact policy, for example if the Unclaimed Money for one investor is less than £250, then the procedure relating to contact attempts will not be followed. The objective here being that the costs of attempting to contact the investor do not outweigh the value of the Unclaimed Money.

### Costs

The policy should address how any exceptional costs will be allocated, i.e. whether the costs will be charged to the Unclaimed Money balance only or the entire Scheme. For the avoidance of doubt, the Commission would not expect the responsible entity to charge additional costs for making reasonable attempts to contact an investor, including use of mass marketing or social media. However the Commission understands that in some circumstances the relevant party may seek to recoup funds from the Scheme or unclaimed balance to cover extraordinary costs such as the engagement of tracing agents; but anticipates these circumstances to be rare and would only be appropriate for high values of Unclaimed Money.

**Q6: Do you have any comments regarding the proposals for Unclaimed Money policy, as discussed above? Please provide your comments below:**

### *Disclosure*

The Commission proposes that the Scheme's policy on Unclaimed Money should be explained and disclosed to investors within the Scheme Particulars.

It would be prudent for the Scheme Particulars to take account of what would happen if the cell or Scheme ceased operating and for there to be appropriate safeguards put in place to ensure that there is a mechanism through which monies can be claimed or distributed during this timeframe.

**Q7: Do you have any comments regarding disclosures in Scheme Particulars, as discussed above? Please provide your comments below:**

It may be necessary to amend a scheme's policy on Unclaimed Money during the term of the Scheme, for example as a result of a change of party to the Scheme, as already discussed above, or as a result of another relevant change, such as a change of investor type (e.g. permitting retail investors to invest in the Scheme). In such circumstances, the Commission would expect this to be disclosed to investors via a change of Scheme Particulars or addendum thereto; and the Commission should be notified as and when required under the relevant scheme rules.

### *Client Money Rules*

During the Commission's Thematic Review it was apparent there was no uniform approach to the handling of Unclaimed Money. In some cases Unclaimed Money was retained in an account in the name of the Scheme, and in other circumstances the Unclaimed Money was held in a client money account of the licensed administrator or licensed principal manager. In the latter case the Commission considers that such money should be treated as Client Money, because it is not the licensee's own money, and therefore subject to the relevant client money rules under Part 9 of the Conduct of Business Rules.

Client Money must be held in a dedicated bank account and in accordance with 9.4 of the Conduct of Business Rules, Licensees may only cease to treat money as Client Money if it is paid:

- a) to the client;
- b) into a bank account in the name of the client, not being an account which is also in the name of the licensee; or
- c) to the licensee itself, where it is due and payable to the licensee.

## Schemes in Wind Down

Unclaimed money is likely to arise at the end of the life of a Scheme. Again, there is no uniform approach to the winding up of a Scheme because of the differing structures used, the nature of scheme property and other factors. The process may be overseen by the principal manager and administered by the licensed fund administrator. The scheme might be placed into a formal liquidation process with the appointment of a professional liquidator.

In any event it is reasonable that any arrangement which is put in place is consistent with the Scheme's stated policy on Unclaimed Money.

It may be that a Scheme seeks to surrender its authorisation or registration while Unclaimed Money remains in the Scheme. It is the Commission's expectation that even where a Scheme may have surrendered its authorisation or registration that the responsible entity, be that a Licensee or a professional liquidator, would comply with the Unclaimed Money policy and the aforementioned IOSCO recommendation that "*it is not considered good practice for unclaimed amounts to be transferred in a manner where they cannot be returned to the investor if he or she subsequently appears within a reasonable time period, unless such transfers are required by law.*"

Further, it is the Commission's expectation that Unclaimed Money would be under the control of a Licensee or a professional liquidator at all times.

Compliance with the above policy does not mean that there is an expectation that Unclaimed Money should be held for an indefinite period. Where the costs of continuing to administer a residual sum of unclaimed money outweigh the sum itself it may be reasonable for the responsible entity to take steps to resolve any arrangement. For example, a liquidator might apply to the Court to pay away the residual balance to charity or declare the monies *bona vacantia*, once a reasonable time period has passed. This is a decision for the responsible entity to make and should at all times be in accordance with the applicable legislation.

**Q8: Do you have any comments regarding Unclaimed Money in relation to Schemes which are reaching the end of their life? Please provide your comments below:**

## Application

It is proposed that the Unclaimed Money Policy outlined in this Consultation Paper would apply to all authorised and registered collective investment schemes, except for Private Investment Funds. For the avoidance of doubt, this would include Schemes whose authorisation or registration has been suspended.

The Commission would expect all current Schemes to take the proposed Unclaimed Money Policy into account, particularly as part of their next review of Scheme Particulars. Notwithstanding this, there will not be an expectation that Schemes adopt a new policy immediately upon publication of

the Commission's proposed Unclaimed Money Policy.

### Providing Feedback

Responses to this Consultation Paper are requested by 20 June 2024. Responses should be submitted through the Commission's Consultation Hub, which can be found at <https://consultationhub.gfsc.gg/>.

### Next Steps

Following the consultation period, the Commission will collate and consider responses provided, with a view to publishing its policy shortly thereafter.