

Regulated Investment Exchange Operator Rules

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The Guernsey Financial Services Commission has today issued the Regulated Investment Exchange Operator Rules and Guidance, 2024 (the “RIEO Rules”), made under the Protection of Investors (Bailiwick of Guernsey) Law, 2020 (the “POI Law”). These rules will come into operation on 31 January 2025.

This follows the public consultation in respect of the RIEO Rules, which closed on 12 November 2024. The Commission has engaged directly with respondents to the Consultation Paper to provide feedback in relation to respondents’ comments.

The RIEO Rules will replace the current Investment Exchange (Notification) Rules 1998 (“the IEN Rules”), which will be revoked upon the RIEO Rules becoming operative on 31 January 2025.

The RIEO Rules will apply to any firm licensed under the POI Law to conduct the Restricted Activity of operating an investment exchange. These rules aim to provide one consolidated and transparent point of reference for an operator of an investment exchange, incorporating relevant elements of the IEN Rules and other applicable rules made under the POI Law.

Links:

- [The Regulated Investment Exchange Operator Rules and Guidance, 2024](#)
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Overview

Introduction

This consultation seeks comments on proposed new rules for licensed operators of investment exchanges, replacing the existing framework of rules applying to such licensees.

Why your views matter

Who might benefit from reading this paper?

This consultation paper is a public document and feedback is welcomed from any interested stakeholder. The proposals will directly impact persons licensed to operate an investment exchange in the Bailiwick and may be of relevance to members, issuers and other persons connected to such an investment exchange.

Related

➔ [Consultation Paper - RIEO Rules](#)

➔ [Draft RIEO Rules](#)

Audiences

Anyone from any background

THE REGULATED INVESTMENT EXCHANGE OPERATOR RULES and GUIDANCE, 2024

The Regulated Investment Exchange Operator Rules, made in accordance with the Protection of Investors (Bailiwick of Guernsey) Law, 2020¹ (“the Law”), are set out in this document.

Further guidance, provided by the Guernsey Financial Services Commission (“the Commission”) is set out in shaded boxes.

¹ Order in Council No. XVIII of 2020

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PART 1 - INTRODUCTION

1.1 Application

- (1) The Regulated Investment Exchange Operator Rules, 2024 replace The Investment Exchange (Notification) Rules, 1998.
- (2) These Rules apply to any person licensed, under the Law, to carry on the restricted activity of operating an investment exchange².
- (3) The Commission may in its absolute discretion, by written notice to a licensee, exclude or modify the application of any provision of these Rules.
- (4) The Commission may issue supplementary guidance regarding the standards of conduct and practice expected in relation to any aspect of the regulatory framework. Such guidance will not constitute rules of the Commission.

Guidance Note:

This document takes a two-level approach –

- The Rules set out the standards to be met; and
- The guidance notes (in blue boxes) present suggested ways of showing compliance with the Rules.

A licensee may adopt alternative measures to those set out in the guidance so long as it is possible to demonstrate that such measures achieve compliance.

The text contained in shaded boxes contains guidance from the Commission and does not form part of these Rules.

² As defined in section 79 of The Protection of Investors (Bailiwick of Guernsey) Law, 2020

PART 2 – CORPORATE GOVERNANCE AND SENIOR MANAGEMENT RESPONSIBILITY

2.1 Corporate governance

- (1) The board must ensure that there are effective and appropriate policies, procedures and controls in place which allow it to meet its obligations under the Law, these Rules, and any other applicable Regulations and/or Ordinances.
- (2) The board must evaluate and record the assessment of its compliance with “The Finance Sector Code of Corporate Governance³”, or any successor codes.
- (3) The board must retain responsibility for any of its outsourced functions.
- (4) A licensee must appoint a person as the chief executive, the formal title being at the discretion of the licensee, and appoint a replacement to fill this position when it falls vacant.
- (5) A licensee’s board and senior management must take all reasonable steps to ensure that all employees of the licensee are aware of the requirement to avoid serious damage to the licensee’s reputation or its financial position.
- (6) The board must appoint such number of Bailiwick-based senior executives as is commensurate with the nature, size and complexity of the licensee’s activities in the Bailiwick, and the prudent conduct of its business.
- (7) The board has overall responsibility for ensuring that the business conducted on the investment exchange operated by the licensee is conducted in an orderly manner and that its markets are fair, efficient and transparent; and afford proper protection to investors.

³ Version dated 26 July 2023 and any subsequent versions

Guidance Note:**Reasonable steps**

Reasonable steps include having in place sufficient management controls and compliance procedures and a system for ensuring that such controls continue to be sufficient and that employees are observing internal compliance procedures.

2.2 Constitution of a licensee

- (1) A licensee must notify the Commission of any proposed change to its constitution, articles of association, governing statute, charter or by-laws and –
 - (a) provide such notification, to the Commission, before the proposed change is circulated to the members of the investment exchange operated by the licensee for consideration or approval;
 - (b) give reasons for the proposed change; and
 - (c) inform the Commission of the date on which any such change is sought to become effective.

2.3 Representation of members in selecting the board of a mutualised investment exchange

- (1) Where an investment exchange operated by a licensee is constituted as a mutualised organisation, it must ensure a fair representation of its mutual members in the selection of its board of directors (or equivalent body) and in the administration of its affairs.

PART 3 – COMPLIANCE ARRANGEMENTS

3.1 General

- (1) The board has effective responsibility for compliance with the Law, these Rules, and any other rules or guidance made under the Law and any other applicable Regulations and/or Ordinances which apply to the licensee.
- (2) The board must take responsibility for the licensee's policy relating to its review of compliance arrangements and discuss compliance at regular intervals.
- (3) The board must ensure that the licensee takes reasonable steps, including the establishment and maintenance of procedures, to ensure that its officers and employees act in conformity with –
 - (a) their own and their employer's relevant responsibilities under the Law, and any rules, applicable Regulations and/or Ordinances made under the Law which apply to it, including these Rules;
 - (b) the requirements of the statutory restrictions on market abuse, insider dealing, money laundering, countering the financing of terrorism and proliferation financing;
 - (c) appropriate arrangements on propriety in personal dealings;
 - (d) guidance documents, issued by the Commission, which are relevant to the carrying on of controlled investment business;
 - (e) any relevant principles issued by the International Organization of Securities Commissions (IOSCO)⁴; and
 - (f) a licensee's own obligations and duties under the rules of the investment exchange it is licensed to operate.
- (4) A licensee must keep a breaches register to log all instances of non-compliance with the obligations and requirements set out in Rule 3.1 (3)(a) to (f).

⁴ As published on the website <https://www.iosco.org/>.

- (5) A licensee must ensure that its compliance procedures are set out in writing and that a copy is kept and made available to the Commission on request.
- (6) The Commission may require changes to the compliance arrangements and a licensee must implement and comply with any such requirements.
- (7) A licensee must review its written compliance procedures at least annually.
- (8) When considering compliance, the board must take into account the size, nature and complexity of the licensee's operation of an investment exchange, which may include, but is not limited to –
 - (a) the underlying business of the issuers;
 - (b) the underlying business of the members;
 - (c) the nature of any trading and volatility of prices;
 - (d) the business and operating model of the licensee; and
 - (e) the products and services provided by the licensee and the investment exchange operated by it, and the way in which they are delivered.

3.2 The compliance officer

- (1) A licensee must appoint an officer, in Guernsey, to be responsible for the licensee's compliance function.
- (2) The board must ensure that the compliance officer –
 - (a) is a natural person;
 - (b) is resident in Guernsey;
 - (c) has sufficient resources to perform their duties;
 - (d) has timely access to all records required under these Rules;
 - (e) receives full cooperation from all staff;
 - (f) reports directly to the board;
 - (g) has regular contact with the board to ensure that the board is able to satisfy itself that all the requirements of the Law and these Rules and any other applicable Regulations and/or Ordinances are being met;
 - (h) has regular contact, with the persons or committee directly responsible for managing, operating and regulating the investment exchange operated by the licensee, to assist them in their considerations; and

- (i) is fully aware of both their obligations and those of the licensee under the Law, these Rules and any other applicable Regulations and/or Ordinances.
- (3) Where a licensee is considering outsourcing the compliance functions, or providing the compliance officer with additional support from third parties, within the group or externally, then the licensee must –
- (a) ensure that roles, responsibilities and respective duties are clearly defined and documented; and
 - (b) ensure that the compliance officer, other third parties and all employees understand their respective roles, responsibilities and duties.
- (4) Where the compliance function itself is outsourced to a third party, the licensee must notify the Commission of the names of the natural persons employed by the licensee and responsible for oversight of that outsourced function.

3.3 Compliance monitoring programme

- (1) The board must –
- (a) establish such other policies, procedures and controls as may be appropriate and effective for the purposes of ensuring compliance with the Law, these Rules and any other rules made under the Law as well as any other applicable Regulations and/or Ordinances which apply;
 - (b) establish and maintain an effective policy, for which responsibility rests with the board, for the review of its compliance with the requirements of the Law, these Rules, and any other rules made under the Law as well as any other applicable Regulations and/or Ordinances which apply. The policy must include provision as to the extent and frequency of reviews;
 - (c) ensure that a review of its compliance with these Rules is discussed and minuted at board meetings and at appropriate intervals. In considering what is appropriate, a licensee must have regard to risk, taking into account –
 - (i) the size, nature, and complexity of the licensee's business;

- (ii) its members , issuers, products, and services; and the ways in which it provides those products and services;
- (d) evaluate and record the evaluation of its compliance with the Finance Sector Code of Corporate Governance⁵ or any successor codes;
- (e) ensure it meets its obligations relating to compliance review; in particular the board must –
 - (i) ensure that the compliance review policy takes into account the size, nature, and complexity of the business and includes a requirement for sample testing of the effectiveness and appropriateness of the policies, procedures, and controls;
 - (ii) consider whether it would be appropriate to maintain a separate internal audit function to assess the adequacy and effectiveness of compliance;
 - (iii) ensure that when a review of compliance is discussed by the board, the necessary action is taken to remedy any identified deficiencies; and
 - (iv) provide adequate resources either from within the licensee itself, within its group, or externally, to ensure that the compliance policies, procedures, and controls of the licensee are subject to regular monitoring and testing as required in these Rules;
- (f) retain overall responsibility, including where the board has delegated some or all of its duties.

3.4 Employee Screening

- (1) A licensee must maintain effective and appropriate procedures when hiring employees for the purpose of ensuring high standards of employee probity and competence.

⁵ Version dated July 2023 and any subsequent versions

- (2) In order for a licensee to ensure that employees are of the required standard of competence and probity, which will depend on the role of the employee, a licensee must

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- (a) obtain and confirm appropriate references at the time of recruitment;
- (b) require information from the employee with regard to any regulatory action taken against them;
- (c) require information from the employee, with regard to any criminal convictions and the provision of a check of their criminal record; subject to the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002⁶; and
- (d) confirm their educational and professional qualifications.

3.5 Employee training

- (1) A licensee must create and implement a training and competency scheme for all employees appropriate to the nature and scale of that licensee's business.
- (2) A licensee must ensure that relevant employees receive comprehensive, ongoing, training to ensure competence including, but not limited to –
 - (a) the Law and any rules, as well as any other applicable Regulations and/or Ordinances made under it which are applicable to the licensee;
 - (b) the rules of the investment exchange operated by the licensee and any other rules, codes or guidance issued by it;
 - (c) the obligations of employees and their potential liability in failing to meet those obligations;
 - (d) the implication of non-compliance by employees with any relevant legislation, rules, regulations or guidance;
 - (e) the licensee's policies, procedures and controls for ensuring compliance.

⁶ Ordres en Conseil Vol. XLII, p.389 (as amended)

- (3) A licensee must maintain a training log to record the training that the directors and employees receive.

Guidance Note:

In meeting the requirements of this Rule, a licensee should refer to the Guidance Note on Training and Competency Schemes, version dated November 2021 (and any subsequent versions) issued by the Commission.

The Commission requires licensees to provide adequate training for their employees. Training should take into account each employee's existing experience and educational and professional qualifications.

Appropriate training should also cover the licensee's in-house provisions.

The Commission expects that the board will exercise oversight of the training process both in terms of its planning and its execution, and document such oversight.

The Commission places emphasis on a licensee's system of supervision and administrative controls to ensure that employees do not act beyond their competence.

PART 4 – CONDUCT OF BUSINESS

4.1 Integrity

- (1) A licensee must promote and maintain high standards of integrity and fair dealing in its operation of an investment exchange.

4.2 Fitness and propriety

- (1) A licensee must observe the Commission's Principles of Conduct of Finance Business when carrying on its controlled investment business. This is in addition to any further Principles set out in the Law and any other applicable Rules, Regulations and Ordinances.

Guidance Note:

The Commission has a continuing duty to determine whether a licensee remains a fit and proper person to carry on the restricted activity of operating an investment exchange. In so doing, the Commission will take into account the licensee's observation of the Commission's Principles of Conduct of Finance Business as well as the Minimum Criteria for Licensing as set out in Schedule 4 to the Law and any other relevant factors.

The Principles are a statement of the standards expected of all persons licensed under the Law.

Breach of a Principle will be taken into account for the purposes of discipline and intervention.

The Principles are not exhaustive and conformity with them does not excuse a failure to observe other regulatory requirements.

4.3 Regulatory cooperation

- (1) A licensee must cooperate by the sharing of information or intelligence material with the Commission and, where legally empowered to do so, with any other regulatory body having responsibility for the supervision or regulation of investment business or other financial services.

- (2) Where such cooperation is with a regulatory body in a jurisdiction outside of the Bailiwick of Guernsey, and relates to any matters which either do, or have the potential to, represent material reputational risk to the Bailiwick, or its financial institutions, any communications with that body must be made in prior consultation with the Commission, where the licensee is lawfully able to do so.

Guidance Note:

Under Rule 4.3(1), the Commission would expect a licensee to pro-actively notify the Commission upon the licensee becoming party to information or intelligence material which is not in the public domain, and which relates to matters which either do, or have potential to, represent material reputational risk to the Bailiwick or its financial institutions.

For the avoidance of doubt, rule 4.3(2) is not intended to capture the exchange of information or intelligence by a licensee in the course of its regular day to day operations, for example when conducting initial or ongoing due diligence in respect of issuers or members, or responding to similar such enquiries from other regulators.

If a licensee is unsure regarding the application of Rule 4.3(2) to any particular case, the Commission should be contacted in the first instance for further guidance.

The Commission may request copies of any exchange of information or intelligence made between a licensee and another regulatory body which does not fall within the scope of Rule 4.3(2) and such copies should be provided by a licensee upon request by the Commission.

4.4 Confidentiality

- (1) A licensee must establish, maintain and document suitable policies and procedures for receiving and responding to information or intelligence material which it might receive from the Commission, other regulatory bodies, or other third parties.
- (2) Where a licensee receives information or intelligence material from the Commission to assist in conducting that licensee's supervisory and regulatory functions, such information or intelligence material shall be treated as confidential, and must not be shared with other parties without first obtaining the Commission's consent in writing.
- (3) Where, in the course of its activities, a licensee is in receipt of information or intelligence material which is not in the public domain, it shall use that information or intelligence material solely for the purposes of conducting its regulatory and supervisory functions; ensuring the business conducted on and facilitated by the investment exchange it operates is conducted in a fair, legitimate and orderly manner; ensuring compliance

with applicable law, regulations, rules and codes and meeting its obligations to assist other regulatory bodies as required by Rule 4.3. In any event the use and disclosure of such information or intelligence material must not be in breach of any laws of the Bailiwick of Guernsey, and must be in compliance with any relevant handling codes applied to such information or intelligence.

4.5 Risk management systems and controls

- (1) A licensee must have in place systems and controls to enable the board to assess and appropriately manage the material risks to which it is exposed.
- (2) The board must allocate responsibility, for risk management, to persons with appropriate knowledge and expertise.
- (3) The board, when assessing the effectiveness of the systems and controls in place, must consider –
 - (a) the ability to identify, measure and manage all material risks; and
 - (b) whether they provide sufficient, reliable and timely information to the board and management.

4.6 Business continuity plan

- (1) A licensee must establish, maintain and document a business continuity plan. The plan must identify the risks that could materially affect the licensee's operations, how those risks would affect those operations if they occurred, and establish the safeguards, policies and procedures to be followed upon such an occurrence to ensure that the licensee's operations are able to continue with minimal disruption.
- (2) The business continuity plan must be regularly reviewed as new risks emerge, and/or the licensee's business activities are planned to change, and in any event at least annually, and updated accordingly.
- (3) The business continuity plan must be periodically tested to ensure its effectiveness and the board must be able to demonstrate the outcome of the testing to the Commission, on or before the date specified by the Commission, if requested to do so.

4.7 Outsourcing or delegation by a licensee

- (1) Where a licensee proposes to outsource or delegate any of its functions to any other body or person, it must notify the Commission, and must observe the Commission's "Guidance Note, Outsourcing of functions by entities licensed under the Protection of Investors (Bailiwick of Guernsey) Law, 2020".
- (2) The notification must include –
 - (a) the name of that other body or person;
 - (b) details of the function that is to be outsourced or delegated to that other body or person; and
 - (c) evidence of their ability and willingness to provide the relevant function.
- (3) The Commission must be notified of any agreement subsequently made and any further alterations made to that agreement.

Guidance Note:

The Commission considers outsourcing arrangements on the basis that responsibility cannot be outsourced, and that a licensee at all times remains responsible and accountable to the Commission, as its regulator, for compliance with the Law and the rules and regulations made thereunder.

A licensee cannot contract out of its statutory and regulatory responsibilities.

Any outsourcing arrangement must not impair the Commission's ability to exercise its statutory responsibilities, or a licensee's responsibility for overseeing the fair and effective operation of the markets which it facilitates.

4.8 Outsourcing or delegation to a licensee

- (1) A licensee must notify the Commission where any other body or person proposes to outsource or delegate any of its functions to that licensee. Such notification must specify the function which it is proposed will be outsourced or delegated to the licensee.
- (2) The Commission must be notified of any agreement subsequently made and any further alterations made to that agreement.

PART 5 – CONFLICTS OF INTEREST

5.1 Policy

- (1) A licensee must establish, implement and maintain an effective conflicts of interest policy, appropriate to the size and organisation of the licensee and the nature, scale and complexity of its business.
- (2) Where a licensee is a member of a group, the policy must also take into account any circumstances of which the licensee is, or should be, aware of which may give rise to a conflict of interest relating to other members of the group.
- (3) The conflicts of interest policy must include the following –
 - (a) identification, with reference to the business carried out by or on behalf of a licensee, of the circumstances which do, or may, give rise to a conflict of interest entailing a material risk of damage to the interests of one or more market participants; and
 - (b) specific procedures to be followed to manage such conflicts.
- (4) A licensee must ensure that any procedures implemented, under this Rule, are designed to ensure that relevant persons engaged in any business involving a conflict of interest carry on that business at a level of independence appropriate to the size and organisation of the licensee and the nature, scale and complexity of the business and of the group to which it belongs.
- (5) Procedures to be followed and any measures adopted must include, where appropriate –
 - (a) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of conflict of interest, where the exchange of that information may harm and/or has the potential to harm the interests of one or more market participants;

- (b) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, market participants whose interests may conflict; or who otherwise represent different interests that may conflict, including those of the licensee;
 - (c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity; where a conflict of interest may arise in relation to those activities;
 - (d) procedures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out activities; and
 - (e) procedures to prevent or control the simultaneous or sequential involvement of a relevant person in activities where such involvement may impair the proper management of conflict of interests.
- (6) If the adoption of the practice of one or more of these procedures does not ensure the requisite degree of independence, a licensee must adopt alternative or additional measures and procedures as necessary.
- (7) Where procedures to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage and/or potential damage to the interests of market participants will be prevented, the licensee must clearly disclose the general nature and sources of conflicts of interest to the party before undertaking business on its behalf or providing services to it.

5.2 Record of services or activities giving rise to detrimental conflict of interest

- (1) A licensee must keep, and regularly update, a record of its activities in which a conflict of interest entailing a material risk of damage and/or potential damage to the interests of one or more market participants has arisen or may arise.

5.3 Gifts and inducements

- (1) A licensee must take reasonable steps to ensure that neither its directors, employees nor any of its agents –
 - (a) offers or gives; or

(b) solicits or accepts

any gifts, or other direct or indirect benefit, which is likely to conflict with any duties of the recipient, or the recipient's employer, owed to a market participant in connection with a licensee's activities.

PART 6 - ACCOUNTING RECORDS AND FINANCIAL STATEMENTS

6.1 Accounting records

- (1) A licensee must keep accounting records, in English, which are sufficient to show and explain its transactions and –
 - (a) disclose, with reasonable accuracy, at any time, the current financial position of the licensee; and
 - (b) enable the licensee to demonstrate its continuing compliance with Part 6 of these Rules.
- (2) Where a licensee outsources the activity of keeping accounts it should have daily access to this information.

6.2 Audited financial statements

- (1) A licensee must prepare audited financial statements covering the period from the preceding accounting reference date, or in the case of a new business from the date of incorporation, to the next accounting reference date. These must, at a minimum, include –
 - (a) accounts complying with generally accepted accounting principles; and
 - (b) an auditor's report which must include a statement of financial resources certified by the auditor confirming that the appropriate financial resources requirement specified in Part 11 of these Rules is satisfied.
- (2) A licensee must prepare, within one month of the month end, a statement of financial resources in respect of each month. It must be made available to the Commission, on request.
- (3) Audited financial statements must be prepared –
 - (a) for a period which is no longer than 12 months from the previous accounting reference date; or

- (b) where the licensee is preparing audited financial statements from the period of incorporation to the accounting reference date, audited financial statements must be prepared to the date notified to the Commission at the time of making the application for a licence.
- (4) A licensee must notify the Commission, immediately, of any change to its accounting reference date. The notification must include a statement of reasons for the change.
- (5) Copies of the audited financial statements must be submitted to the Commission no later than four months after the accounting reference date.
- (6) A licensee must give immediate written notice, to the Commission, where it has reason to believe that the auditor may qualify the accounts.

6.3 Auditor

- (1) A licensee must appoint an auditor and confirm to the Commission that the auditor is qualified.
- (2) A licensee must provide the Commission with immediate written notice of a change of its auditor, including a statement of reasons for the change.

PART 7 - RECORD KEEPING

7.1 Retention requirements

- (1) In this Part, the retention periods set out are absolute. They continue to apply after the surrender of a licence and where a licensee ceases to do business.
- (2) The retention periods set out in Rule 7.2 are subject to the further requirements of Rule 7.3, where applicable.

7.2 Records

- (1) All records prepared in order to comply with these Rules must be retained for a period of at least six years.
- (2) A licensee must keep, for a period of six years, a record of occurrences that have, or may have, involved an alleged breach of any applicable legislation, and the steps taken with a view to ensuring that such occurrences do not recur.
- (3) Unless otherwise stated, all material records and permanent data, prepared in order to comply with these Rules, must be retained for the duration of the relevant relationship and also for a period of at least six years starting from the date that the relationship ceased. For the purpose of this Rule, the term 'relationship' includes any direct relationship a licensee has with a market participant or any other party for whom the licensee is providing services.
- (4) A licensee must keep, and properly maintain, records relating to its operation of an investment exchange and any other activities affecting the operation of that exchange, in English and capable of being verified and audited, to demonstrate compliance with the legislation.
- (5) A licensee must make such records available at any time to the Commission, its employees and any person authorised by it, upon its request, on or before the date specified by the Commission.
- (6) A licensee must review, at least annually, the ease of retrieval of, and condition of paper and electronic records; including telephone records and recordings. Where

applicable, this must include an annual review of any trading system used by the licensee to ensure that records are easily retrievable.

7.3 Destruction of records or files

- (1) A licensee must ensure that it, and its directors and employees and other persons, to the extent that they are under its power and control, must not, without the express written consent of the Commission, amend, destroy, make further entries in, or erase any record or file which is, or may be, relevant to any matter which is the subject of any kind of investigation, disciplinary or other process, or appeal under the Law or the rules and Regulations or Ordinances made under it.

PART 8 - COMPLAINTS

8.1 Complaints procedure

- (1) A licensee must have, and ensure compliance with, a written procedure for the effective consideration and fair and proper handling of any complaints relating to its operation of an investment exchange.
- (2) A licensee must ensure that each of its officers and employees responsible for dealing with market participants and the public are, at all times, aware of the complaints procedure and the obligation to follow it.

Guidance Note:

It is expected that all complaints are reviewed by, at least, a senior officer of the licensee who is independent of the circumstances giving rise to the complaint.

An example of an appropriate person could be the compliance officer.

8.2 Complaint notifications

- (1) If a complaint remains unsettled for longer than three months from the date of a licensee becoming aware of the complaint, the licensee must inform the Commission, in writing, within 14 days, and must also advise the complainant that they may inform the Commission directly of the complaint.
- (2) A licensee must inform the Commission, in writing, within 14 days, of it becoming aware of a significant complaint and must also advise the complainant that they may inform the Commission directly of the complaint.
- (3) A licensee must inform the Commission, in writing, within 14 days, of it becoming aware of a series of complaints regarding any one employee, whether a current employee or not.

- (4) For the purposes of this Rule, where a licensee has given a substantive response in relation to a complaint or significant complaint, unless and until the licensee has received an indication from the complainant that the response is unsatisfactory, the licensee is entitled to treat the complaint as settled and resolved after the expiry of four weeks from the date of its response.

8.3 Record keeping regarding complaints

- (1) A licensee must maintain a register in which it records any complaints received, along with sufficient details to allow it to be able to demonstrate that it has dealt with, or is dealing with, such complaints in accordance with these Rules.

PART 9 - CLIENT MONEY

9.1 Client money

- (1) For the purposes of these Rules, client money is money, in any currency, which in the course of operating an investment exchange, a licensee holds for, or receives from, or owes to a client. Client money may be held in different currency to that of receipt.
- (2) Client money must be held separately from the licensee's own money, in one or more client money bank accounts.

Guidance Note:

A licensee, or its agent, holds or receives money where either that money is not immediately due and payable on demand to the licensee for its own account, or, although due and payable, is held or received in respect of any obligation of the licensee which has not yet been performed.

A licensee, or its agent, owes money where it is due and payable to a client.

9.2 Client money bank accounts

- (1) All money which is client money and which is received by a licensee, and all money payable by a licensee which becomes client money, must be held in a client money bank account.
- (2) If not already confirmed by the bank, when a licensee opens a client money bank account, it must give written notice to the approved bank, requiring the bank's written acknowledgement that –
 - (a) all money standing to the credit of that account is held by the licensee as trustee and that the bank is not entitled to combine the account with any other account, or to exercise any right of set-off or counter-claim against the money in that account, in respect of any sum owed to it on any other account of the licensee;

- (b) interest earned on the account will be credited to the account or to an account of the same type; and
 - (c) the title of the account sufficiently distinguishes the account from any other account containing money that belongs to the licensee and is in the form requested by the licensee.
- (3) If, in the case of a client money bank account with an approved bank outside Guernsey, the bank declines to provide the acknowledgements required above, or if the licensee has any other ground for believing that client money will not be protected as effectively as it would be if held in a client money bank account in Guernsey, the licensee must not pay or transfer client money into that account.
- (4) Client money held or received by a licensee must be paid either into a client money bank account as soon as possible, and in any event no later than the next business day, or to the client concerned.
- (5) Money held or received by a licensee, in the form of a cheque, a bank draft, or electronic transfer drawn in favour of the licensee which includes client money, must be paid into a client money bank account unless it represents money payable to one client only in which case it may be endorsed over or paid to the client concerned, or as the client directs.
- (6) Money received which is not client money should be paid out of the client money bank account no later than one business day after the day on which the money had been cleared. This does not apply to amounts of less than £25, or equivalent.

9.3 Payments from client money bank accounts

- (1) Money ceases to be 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.
- (2) The following items may be withdrawn from a client account –
 - (a) money, not being client money, paid into the account for the purpose of opening or maintaining the account;
 - (b) money paid into the account in contravention of these Rules;
 - (c) money properly required for payment to or on behalf of a client;

- (d) money properly required for or towards payment for the purchase of units, shares, partnership interests, or of a debt due to the licensee from a client other than in respect of fees and commission;
 - (e) money properly required for, or towards, payment of fees or commissions payable to the licensee and specified in a statement delivered to the client showing how those fees and commissions have been calculated;
 - (f) money drawn on a client's authority or in conformity with any contract between the licensee and the client;
 - (g) money which may be properly transferred into another client money bank account;
 - (h) if a cheque is paid into a client money bank account and that cheque includes money which is not client money, that money must be withdrawn from the account as soon as cleared funds are credited to the account in respect of that cheque; and
 - (i) interest withdrawn from the client money bank account.
- (3) Money must not be withdrawn from a client account for, or towards, payment of fees or commissions payable to the licensee unless those fees or commissions have been calculated in accordance with the formula disclosed to clients in the relevant permanent data communication.
 - (4) Where a licensee draws a cheque or other payable order the money does not cease to be client money until the cheque or order is dispatched.
 - (5) Where a licensee makes a payment to a client from an account other than a client money bank account, the sum of money in the client money bank account equivalent to the amount of that payment, will not become due and payable to the licensee until the client or other party has received that payment in cleared funds.
 - (6) Where a licensee has contracted to rebate commission to a client, the amount becomes client money when it becomes payable and should be settled within the timeframe agreed in the contract.
 - (7) No money, other than money required to be paid under these Rules, must be paid into such an account unless the money is the licensee's own money –
 - (a) and it is required to be paid for the purpose of opening or maintaining the account and the amount is the minimum amount required for the purpose; or

- (b) it is paid to restore, in whole or in part, any money paid out of the account in contravention of these Rules, or to restore the account out of an overdraft position.

9.4 Operation of client money bank accounts

- (1) A licensee must maintain records sufficient to demonstrate compliance with this Part.
- (2) A licensee must, at least once a month, reconcile the balance on each client money bank account, as recorded by the licensee, with the balance on that account as set out on the statement issued by the approved bank.
- (3) The client money bank account must not become overdrawn and there must not be a shortfall in client money upon reconciliation with the statement issued by the approved bank.
- (4) In the event of a breach, the licensee must immediately restore the account.

PART 10 - OPERATING AN INVESTMENT EXCHANGE

Guidance Note:

The Commission recognises that an investment exchange could facilitate the listing and/or trading of many different types of securities, which each have their own distinct characteristics and properties. Furthermore, some investment exchanges might also operate the settlement system for any trading facilitated by it.

Therefore, in the following sections of this Part, certain rules will state “where relevant”, “where applicable” or use equivalent words. This is in recognition of the fact that the requirements of the rules, where this is stated, might not apply to the securities of certain types of issuer, or to the specific nature of the services facilitated by an investment exchange.

For example, certain requirements relating to the listing of shares in a company will not be relevant in respect of the listing of a bond; or requirements relating to an investment exchange which facilitates trading and/or settlement might not be relevant to an investment exchange whose main business is the listing of securities.

However, where rules are not caveated as referred to above, then such rules will apply in all cases.

10.1 Rules of an investment exchange

- (1) A licensee must establish, maintain and document its own rules relating to members of the investment exchange operated by it; the listing of issuers’ securities on the investment exchange; and where relevant to an investment exchange’s business, the trading and/or settlement of securities on that investment exchange.
- (2) The rules of an investment exchange operated by a licensee must be designed to set appropriate standards of behaviour, promote investor protection, and ensure fair markets.
- (3) The rules of an investment exchange operated by a licensee must be submitted to the Commission, and receive the Commission’s agreement in writing prior to their coming into effect.
- (4) The rules of an investment exchange operated by a licensee must provide it with comprehensive and effective supervisory, investigative and enforcement powers,

including the power to take action to enforce regulatory, administrative, or investigative requirements or decisions. Such powers must include the power for the licensee to be able to order the suspension, or other appropriate action, of trading in securities, where considered appropriate and necessary.

- (5) The rules of an investment exchange operated by a licensee must not be drafted such that they create anti-competitive situations.

Guidance Note:

Anti-competitive situations may include situations where an investment exchange acts in an exclusionary, unfair or inequitable manner when governing access to the exchange, or when taking action with respect to the enforcement, or promulgation or interpretation of its rules and procedures in a way that is not fair and equitable to similarly placed market participants.

- (6) Any proposed material changes to the rules of an investment exchange operated by a licensee must be sent by way of notice, in advance, to the Commission and receive the Commission's agreement in writing prior to coming into effect.

Guidance Note:

For the purposes of Rule 10.1(6), the Commission considers a material change to be one which impacts all, or a particular sector of, issuers or members on an ongoing basis.

A modification, waiver or derogation from a rule which is made in respect of a specific Issuer or Member on an *ad hoc* basis is not considered to fall within the scope of Rule 10.1(6), but rather, would be subject to the requirements of Rules 10.1(7) and 10.1(8).

- (7) A licensee must exercise discretion in good faith when considering any proposal to derogate, modify or waive any of its rules, and ensure that any such derogation, modification or waiver will not result in any undue risk to investors or markets.

- (8) Subject to the requirements of Rule 10.1(7), where a licensee does derogate, modify or waive any of its rules, it must notify the Commission immediately, or on a periodic basis if agreed in advance with the Commission in writing.
- (9) A licensee must maintain a register in which it records all instances of non-compliance with its rules and any codes or equivalent by members and issuers of the investment exchange operated by it. This register must also record any action taken, whether by the licensee, relevant members or issuers, in response to any breaches along with any steps taken towards rectification and future prevention.

10.2 Rules relating to members of an investment exchange

- (1) The rules relating to members of an investment exchange operated by a licensee must:
 - (a) set out the requirements for membership;
 - (b) set out the procedure for membership applications;
 - (c) establish the requirement for new and existing members to be fit and proper;
 - (d) establish any codes of conduct in respect of members and / or their membership of the investment exchange;
 - (e) establish any arbitration, disciplinary and appeals provisions in respect of members and/or their membership of the investment exchange; and
 - (f) establish any continuing obligations required of a member.

10.3 Rules relating to the listing of an issuer's securities on an investment exchange

- (1) The rules relating to the listing of an issuer's securities on an investment exchange, where relevant to the nature of the security being listed, must –
 - (a) govern the listing of securities;
 - (b) establish the conditions which are applicable for the admission of an issuer's securities to the Official List;
 - (c) set out the procedure for listing applications;

- (d) establish the requirement for new and existing issuers to be fit and proper;
- (e) establish any codes of conduct in respect of issuers and / or the listing of their securities on the investment exchange;
- (f) establish any arbitration, disciplinary and appeals provisions in respect of issuers and / or the listing of their securities on the investment exchange;
- (g) set requirements regarding the content and distribution of the issuer's listing document, or other offering documents;
- (h) establish any continuing obligations required in respect of an issuer and its securities which are listed on the investment exchange;
- (i) establish any requirements regarding provision of relevant, up to date, financial information, including, where applicable, the provision of annual audited financial statements, and interim financial reporting;
- (j) where applicable, establish the accounting standards to be used, which must be of high quality and internationally acceptable; and
- (k) where applicable, set the requirement for the appointment of a suitably qualified auditor which is independent of the issuer.

10.4 Rules relating to the trading and / or settlement of securities on an investment exchange

- (1) Where relevant to the nature of the business conducted by an investment exchange operated by a licensee, any rules relating to the trading and / or settlement of an issuer's securities on that investment exchange must, where relevant to the nature of the security –
 - (a) set out the conditions which are applicable for the admission of an issuer's securities to trading;
 - (b) govern the trading and settlement of securities transactions;

- (c) provide for fair and orderly trading; and
- (d) establish objective criteria for the efficient execution of orders.

10.5 Disclosure requirements relating to issuers whose securities are listed and / or traded on an investment exchange

- (1) The rules and the associated regulatory regime of an investment exchange operated by a licensee must, to the extent applicable to the nature of a security, ensure the full, timely, and accurate disclosure of risks, financial results and other information which is material to investors making informed investment decisions concerning the securities of issuers listed and, where relevant, traded on the investment exchange, on an ongoing basis.
- (2) Requirements in the rules of an investment exchange operated by a licensee must include, where relevant to the nature of the issuer's listed and / or traded securities, the obligation for the following disclosures to be made:
 - (a) relevant important information about an issuer and its activities;
 - (b) details of how up to date financial information regarding an issuer may be accessed when audited financial statements included in an offering document are no longer current;
 - (c) information about those who have a significant interest in the listed and / or traded securities of an issuer;
 - (d) information material to the price or value of a security;
 - (e) the frequency and nature of periodic financial reporting;
 - (f) details of shareholder voting decisions;
 - (g) provisions for any advertising of public offerings outside of the listing document;
 - (h) details of material related party transactions, including transactions involving directors and senior management of an issuer;
 - (i) periodic disclosure of information about director and senior management compensation;
 - (j) the most significant specific and general risks material to the offering;
 - (k) details of changes in controlling interests and substantial holdings above a specified threshold, and transactions which may result in changes in controlling interests and substantial holdings above such threshold;

- (l) information necessary to informed decision making with respect to tender offers, take-over bids, and any other transactions intended to effect a change of control or that potentially may result in a change of control, or that may consolidate control, or whose effect may result in a fundamental corporate change;
 - (m) details of holdings of directors and senior management of an issuer; and
 - (n) details of the identity and holdings of those persons who hold beneficial ownership of an issuer.
- (3) The rules of an investment exchange operated by a licensee must require disclosures by issuers to be accurate, sufficiently clear and comprehensive, and reasonably specific and timely.
 - (4) The rules of an investment exchange operated by a licensee must ensure that responsibility for the provision and content of disclosures is taken by the issuer and its directors.
 - (5) A licensee must ensure that the circumstances under which a derogation from the requirements of full and timely disclosure are limited and that appropriate mitigating safeguards are applied in such circumstances, and are clearly disclosed.

Guidance Note:

Where two or more persons are acting in concert, the disclosure requirements in the above Rules will apply to those persons collectively, even where each of their own interests in the issuer might, individually, fall outside of the disclosure requirements.

10.6 Rights of holders of securities in a listed company

- (1) A licensee must ensure that the holders of securities in a company admitted to listing and / or trading on an investment exchange operated by it are treated in a fair and equitable manner and that their basic rights are respected. Such rights, where relevant, include:
 - (a) the right to register and transfer ownership;
 - (b) where the securities have voting rights, the right to vote on:
 - (i) the election of directors;

- (ii) corporate changes affecting the terms and conditions of their securities; and
- (iii) other fundamental corporate changes;
- (c) the right to participate on an informed basis in voting decisions, where the securities have voting rights;
- (d) the right to give proxies or voting instructions and for these to be actioned in an efficient and effective manner;
- (e) the right to receive timely notice of shareholder meetings and voting decisions, and to be given reasonable time in which to consider proposals;
- (f) the right to participate equitably in dividends and other distributions, when and if declared, including distributions upon liquidation;
- (g) the right to have reasonable and equal opportunities to participate in any benefits accruing to the shareholders under any proposal which would result in a party acquiring a substantial or controlling interest in the company;
- (h) the right to receive fair and equal treatment, including for minority shareholders, in relation to a proposal as described in Rule 10.6(1)(g); and
- (i) the right to hold the company, its directors and senior management accountable for their involvement or oversight resulting in breaches of relevant legislation.

10.7 Official list

- (1) An investment exchange operated by a licensee must develop, maintain and document appropriate operational policies and procedures to enable it to maintain and operate its Official List effectively and accurately.

10.8 Regulatory and supervisory functions

- (1) A licensee operating an investment exchange must accept responsibility for –
 - (a) the admission of an issuer's securities to the Official List of, and / or trading on, the investment exchange operated by the licensee, by reference to its rules and its policy on issuer suitability;

- (b) the admission of members by reference to its rules and policy on member suitability;
- (c) the suspension or cancellation of an issuer's securities from the Official List of, and / or trading on, the investment exchange operated by the licensee, by reference to its rules and its policy on issuer suitability;
- (d) the readmission of an issuer's securities to the Official List of, and / or trading on, the investment exchange operated by the licensee, in accordance with its rules, following suspension save where suspension was at the request of the issuer and the licensee concludes that the criteria for readmission are not met;
- (e) the suspension or cancellation of an entity's membership of the investment exchange operated by the licensee, in accordance with its rules;
- (f) the readmission of a member to membership of the investment exchange operated by the licensee, in accordance with its rules following suspension save where suspension was at the request of the member and the licensee concludes that the criteria for readmission are not met;
- (g) the monitoring of ongoing member compliance with any anti-money laundering, counter terrorist financing, and counter the financing of proliferation of weapons of mass destruction legislation, where such members are not supervised by the Commission;
- (h) the monitoring of ongoing issuer compliance with its rules;
- (i) the monitoring of ongoing member compliance with its rules;
- (j) where relevant, the enforcement, against members of its rules;
- (k) where relevant, the enforcement, against issuers of its rules; and
- (l) liaising with the Commission and other regulatory bodies, as applicable, on all matters relating to the operation of the investment exchange. Where such liaison is with regulatory bodies in jurisdictions outside of the Bailiwick of Guernsey, any communications with that body must be made in accordance with Rule 4.3.

10.9 Trading systems and access to markets

- (1) Where an investment exchange operated by a licensee facilitates the trading of securities, the licensee must ensure that access to the investment exchange's trading systems is fair and transparent, and that the systems themselves afford equal treatment for all users.
- (2) Where such trading is facilitated by an investment exchange operated by a licensee:
 - (a) the policies and procedures relating to order execution, as well as any order cancellation, must be established, disclosed, and applied fairly;
 - (b) where applicable, the trading system's order routing procedures must be clearly disclosed and fairly applied, and must not be inconsistent with good practice, including requirements for client precedence, prohibition of front running and trading ahead of customers;
 - (c) where applicable, the trading system must include safeguards to ensure the principles of fairness are maintained even where there are latency differences resulting from different technical options for connection to it;
 - (d) where the trading system facilitates direct electronic access and / or automated trading, the licensee must ensure there are appropriate and effective systems and controls to enable the management of the associated risks, including those relating to fair and orderly trading; and
 - (e) where applicable, the licensee must have suitable trading control mechanisms, including trading halts, volatility interruptions and limit up / limit down controls, to deal appropriately with volatile market conditions.

10.10 Transparency of trading

- (1) Where an investment exchange operated by a licensee facilitates trading of the securities listed upon it, the licensee must ensure that timely access to relevant information about such trading is available to investors.
- (2) Where such trading is facilitated by an investment exchange operated by a licensee, either:
 - (a) pre-trade and post-trade information must be provided to market participants in a timely manner; and

- (b) information on completed transactions must be provided on an equitable basis to all market participants

or, in markets where an absence of real time transparency is permitted:

- (c) the conditions for such absence of real time transparency must be clearly defined.

Guidance Note:

Pre-trade information concerns the posting of bids and offers, in both quote and order-driven markets, as a means of enabling intermediaries and investors to know, with some degree of certainty, whether, and at what prices, they can deal.

Post-trade information relates to the prices and volumes of individual transactions actually concluded.

10.11 Large exposures and default risk

- (1) Where an investment exchange operated by a licensee facilitates the trading of securities listed upon it and also operates the settlement system for such trading, it must have effective mechanisms to continuously monitor and evaluate the risk of open positions, or credit exposures on unsettled trades, that are sufficiently large to expose a risk to the market or to a clearing firm.
- (2) Such mechanisms must include:
 - (a) qualitative or quantitative trigger levels appropriate to the market, for the purpose of identifying large exposures on a continuous, ongoing basis, and a process for evaluating cases where such trigger levels are reached;
 - (b) the ability to access information, if required, on the size and beneficial ownership of positions held by direct customers of market intermediaries;
 - (c) the power to take appropriate action against a market participant that does not provide the relevant information needed to evaluate an exposure; and
 - (d) the general power to require market participants carrying or controlling large positions to reduce their exposures, or take other relevant actions.
- (3) A licensee must have effective policies and procedures for dealing with market participants who are in default. The procedures must be fully disclosed to market participants and must include details of the circumstances under which action may be

taken by the exchange in respect of any default, and the scope of those actions that might be taken.

10.12 Short selling on equity markets

- (1) Where a licensee operates a market for trading equities which facilitates short selling, it must have policies, procedures, controls, and enforcement powers appropriate to the equity market in question.

Guidance Note:

When considering the application of Rule 10.12 to its particular circumstances, a licensee should consider, to the extent that they are relevant or applicable, factors including:

- a) the minimisation of potential risks that could adversely affect the orderly and efficient functioning and stability of the market, including the settlement of failed trades;
- b) a reporting regime that provides timely short selling information to the licensee and / or the market;
- c) the promotion of settlement discipline, and the monitoring of settlement failures;
- d) surveillance of short selling activities; and
- e) the recognition of certain types of transactions intended to facilitate the efficient functioning and development of the market, which could, for example, include those relating to:- *bona fide* hedging, market making and arbitrage activities.

10.13 Fees and charges

- (1) A licensee must publish full details of the fees and charges applicable to the investment exchange it operates in a clear and transparent manner, which can be

readily and easily accessed by existing and potential market participants and any other parties who might make use of the services of that licensee.

Guidance Note:

Rule 10.13 might be met by a licensee publishing the fees and charges on a clearly marked and publicly accessible page of its website.

10.14 Market monitoring

- (1) A licensee must undertake sufficient and appropriate checks, monitoring and scrutiny to satisfy itself of:
 - (a) ongoing issuer compliance with the rules of the investment exchange it operates;
and
 - (b) ongoing member compliance with the rules of the investment exchange it operates.

10.15 Market surveillance

- (1) A licensee must take reasonable steps, including the establishment and maintenance of policies, procedures and systems to satisfy itself that the business conducted on the investment exchange operated by it and facilitated by that investment exchange, is conducted in a legitimate and orderly manner and affords fairness, efficiency, transparency and proper protection to investors including –
 - (a) monitoring of trading activity;
 - (b) the review of movements in prices and transactions; and
 - (c) monitoring of market information.
- (2) A licensee must inform the Commission within one business day, of it becoming aware of –
 - (a) price movements in excess of certain trigger levels above or below the starting price at opening, as agreed in advance in writing with the Commission; and

- (b) transactions where market abuse is suspected based on the information reasonably available to a licensee.
- (3) A licensee must have suitable policies, procedures and systems to enable it to detect and investigate unusual transactions on the trading system of the investment exchange operated by it and other events, which might be, or help facilitate market abuse or other fraudulent acts, including:
 - (a) market and/or price manipulation,
 - (b) insider trading,
 - (c) front running,
 - (d) other fraudulent or manipulative practices relating to securities or derivatives, or
 - (e) misrepresentations of, or misleading, material information.

Guidance Note:

A licensee should refer to the Commission's Code of Market Conduct for a description of behaviours which are considered to amount to market abuse.

- (4) A licensee must ensure that its policies, procedures and controls and its market monitoring and market surveillance mechanisms permit the audit of the execution and trading of all transactions on the investment exchange which it operates.

Guidance Note:

A licensee's market surveillance activities should take account of the nature of trading undertaken on or reported to the investment exchange operated by it. For example, where an investment exchange facilitates continuous trading "on market", it is expected that such surveillance is undertaken on an ongoing basis.

Where trading is intermittent, including instances where auction platforms are used, the frequency of relevant market surveillance activities should be suitably synchronised with such trading.

Where the securities of issuers are traded "off-market" and the trades subsequently notified to a licensee, it is expected that market surveillance checks are undertaken promptly upon receipt by the licensee of trade details, and where these fall within the scope of Rule 10.15(2), the Commission should be notified without delay.

10.16 Safeguards for investors

- (1) The rules and practices of a licensee operating an investment exchange must ensure that business conducted by means of that investment exchange's facilities is conducted in an orderly manner and affords proper protection to its investors.
- (2) A licensee must limit trading on the investment exchange to investments in which there is a proper market.
- (3) A licensee operating an investment exchange must either itself provide satisfactory procedures, including default procedures, for the settlement of transactions on that investment exchange or ensure such provision by means of services provided under clearance systems approved by it.
- (4) A licensee must either itself have, or secure the provision on its behalf of, satisfactory arrangements for recording the transactions effected on an investment exchange operated by it.
- (5) A licensee must ensure that no market participant unfairly gains an advantage in the market operated and overseen by the licensee.

10.17 Settlements

- (1) The mechanism used to settle transactions conducted on the investment exchange operated by a licensee must be regularly monitored by the licensee to ensure effective operation. A licensee must document such monitoring accordingly. This Rule applies where the function is undertaken by the licensee itself or is outsourced by it to another party.

10.18 Market information

- (1) A licensee must ensure systems are in place to enable market information, relevant to the types of securities listed and/or traded upon the investment exchange operated by it, to be easily accessed and clearly displayed.
- (2) A licensee must notify the Commission of any material change in the system for displaying market information in respect of the investment exchange operated by it.

10.19 Membership

- (1) A licensee must notify the Commission of the proposed introduction or abolition of any category of membership of the investment exchange operated by it.
- (2) In relation to individual members of an investment exchange operated by it, a licensee must notify the Commission within 14 days of the following –
 - (a) information regarding new members which must include their –
 - (i) name;
 - (ii) address; and
 - (iii) category or categories of membership;
 - (b) any change to the member's details submitted in accordance with this Rule;
 - (c) the resignation of a member, including the member's details as submitted in accordance with this Rule and the effective date of resignation;
 - (d) the suspension of a member by the licensee, including –
 - (i) the effective date of the suspension;
 - (ii) the duration of the suspension;
 - (iii) the reasons for the suspension;
 - (iv) any other action taken in relation to that member; and
 - (v) whether the member appeals against the decision and the outcome of any such appeal;
 - (e) the compulsory cancellation or expulsion of a member by the licensee, including –
 - (i) the effective date of the cancellation or expulsion;
 - (ii) the reasons for the cancellation or expulsion;

- (iii) any other action taken in relation to that member; and
 - (iv) whether the member appeals against the decision and the outcome of any such appeal;
- (f) when it investigates the affairs of a member or appoints another person to do so, including –
- (i) the reasons for the investigation;
 - (ii) the investigation's terms of reference;
 - (iii) the findings of any such investigation; and
 - (iv) any action taken as a result;

Guidance Note:

A licensee is not required by this Rule to notify the Commission regarding supervisory visits or inspections carried out in the course of routine supervision, or in respect of enquiries made as part of the procedure for investigating complaints.

Rather, this Rule relates to investigations in respect of actual, or suspected: malpractice; significant breaches of its rules; or other matters which are likely to adversely impact investor protection, market integrity, or the reputation of the licensee or the Bailiwick.

- (g) when it has taken any disciplinary action against either a member, or an employee of a member, or agent and that action is relevant and material to the carrying on of controlled investment business, including –
- (i) the member's name
 - (ii) the name of the person concerned;
 - (iii) the details of the action taken;
 - (iv) any other action taken in relation to that member;
 - (v) the reasons for the action; and

- (vi) whether an appeal is lodged against the disciplinary action, and if so, the subsequent outcome of the appeal;
- (h) when it liquidates or restricts the open positions of a member, or issues instructions to that member to do likewise, including –
 - (i) the member's name;
 - (ii) the nature and size of the positions liquidated or restricted; and
 - (iii) the reasons for its actions;
- (i) when a member is in default, including –
 - (i) the member's name;
 - (ii) the reasons for the action;
 - (iii) the name of the clearance system on which the member clears business; and
 - (iv) where appropriate, a summary of the member's open positions, margin liability and cash and collateral balances in respect of the member's segregated customer accounts and other accounts.

10.20 Human and technical resources

- (1) A licensee must have human resources sufficient for the proper performance of its functions.
- (2) The board has responsibility for ensuring that the information technology systems are sufficient to support the functions of the licensee. The board's consideration must have reference to –
 - (a) the organisation, management and resources of those responsible for the licensee's information technology function;

- (b) the arrangements for controlling and documenting the design, development, implementation and use of information technology systems; and
 - (c) the resilience, reliability, integrity and security of its critical systems.
- (3) A licensee must be prepared for dealing with failures of its information technology systems, and such contingencies must form part of the business continuity plan required by Rule 4.6.
- (4) The board must conduct a review, at least annually, of the performance of the licensee's information technology systems and consider whether they are still appropriate and sufficient for the functions carried out by the licensee.

10.21 Skill, care and diligence

- (1) A licensee must act with due skill, care and diligence towards market participants, as well as the Commission.
- (2) A licensee must treat all members and applicants for membership of the investment exchange operated by it in a fair and consistent manner.

PART 11 – PRUDENTIAL

11.1 Financial resources requirement

- (1) A licensee must ensure that it maintains adequate financial resources and professional indemnity insurance at all times, the levels of which must be sufficient, in the view of the board, to meet the licensee's commitments and to withstand the risks and potential risks to which its business is subject.
- (2) A licensee must also, at all times, maintain a level of regulatory capital not less than—
 - (a) 50% of the licensee's annual operating expenses, as shown in its latest annual audited financial statements (or, if about to commence the first period of trading, or a change in the operating model has led to a significantly different projected expenditure, six months budgeted operating expenses), plus 50% of the annual cost of any relevant operational services provided to the licensee by related or third parties which are not reflected in the financial statements of the licensee; or
 - (b) the level of capital identified in the licensee's wind down plan, as required by Rule 11.4, that is needed to achieve an orderly wind down of the licensee's business,

whichever is the higher amount, or

- (c) such other amount as the Commission may prescribe in writing to a licensee.

Guidance Note:

An example of the circumstances under which the Commission might seek to utilise Rule 11.1(2)(c) could be where it considers there are material additional risks present, which are not mitigated by the levels of capital required under Rules 11.1(2)(a) and (b). These might include foreign exchange risk, risk of counterparty default, off-balance sheet assets or liabilities (including contingent liabilities) or principal positions which the licensee has taken, and which are not otherwise mitigated.

11.2 Liquidity Requirement

- (1) A licensee must maintain adequate liquid assets at all times, the level of which must be:
 - (a) sufficient, in the opinion of the board, to meet the licensee's commitments as they arise and to withstand the risks and potential risks to which its business is subject; and
 - (b) sufficient to allow for an orderly wind down of its business as identified in the licensee's wind down plan required at Rule 11.4.
- (2) The board's consideration of the appropriate liquidity levels to meet Rule 11.2(1) must be documented.

Guidance Note:

In certain circumstances the Commission might impose a prescriptive minimum liquidity requirement on a licensee, by means of a modification of these Rules or by a condition on its licence under the Law.

Such circumstances might, for example be where a licensee is, or becomes, exposed to a material level of settlement risk.

11.3 Notifications regarding capital and liquidity requirements

- (1) A licensee must notify the Commission, immediately, where –

- (a) the level of regulatory capital held falls below the regulatory monitoring limit, including setting out the circumstances which have led to that position, whether the board considers that any action is necessary to prevent the regulatory capital requirement being breached, the rationale behind such consideration and details of any action which will be taken or has been taken where relevant;
- (b) it is in breach of its regulatory capital requirement or liquidity requirement, including setting out in writing the steps that it is taking, or has taken, to remedy the breach; or
- (c) it anticipates being in breach of its regulatory capital requirement or liquidity requirement within one month, including setting out in writing the steps that it proposes to take to avoid the breach or that it has already taken.

11.4 Wind-down plan

- (1) A licensee must establish, maintain and document a wind-down plan, which is considered and approved by the board. The plan must identify the steps to be taken and the appropriate levels of capital and liquidity which must be maintained to allow for an orderly wind-down of its business. The wind down plan must include provision for the acquisition of run-off insurance at a level considered appropriate by the board and an appropriate allowance for the cost of acquiring such run-off insurance.
- (2) The wind-down plan must be regularly reviewed as new risks to the investment exchange emerge and / or the licensee's activities change, and in any event, at least annually.
- (3) A copy of the wind-down plan must be submitted to the Commission as part of the application for a licence and at every subsequent update of the plan.

11.5 Liabilities of related entities

- (1) A licensee must give immediate, written notice, to the Commission, where it has reason to believe that –

- (a) the liabilities of a subsidiary of the licensee exceed that subsidiary's assets;
or
- (b) the liabilities of the licensee's holding company or parent company exceed that holding company's or parent company's assets.

11.6 Insurance arrangements

- (1) A licensee must maintain insurance cover which is commensurate with the size and nature of its business. Such cover must include professional indemnity insurance and insurance against employee dishonesty or fraud.
- (2) The minimum indemnity limit for any one claim, and in the aggregate, for a licensee's professional indemnity insurance must equal or exceed the greater of:
 - (a) such amount which is, in the opinion of its board, sufficient to meet its commitments and to withstand the risks to its business, or
 - (b) three times the licensee's relevant annual turnover based on the latest audited financial statements or, for new businesses, estimated figures for the first year, or
 - (c) £3 million.
- (3) For the purposes of this Rule, "relevant annual turnover" means annual turnover less any income which is derived from any function which is covered by a statutory limitation of liability.

Guidance Note:

The relevant annual turnover should be based on the latest audited financial statements at the time of PII renewal.

Insurance cover based on a prior year's audited financial statements does not need to be amended before the next annual renewal following release of the following year's financial statements. However, a licensee should consider whether to arrange additional cover if the audited financial statements show a material increase in relevant annual turnover.

- (4) Notwithstanding the requirements of Rule 11.6(2), a licensee is not required to have aggregate insurance cover exceeding £10 Million provided that the board has considered and decided that such level of cover is appropriate and sufficient for its business. The licensee must be able to evidence the board assessment if requested by the Commission.

Guidance Note:

Rule 11.6 (4) is also applicable for a licensee which is part of a group and relies on PII cover provided by the group. In this case, the consideration should ensure that the group PII is appropriate for the licensee.

Excess:

Consideration should be given to the excess per claim on the PII policy and whether it is appropriate for the licensee taking into account its financial position. Specifically, the licensee should ensure that it will be able to fund the excess if a claim is made on the PII policy.

- (5) A licensee must maintain, at all times, cover for:
- (a) negligence, errors, or omissions by the licensee or its employees;
 - (b) any liability for the dishonest or fraudulent acts of employees which may fall on the licensee;
 - (c) liabilities of its employees who, in the course of their duties to the licensee, perform functions in their own names;
 - (d) liabilities which the licensee might incur, in any jurisdiction, in which it should reasonably foresee that it may be held liable for damages and costs;
 - (e) where relevant, ombudsman awards; and
 - (f) legal costs.

Guidance Note:

Employee – in section 79, the Law defines “employee” as “an individual who has entered into or who works under (or, where the employment has ceased, who worked under) a contract of employment”.

For the purposes of Rule 11.6(5)(a), the policies should cover current and former employees and any person under contract to perform services or duties to or on behalf of the licensee. (Note – time limitation may apply to the period of cover for former employees and will be dependent on the date of cessation of employment.)

In meeting Rule 11.6(5)(b), some licensees may rely on a different insurance instrument for indemnity against such liabilities, provided that the licensee is satisfied with such insurance arrangements. Insurance policy wordings vary greatly, and a licensee should consider whether its policy provides the required cover. For instance, these may be covered under “crime”, “fraud”, or “fidelity”. Some policies may contain limitations on “dishonest or fraudulent acts”, such as a carve out on deliberate dishonest acts. Where there is such limitation, or exception, the licensee should assess whether the policy is considered appropriate for its business.

Rule 11.6(5)(e) – applies to licensees which carry out activities within the scope of the Channel Islands Financial Ombudsman.

- (6) Where a licensee relies on captive insurance to meet requirements under this Part, the captive insurer must be licensed under the Insurance Business (Bailiwick of Guernsey) Law, 2002, or a captive insurer of an equivalent status in Jersey, Gibraltar, Bermuda, Isle of Man or a country which is a full member of OECD.

Guidance Note:

Notifications relating to PII:

Principle 10 of the Commission’s Principles of Conduct of Finance Business establishes that a licensee should deal with the Commission in an open and co-operative manner and keep the regulator promptly informed of anything concerning the firm which it might reasonably be expected to disclose.

When a licensee makes a notification under a PII policy to its insurer, the licensee should consider whether a notification should also be made to the Commission.

PART 12 – ADDITIONAL NOTIFICATIONS

Guidance Note:

This section sets out the circumstances (which have not previously been covered in these Rules) in which a licensee is required to make a notification to the Commission. If the licensee is faced with a scenario which is similar but not exactly the same as those which are referred to in this Rule, guidance should be sought from the Commission as to whether a notification must in fact be made to it.

12.1 Compliance with Rules

- (1) A licensee must give immediate written notice and details to the Commission where it has reason to believe that it will be unable to comply with, or demonstrate compliance with, the requirements of these Rules.
- (2) If any event happens or circumstances arise which make it impossible or impracticable for a licensee to discharge any of its regulatory or supervisory functions, it must provide written notice to the Commission immediately, specifying the action it is taking, and/or has taken and/or proposes to take to deal with the situation.

12.2 Name and address

- (1) A licensee must give the Commission immediate written notice of –
 - (a) a change in the registered or equivalent name of the licensee;
 - (b) a change in any business name under which the licensee carries on controlled investment business in Guernsey;
 - (c) a change in the address of the head office or principal place of business of the licensee;
 - (d) a change in the address of the registered office of the licensee; or

- (e) a change in the address for the service of any notices or documents.

12.3 Governance

- (1) A licensee must provide written notice to the Commission within 14 days of the establishment, or abolition, of a committee of the board to which it has delegated the making or enforcement of rules.
- (2) Notification, of a committee under this Rule, must include the terms of reference of the committee.
- (3) The Commission must receive written notice within 14 days of any changes to the composition or terms of reference of any committee which falls under this Rule.

12.4 Key employees

- (1) A licensee must provide written notice to the Commission within 14 days of any changes to key employees as set out in sections 40, 41 and 42 of the Law, providing reasons for the change, and must only act on those changes in accordance with the relevant sections of the Law and these Rules.

12.5 Other Key appointments and resignations

- (1) A licensee must provide written notice to the Commission within 14 days of the appointment of, or the ceasing to act, of–
 - (a) any person to a body to which the board has delegated rule making powers;
 - (b) any person to a body with responsibility for disciplinary matters in respect of an investment exchange operated by the licensee;
 - (c) any person appointed by the licensee to an appeals panel established by the licensee;
 - (d) an arbitrator appointed by the licensee or a person appointed to an arbitration panel established by the licensee; or

- (e) any person to a body with responsibility for investigating complaints in respect of business transacted on the investment exchange operated by the licensee.

- (2) Where a person ceases to act, the written notice must include a statement of reasons.

12.6 Information regarding key employees and appointments

- (1) A licensee must provide the Commission with written notice within 14 days of it becoming aware of any of the following changes in relation to any persons carrying out the roles set out in Rules 12.4 and 12.5:

- (a) change of name;
- (b) the refusal of any application for or the revocation or suspension of any license, authorisation or registration under any legislation relating to finance business;
- (c) the imposition of disciplinary measures or sanctions by a regulatory authority, including a Self-Regulatory Organisation, or professional body in relation to the individual's professional or business activities; or
- (d) the making of an order by a court disqualifying that individual from serving as a director of a company or from being concerned with the management of a company.

- (2) A written notice provided in respect of this Rule must include a statement of the circumstances and all known matters related to the reason for the notification.

12.7 Disciplinary matters

- (1) A licensee must give written notice, to the Commission, as soon as it has reason to believe that any of the following apply to any of its directors or employees –
 - (a) engagement in activities involving fraud, wherever or howsoever committed;

- (b) conviction for any offence involving fraud or other dishonesty, wherever or howsoever committed;
 - (c) engagement in activities involving dishonesty in relation to the licensee's controlled investment business in Guernsey, or in relation to finance business wherever or howsoever conducted;
 - (d) conviction for any offence under legislation relating to finance business in Guernsey or elsewhere; or
 - (e) the institution of *saisie, désastre*, bankruptcy, sequestration or similar proceedings.
- (2) A licensee must give written notice, to the Commission, immediately on the summary dismissal of any employee and the reasons for this dismissal, which includes employees under probation.
- (3) A record must be maintained of the names of any employees disciplined by a licensee for any breach of the Law, rules, Regulations or Ordinances or for any other conduct which may reasonably be expected to affect the conduct of the licensee's controlled investment business, including particulars of –
- (a) the offence for which the employee was disciplined; and
 - (b) steps taken to discipline the employee,

and details must be submitted, to the Commission, within seven days of the employee being disciplined.

12.8 Trading hours

- (1) Where relevant, a licensee must provide written notice to the Commission immediately of –
- (a) any change, whether permanent or temporary, in the hours during which business may be conducted by means of the facilities of the investment exchange operated by the licensee;

- (b) any trading halt⁷; or
- (c) any suspension in trading of any investment.

Guidance Note:

The requirements of Rule 12.8(1)(a) are intended to keep the Commission suitably informed of the trading hours of an investment exchange, and in particular in relation to the hours during which continuous trading may be undertaken (where an exchange facilitates such continuous trading).

Where, for example, an investment exchange facilitates trading on a non-continuous or intermittent basis or uses an auction platform, it is expected that the basis of the timings of access to such facilities as well as any subsequent changes to such basis should be notified to the Commission in order to satisfy the requirements of this Rule.

12.9 Categories of investments listed or traded on an investment exchange operated by a licensee

- (1) A licensee must provide written notice to the Commission immediately of any proposed new category, or changes to existing categories, of investments listed or traded on the investment exchange operated by it. The notification must include an explanation of any new category of investment proposed.
- (2) A licensee must provide written notice to the Commission within 14 days where it discontinues or suspends the listing or trading of any category of investments listed or traded on the investment exchange operated by it.

Guidance Note:

For the purposes of Rule 12.9, examples of different “categories of investments” might include: Equities, Bonds, Special Purpose Acquisition Companies, Commodities etc.

⁷ For the purposes of these Rules a trading halt shall include a halt in the trading of investments on an investment exchange operated by a licensee as a whole or in relation to a sector, but it shall not include a halt in the trading of individual investments.

12.10 Offences

- (1) A licensee must give immediate written notice to the Commission if, in the course of its business, it becomes aware of any person that –
 - (a) has been carrying on unauthorised controlled investment business; or
 - (b) has committed a criminal offence under the Law in the course of carrying on controlled investment business,including all details known to the licensee.

12.11 Subsidiaries

- (1) A licensee must give immediate written notice, to the Commission, of the formation, acquisition, disposal or dissolution of a subsidiary.
- (2) The notice must specify the following –
 - (a) the subsidiary's name; and
 - (b) the subsidiary's principal business, if any.

12.12 Holding company

- (1) A licensee must give immediate written notice to the Commission if it either becomes, or ceases to be, a subsidiary of another company or entity.
- (2) The notice must specify the following –
 - (a) the holding company's, or entity's, name;
 - (b) its principal business;
 - (c) the names of its directors (or equivalent); and
 - (d) the address of its registered office.

12.13 Insolvency and legal proceedings

- (1) A licensee must give immediate written notice to the Commission of the proposal or occurrence of any of the following –
 - (a) the presentation of a petition for the winding up of the licensee;
 - (b) the appointment of a receiver, administrator, liquidator or trustee of assets of the licensee;
 - (c) the making of a composition or arrangement with creditors of the licensee; and
 - (d) where the licensee is an unincorporated association, a resolution to wind up the association.
- (2) A licensee must give immediate written notice to the Commission if civil proceedings are instituted against it –
 - (a) arising out of the contravention or alleged contravention of applicable legislation; or
 - (b) which might be expected to have a significant impact on the financial stability of the licensee.
- (3) A licensee must give written notice to the Commission of any other legal proceedings instituted by or against it.

12.14 Other matters affecting business

- (1) A licensee must give immediate written notice to the Commission of any of the following –
 - (a) the presentation of an application for the winding-up⁸ of a subsidiary or holding company of the licensee;
 - (b) the serving of an administration order on the licensee or a company which is a subsidiary or holding company of the licensee;

⁸ Other than a petition for the voluntary winding-up for the purposes of reconstruction or amalgamation.

- (c) the granting, withdrawal, or refusal of an application for, or revocation of, any license, authorisation or registration to carry on finance business under any legislation relating to finance business whether in Guernsey or elsewhere;
- (d) the appointment of inspectors by a statutory or other regulatory authority, including a Self-Regulatory Organisation, or Recognised Professional Body to investigate the affairs of the licensee or the investment exchange operated by it;
- (e) the imposition of disciplinary measures or sanctions on the licensee or its directors in relation to its finance business by any regulatory authority, including a Self-Regulatory Organisation, or Recognised Professional Body;
- (f) the bringing against the licensee or its directors of any material legal action or proceedings, or any arbitration to which the licensee is a party, relating to finance business; or
- (g) the conviction of the licensee for any offence under legislation relating to finance business, companies or bankruptcy or of any offence involving fraud, dishonesty and/or similar offence(s).

12.15 Proposed changes to business plan

- (1) A licensee must give immediate written notice to the Commission of any proposed significant change in its business plan.

12.16 Periodic and ad hoc reporting to the Commission

- (1) A licensee must provide such other information as may be reasonably requested by the Commission, including both periodic and *ad hoc* submissions of information.

PART 13 – GENERAL PROVISION

13.1 Interpretation

- (1) In these Rules, terms have their ordinary meaning unless specifically defined in the Law or in this Rule.
- (2) In these Rules, the following definitions should be followed –

“accounting reference date” means the date to which the licensee’s accounts are prepared;

“agent” means, in relation to a licensee, any person, including an employee, who acts under the instruction of a licensee;

“annual audited expenditure” means either –

(a) an estimate of budgeted expenditure for the first twelve months which is submitted to the Commission, in the case of a licensee which has not yet commenced its controlled investment business; or

(b) the expenditure as stated in the reported results in the immediately preceding period’s audited financial statements

and, in either case, excluding any remuneration to directors whether through salary, bonuses, or other benefits; this should exclude fees and commissions payable which are directly attributable to fees and commissions receivable and should also exclude depreciation and amortisation of non-current assets;

“approved bank” means a person who is licensed under The Banking Supervision (Bailiwick of Guernsey) Law, 2020, or is registered under The Banking Business (Jersey) Law, 1991 (as amended), or authorised under the Isle of Man Financial Services Act 2008 (as amended), or is authorised to carry on a banking or deposit-taking business under the law of the UK, of any EU member State, or under the law of any country or territory which may be listed in notices issued by the Commission;

“board” has the meaning given to it in the Companies (Guernsey) Law, 2008⁹ or, in the case of an unincorporated entity, the committee or managing board of a partnership or other similar governing body;

“client money bank account” means an account at an approved bank in the name of a licensee which includes, in its title, an appropriate description to distinguish the money in the account from a licensee’s own money;

“complaint” means any oral or written expression of dissatisfaction, whether justified or not, for or on behalf of a person about the provision of, or failure to provide, a financial service which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience;

“current assets” means assets falling to be realised within one year of the accounting reference date;

“finance business” has the meaning given to it in the Financial Services Commission (Bailiwick of Guernsey) Law, 1987¹⁰, as amended;

“generally accepted accounting principles (“GAAP”)” includes those accepted in–

- (a) the UK;
- (b) the United States; or
- (c) any other country approved in writing by the Commission;

“issuer” means a company or other legal person or undertaking, including a public sector issuer or fund, any of whose securities are or are proposed to be the subject of an application for listing and/or, where relevant, trading on an investment exchange operated by a licensee or some of whose securities are already listed and/or, where relevant, traded on such an investment exchange;

“licensee” means an entity licensed under the Law (although it should be noted that these Rules are applicable only to licensees which are specifically licensed to conduct the restricted activity of operating an investment exchange);

“listed” means admitted to the Official List of an investment exchange;

⁹ Order In Council No. VIII of 2008, as amended.

¹⁰ Ordres en Conseil Vol.XXX, p.243, as amended.

“market participant” means any member, issuer or other party with or for whom an exchange carries on, or intends to carry on, controlled investment business;

“material records” means such records that would be necessary for the purposes of establishing a complete and accurate record of all aspects of a licensee’s conduct of controlled investment business;

“member” means a company, partnership or other legal entity which has been admitted to membership of an investment exchange operated by a licensee and whose membership has not been terminated;

“non-current assets” means any assets that are not current assets;

“OECD” means The Organization for Economic Cooperation and Development;

“Official List” means the list of securities admitted to listing on an investment exchange operated by a licensee and which is maintained and published by that licensee operating the investment exchange;

“permanent data” means such records, documents or data as are considered material for the establishment and ongoing proper conduct of controlled investment business of a licensee;

“public” has its ordinary meaning;

“Recognised Professional Body” means a body which regulates the practice of a profession; reference to the practice of a profession does not include references to carrying on a business consisting wholly or mainly of controlled investment business;

“regulatory adjustments” means any additions or deductions as specified in writing to a licensee by the Commission;

“regulatory capital” means a licensee’s total assets, less its total liabilities (as reported in its latest audited financial statements, or its latest management accounts, whichever is more current), less non-current assets, less any investment in a subsidiary, less debtors arising from sales or other transactions to associates, less any deficiencies where the liabilities of a subsidiary of a licensee exceed its assets, less any contingent liabilities that require disclosure or provision under GAAP, less any position risk and counterparty risk calculated in accordance with

Schedule 1 to these rules, less the amount of the excess on the licensee's PII policy, plus any creditors arising from purchases or other transactions from associates; subject to any regulatory adjustments;

"regulatory monitoring limit" means an amount equivalent to the regulatory capital requirement for a licensee which operates an investment exchange, as set out in Rule 11.1(2), plus 15% of that sum;

"securities" means any securities which are listed or traded on an investment exchange and which fall within the definition of a controlled investment in Schedule 1 to the Law;

"Self-Regulatory Organisation" means a body, whether a body corporate or unincorporated, which regulates the carrying on of investment business of any kind by enforcing rules which are binding on persons carrying on business of that kind either because they are members of that body or because they are subject to regulation; and

"significant complaint" means a complaint alleging a breach of the Law, *mala fides*, malpractice or impropriety, or repetition or recurrence of a matter previously complained of, whether significant or otherwise.

- (3) The Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016¹¹ applies to the interpretation of these Rules.
- (4) A reference in these Rules to an enactment should be taken to include any amendments, re-enactments (with or without modification), extensions and applications.

¹¹ Order in Council No. V of 2018, as amended.

PART 14 – REVOCATION, CITATION AND COMMENCEMENT

14.1 Revocation of the Investment Exchange (Notification) Rules 1998

- (1) The Investment Exchange (Notification) Rules, 1998, are revoked.

14.2 Citation and commencement

- (1) These Rules shall come into operation on 31 January 2025 and may be cited as the Regulated Investment Exchange Operator Rules, 2024 (“the RIEO Rules”).

SCHEDULE 1

Calculation of a licensee's position risk

Position risk shall be calculated as the sum of:

- 5% of the carry value of any Sovereign Debt held by a licensee;
- 5% of the carry value of any daily dealing money market open ended collective investment scheme held by a licensee;
- 10% of the carry value of any other marketable debt held by a licensee;
- 25% of the carry value of any listed / publicly traded equities held by a licensee;
- 25% of the carry value of any open-ended and closed-ended collective investment scheme, other than a daily dealing money market open ended scheme, held by a licensee;
- 25% of the carry value or 4 times initial margin requirement, whichever is greater, of any other derivative products (as referred to in Schedule 1 to the Law) held by a licensee; and
- 100% of the carry value of any illiquid current assets (being more than 90 days) held by a licensee.

Calculation of a licensee's counterparty risk

Counterparty risk shall be calculated as the sum of:

- Where a licensee's exposure to any one counterparty is at least 25% of the licensee's regulatory capital requirement, 15% of any excess over that 25%; and

- Where a licensee's exposure to any one counterparty is at least 50% of the licensee's regulatory capital requirement, 40% of any excess over 25%.

Guidance Note:

Margin Requirement: The margin requirement may only be used as a measure for calculating the position risk of derivative products if it is considered by the board to appropriately reflect that risk.

Counterparty Risk: For the purposes of calculating the counterparty risk, the Commission recognises that not all unsettled bargains should be included. Accordingly, the provisions above only apply to bargains which are unsettled after 15 days (unless the bargain is subject to a legally enforceable guarantee).

Any money held at a bank with terms of less than 90 days should also be excluded from the counterparty risk.



Guernsey Financial
Services Commission

Consultation Paper

Regulated Investment Exchange Operator Rules

Who might benefit from reading this paper?

This consultation paper is a public document and feedback is welcomed from any interested stakeholder. The proposals will directly impact persons licensed to operate an investment exchange in the Bailiwick and may be of relevance to members, issuers and other persons connected to such an investment exchange.

How to respond

Responses to this Consultation Paper are sought by 12 November 2024.

Feedback may be provided via the Consultation Hub section of the Commission's website (www.gfsc.gg).

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1. Introduction

This consultation seeks comments on proposed new rules for licensed operators of investment exchanges, replacing the existing framework of rules applying to such licensees.

1.1 Background

The operation of an investment exchange, in or from within the Bailiwick, is a restricted activity requiring licensing under the Protection of Investors (Bailiwick of Guernsey) Law 2020 (the PoI Law).

The PoI Law defines an “investment exchange” as

“a market for the buying and selling of –

- a) shares, debentures or securities,*
- b) instruments entitling their holders to subscribe for, or certificates representing property rights in, shares, debentures or securities,*
- c) contracts for property or commodity futures or contracts for differences,*
- d) rights under insurance contracts the effecting and carrying out of which in the Bailiwick would constitute long term business within the meaning of the Insurance Business Law, or*
- e) options to acquire or dispose of, or other rights or interest in, any investment mentioned in this definition.”*

The Commission licenses persons operating such markets by way of business.

Licensed investment exchange operators are subject to the general framework of rules applicable under the PoI Law, including for example the Conduct of Business Rules¹ for licensees (the CoB Rules), but are also subject to the Investment Exchange (Notification) Rules 1998 (the 1998 Rules) which are specific to operators of investment exchanges.

At present there is only one licensed operator of an investment exchange in the Bailiwick.

2. Objectives of the proposed new rules

Modernisation

In recent years the Commission went through a comprehensive exercise to revise its supervisory laws and rules framework. The Investment Exchange (Notification) Rules 1998 were not updated as part of this exercise because it was decided that a more focussed and comprehensive exercise should be undertaken to review the longstanding 1998 Rules. The proposed new draft rules will modernise both the format of the rules and the references to the revised supervisory laws.

¹ [Licensees \(Conduct of Business\) Rules and Guidance, 2021](#)

Consolidation

While the 1998 Rules are nominally “notification” rules their scope extends to other areas including the specification of requirements for licensing. However the 1998 Rules do not represent a comprehensive rules framework for operators of exchanges and such licensees must also comply with the other sets of rules such as the Capital Adequacy Rules² and the CoB Rules. It is proposed that the new rules will consolidate these requirements for investment exchange operators, having the twin benefits of removing any conflicts between different sets of applicable rules and creating a core rulebook for easier reference by licensees.

Specialisation

As much of the current applicable rules framework is aimed at other types of investment firms, certain current rules are either not applicable or not easily applied to investment exchange operators. The proposed new rules will be tailored specifically for this type of licensee.

Consistency with international standards

The International Organization of Securities Commissions (IOSCO) is the global standard setting body for securities market regulators and it sets the Core Principles for the supervision of investment exchanges. These Principles were last revised in 2017, many years after the drafting of the 1998 Rules. In preparing the proposed draft rules the Commission has reviewed the relevant IOSCO principles to ensure that the proposed framework is up-to-date and consistent with international standards.

Question 1: Do you agree with the objectives of the proposed new rules, as set out above?

3. Proposal

It is proposed that the 1998 Rules will be repealed and the Capital Adequacy Rules and the CoB Rules will be disapplied for licensed operators of investment exchanges. A new set of comprehensive rules will be made applying only to licensed operators of investment exchanges.

The proposed new rules are divided into different sections covering the following areas:

- rules on corporate governance and the responsibilities of senior management;
- rules on compliance arrangements;

² [Licensees \(Capital Adequacy\) Rules and Guidance, 2021](#)

- rules on the licensee’s conduct of business;
- rules of the operation of the investment exchange;
- rules setting prudential requirements for the licensee; and
- rules on notifications to be made to the Commission.

A copy of the proposed rules is provided in the Appendix.

Question 2: Do you have any comments on the proposed Regulated Investment Exchange Operator Rules? Please provide these in the box below.

4. Next steps

Following the closing date of 12 November 2024 the Commission will review and consider the comments received and make any appropriate changes to the rules. The Commission will then issue a public feedback paper and publish final rules.

Appendix - The Regulated Investment Exchange Operator Rules and Guidance, 2024

Please see attached draft.

THE REGULATED INVESTMENT EXCHANGE OPERATOR RULES and Guidance, 2024

The Regulated Investment Exchange Operator Rules, made in accordance with the Protection of Investors (Bailiwick of Guernsey) Law, 2020¹ (“the Law”), are set out in this document.

Further guidance, provided by the Guernsey Financial Services Commission (“the Commission”) is set out in shaded boxes.

¹ Order in Council No. XVIII of 2020

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PART 1 - INTRODUCTION

1.1 Application

- (1) The Regulated Investment Exchange Operator Rules, 2024 replace The Investment Exchange (Notification) Rules, 1998.
- (2) These Rules apply to any person licensed, under the Law, to carry on the restricted activity of operating an investment exchange².
- (3) The Commission may in its absolute discretion, by written notice to a licensee, exclude or modify the application of any provision of these Rules.
- (4) The Commission may issue supplementary guidance regarding the standards of conduct and practice expected in relation to any aspect of the regulatory framework. Such guidance will not constitute rules of the Commission.

Guidance Note:

This document takes a two-level approach –

- The Rules set out the standards to be met; and
- The guidance notes (in blue boxes) present suggested ways of showing compliance with the Rules.

A licensee may adopt alternative measures to those set out in the guidance so long as it is possible to demonstrate that such measures achieve compliance.

² As defined in section 79 of The Protection of Investors (Bailiwick of Guernsey) Law, 2020

PART 2 – CORPORATE GOVERNANCE AND SENIOR MANAGEMENT RESPONSIBILITY

2.1 Corporate governance

- (1) The board must ensure that there are effective and appropriate policies, procedures and controls in place which allow it to meet its obligations under the Law, these Rules, and any other applicable Regulations and/or Ordinances.
- (2) The board must evaluate and record the assessment of its compliance with “The Finance Sector Code of Corporate Governance³”, or any successor codes.
- (3) The board must retain responsibility for any of its outsourced functions.
- (4) A licensee must appoint a person as the chief executive, the formal title being at the discretion of the licensee, and appoint a replacement to fill this position when it falls vacant.
- (5) A licensee’s board and senior management must take all reasonable steps to ensure that all employees of the licensee are aware of the requirement to avoid serious damage to the licensee’s reputation or its financial position.
- (6) The board must appoint such number of Bailiwick-based senior executives as is commensurate with the nature, size and complexity of the licensee’s activities in the Bailiwick, and the prudent conduct of its business.
- (7) The board has overall responsibility for ensuring that the business conducted on the investment exchange operated by the licensee is conducted in an orderly manner and that its markets are fair, efficient and transparent; and afford proper protection to investors.

³ Version dated 26 July 2023 and any subsequent versions

Guidance Note:**Reasonable steps**

Reasonable steps include having in place sufficient management controls and compliance procedures and a system for ensuring that such controls continue to be sufficient and that employees are observing internal compliance procedures.

2.2 Constitution of a licensee

- (1) A licensee must notify the Commission of any proposed change to its constitution, articles of association, governing statute, charter or by-laws and –
 - (a) provide such notification, to the Commission, before the proposed change is circulated to the members of the investment exchange operated by the licensee for consideration or approval;
 - (b) give reasons for the proposed change; and
 - (c) inform the Commission of the date on which any such change is sought to become effective.

2.3 Representation of members in selecting the board of a mutualised investment exchange

- (1) Where an investment exchange operated by a licensee is constituted as a mutualised organisation, it must ensure a fair representation of its mutual members in the selection of its board of directors (or equivalent body) and in the administration of its affairs.

PART 3 – COMPLIANCE ARRANGEMENTS

3.1 General

- (1) The board has effective responsibility for compliance with the Law, these Rules, and any other rules or guidance made under the Law and any other applicable Regulations and/or Ordinances which apply to the licensee.
- (2) The board must take responsibility for the licensee's policy relating to its review of compliance arrangements and discuss compliance at regular intervals.
- (3) The board must ensure that the licensee takes reasonable steps, including the establishment and maintenance of procedures, to ensure that its officers and employees act in conformity with –
 - (a) their own and their employer's relevant responsibilities under the Law, and any rules, applicable Regulations and/or Ordinances made under the Law which apply to it, including these Rules;
 - (b) the requirements of the statutory restrictions on market abuse, insider dealing, money laundering, countering the financing of terrorism and proliferation financing;
 - (c) appropriate arrangements on propriety in personal dealings;
 - (d) guidance documents, issued by the Commission, which are relevant to the carrying on of controlled investment business;

(e) any relevant principles issued by the International Organization of Securities Commissions (IOSCO)⁴; and

(f) a licensee's own obligations and duties under the rules of the investment exchange it is licensed to operate.

(4) A licensee must keep a breaches register to log all instances of non-compliance with the obligations and requirements set out in Rule 3.1 (3)(a) to (f).

(5) A licensee must ensure that its compliance procedures are set out in writing and that a copy is kept and made available to the Commission on request.

(6) The Commission may require changes to the compliance arrangements and a licensee must implement and comply with any such requirements.

(7) A licensee must review its written compliance procedures at least annually.

(8) When considering compliance, the board must take into account the size, nature and complexity of the licensee's operation of an investment exchange, which may include, but is not limited to –

- (a) the underlying business of the issuers;
- (b) the underlying business of the members;
the nature of any trading and volatility of prices;
- (c) the business and operating model of the licensee; and
- (d) the products and services provided by the licensee and the investment exchange operated by it, and the way in which they are delivered.

⁴ As published on the website <https://www.iosco.org/>.

3.2 The compliance officer

- (1) A licensee must appoint an officer, in Guernsey, to be responsible for the licensee's compliance function.
- (2) The board must ensure that the compliance officer –
 - (a) is a natural person;
 - (b) is resident in Guernsey;
 - (c) has sufficient resources to perform their duties;
 - (d) has timely access to all records required under these Rules;
 - (e) receives full cooperation from all staff;
 - (f) reports directly to the board;
 - (g) has regular contact with the board to ensure that it is able to satisfy itself that all the requirements of the Law and these Rules and any other applicable Regulations and/or Ordinances are being met;
 - (h) has regular contact, with the persons or committee directly responsible for managing, operating and regulating the investment exchange operated by the licensee, to assist them in their considerations; and
 - (i) is fully aware of both their obligations and those of the licensee under the Law, these Rules and any other applicable Regulations and/or Ordinances.

- (3) Where a licensee is considering outsourcing the compliance functions, or providing the compliance officer with additional support from third parties, within the group or externally, then the licensee must –
- (a) ensure that roles, responsibilities and respective duties are clearly defined and documented; and
 - (b) ensure that the compliance officer, other third parties and all employees understand their respective roles, responsibilities and duties.
- (4) Where the compliance function itself is outsourced to a third party, the licensee must notify the Commission of the names of the natural persons employed by the licensee and responsible for oversight of that outsourced function.

3.3 Compliance monitoring programme

- (1) The board must –
- (a) establish such other policies, procedures and controls as may be appropriate and effective for the purposes of ensuring compliance with the Law, these Rules and any other rules made under the Law as well as any other applicable Regulations and/or Ordinances which apply;
 - (b) establish and maintain an effective policy, for which responsibility rests with the board, for the review of its compliance with the requirements of the Law, these Rules, and any other rules made under the Law as well as any other applicable Regulations and/or Ordinances which apply. The policy must include provision as to the extent and frequency of reviews;

- (c) ensure that a review of its compliance with these Rules is discussed and minuted at board meetings and at appropriate intervals. In considering what is appropriate, a licensee must have regard to risk, taking into account –
 - (i) the size, nature, and complexity of the licensee’s business;
 - (ii) its members , issuers, products, and services; and the ways in which it provides those products and services;
- (d) evaluate and record the evaluation of its compliance with the Finance Sector Code of Corporate Governance⁵ or any successor codes;
- (e) ensure it meets its obligations relating to compliance review; in particular the board must –
 - (i) ensure that the compliance review policy takes into account the size, nature, and complexity of the business and includes a requirement for sample testing of the effectiveness and appropriateness of the policies, procedures, and controls;
 - (ii) consider whether it would be appropriate to maintain a separate internal audit function to assess the adequacy and effectiveness of compliance;
 - (iii) ensure that when a review of compliance is discussed by the board, the necessary action is taken to remedy any identified deficiencies; and
 - (iv) provide adequate resources either from within the licensee itself, within its group, or externally, to ensure that the compliance policies, procedures, and controls of the licensee are subject to regular monitoring and testing as required in these Rules;

⁵ Version dated July 2023 and any subsequent versions

- (f) retain overall responsibility, including where the board has delegated some or all of its duties.

3.4 Employee Screening

- (1) A licensee must maintain effective and appropriate procedures when hiring employees for the purpose of ensuring high standards of employee probity and competence.
- (2) In order for a licensee to ensure that employees are of the required standard of competence and probity, which will depend on the role of the employee, a licensee must
 - (a) obtain and confirm appropriate references at the time of recruitment;
 - (b) require information from the employee with regard to any regulatory action taken against them;
 - (c) require information from the employee, with regard to any criminal convictions and the provision of a check of their criminal record; subject to the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002⁶; and
 - (d) confirm their educational and professional qualifications.

3.5 Employee training

- (1) A licensee must create and implement a training and competency scheme for all employees appropriate to the nature and scale of that licensee's business.

⁶ Ordres en Conseil Vol. XLII, p.389 (as amended)

- (2) A licensee must ensure that relevant employees receive comprehensive, ongoing, training to ensure competence including, but not limited to –
- (a) the Law and any rules, as well as any other applicable Regulations and/or Ordinances made under it which are applicable to the licensee;
 - (b) the rules of the investment exchange operated by the licensee and any other rules, codes or guidance issued by it;
 - (c) the obligations of employees and their potential liability in failing to meet those obligations;
 - (d) the implication of non-compliance by employees with any relevant legislation, rules, regulations or guidance;
 - (e) the licensee's policies, procedures and controls for ensuring compliance.
- (3) A licensee must maintain a training log to record the training that the directors and employees receive.

Guidance Note

In meeting the requirements of this Rule, a licensee should refer to the Guidance Note on Training and Competency Schemes, version dated November 2021 (and any subsequent versions) issued by the Commission.

The Commission requires licensees to provide adequate training for their employees. Training should take into account each employee's existing experience and educational and professional qualifications.

Appropriate training should also cover the licensee's in-house provisions.

The Commission expects that the board will exercise oversight of the training process both in terms of its planning and its execution, and document such oversight.

The Commission places emphasis on a licensee's system of supervision and administrative controls to ensure that employees do not act beyond their competence.

PART 4 – CONDUCT OF BUSINESS

4.1 Integrity

- (1) A licensee must promote and maintain high standards of integrity and fair dealing in its operation of an investment exchange.

4.2 Fitness and propriety

- (1) A licensee must observe the Commission's Principles of Conduct of Finance Business when carrying on its controlled investment business. This is in addition to any further Principles set out in the Law and any other applicable Rules, Regulations and Ordinances.

Guidance Note

The Commission has a continuing duty to determine whether a licensee remains a fit and proper person to carry on the restricted activity of operating an investment exchange. In so doing, the Commission will take into account the licensee's observation of the Commission's Principles of Conduct of Finance Business as well as the Minimum Criteria for Licensing as set out in Schedule 4 to the Law and any other relevant factors.

The Principles are a statement of the standards expected of all persons licensed under the Law.

Breach of a Principle will be taken into account for the purposes of discipline and intervention.

The Principles are not exhaustive and conformity with them does not excuse a failure to observe other regulatory requirements.

4.3 Regulatory cooperation

- (1) A licensee must cooperate by the sharing of information or intelligence material with the Commission and, where legally empowered to do so, with any other authority,

body or person having responsibility for the supervision or regulation of investment business or other financial services.

- (2) Where such cooperation is with a statutory regulatory body in a jurisdiction outside of the Bailiwick of Guernsey, and relates to any matters which either do, or have the potential to, represent material reputational risk to the Bailiwick, or its financial institutions, any communications with that body must be made in prior consultation with the Commission, where the licensee is lawfully able to do so.

Guidance Note

For the avoidance of doubt, rule 4.3(2) is not intended to capture the exchange of information or intelligence by a licensee in the course of its regular day to day operations, for example when conducting initial or ongoing due diligence in respect of issuers or members, or responding to similar such enquiries from other regulators.

If a licensee is unsure regarding the application of Rule 4.3(2) to any particular case, the Commission should be contacted in the first instance for further guidance.

The Commission may request copies of any exchange of information or intelligence made between a licensee and another regulatory body which does not fall within the scope of Rule 4.3(2) and such copies should be provided by a licensee upon request by the Commission.

4.4 Confidentiality

- (1) A licensee must establish, maintain and document suitable policies and procedures for receiving and responding to information or intelligence material which it might receive from the Commission, other regulatory bodies, or other third parties.
- (2) Where a licensee receives information or intelligence material from the Commission to assist in conducting that licensee's supervisory and regulatory functions, such information or intelligence material shall be treated as confidential, and must not be shared with other parties without first obtaining the Commission's consent in writing.
- (3) Where, in the course of its activities, a licensee is in receipt of information or intelligence material which is not in the public domain, it shall use that information or intelligence

material solely for the purposes of conducting its regulatory and supervisory functions; ensuring the business conducted on and facilitated by the investment exchange it operates is conducted in a fair, legitimate and orderly manner; ensuring compliance with applicable law, regulations, rules and codes and meeting its obligations to assist other regulatory bodies as required by Rule 4.3. In any event the use and disclosure of such information or intelligence material must not be in breach of any laws of the Bailiwick of Guernsey.

4.5 Risk management systems and controls

- (1) A licensee must have in place systems and controls to enable the board to assess and appropriately manage the risks to which it is exposed.
- (2) The board must allocate responsibility, for risk management, to persons with appropriate knowledge and expertise.
- (3) The board, when assessing the effectiveness of the systems and controls in place, must consider –
 - (a) the ability to identify, measure and control all material risks; and
 - (b) whether they provide sufficient, reliable and timely information to the board and management.

4.6 Business continuity plan

- (1) A licensee must establish, maintain and document a business continuity plan. The plan must identify the risks that could materially affect the licensee's operations, how those risks would affect those operations if they occurred, and establish the safeguards, policies and procedures to be followed upon such an occurrence to ensure that the licensee's operations are able to continue with minimal disruption.

- (2) The business continuity plan must be regularly reviewed as new risks emerge, and/or the licensee's business activities are planned to change, and in any event at least annually, and updated accordingly.
- (3) The business continuity plan must be periodically tested to ensure its effectiveness and the board must be able to demonstrate the outcome of the testing to the Commission, on or before the date specified by the Commission, if requested to do so.

4.7 Outsourcing or delegation by a licensee

- (1) Where a licensee proposes to outsource or delegate any of its functions to any other body or person, it must notify the Commission, and must observe the Commission's "Guidance Note, Outsourcing of functions by entities licensed under the Protection of Investors (Bailiwick of Guernsey) Law, 2020".
- (2) The notification must include –
 - (a) the name of that other body or person;
 - (b) details of the function that is to be outsourced or delegated to that other body or person; and
 - (c) evidence of their ability and willingness to provide the relevant function.

- (3) The Commission must be notified of any agreement subsequently made and any further alterations made to that agreement.

Guidance Note:

The Commission considers outsourcing arrangements on the basis that responsibility cannot be outsourced, and that a licensee at all times remains responsible and accountable to the Commission, as its regulator, for compliance with the Law and the rules and regulations made thereunder.

A licensee cannot contract out of its statutory and regulatory responsibilities.

Any outsourcing arrangement must not impair the Commission's ability to exercise its statutory responsibilities, or a licensee's responsibility for overseeing the fair and effective operation of the markets which it facilitates.

4.8 Outsourcing or delegation to a licensee

- (1) A licensee must notify the Commission where any other body or person proposes to outsource or delegate any of its functions to that licensee. Such notification must specify the function which it is proposed will be outsourced or delegated to the licensee.
- (2) The Commission must be notified of any agreement subsequently made and any further alterations made to that agreement.

PART 5 – CONFLICTS OF INTEREST

5.1 Policy

- (1) A licensee must establish, implement and maintain an effective conflicts of interest policy, appropriate to the size and organisation of the licensee and the nature, scale and complexity of its business.
- (2) Where a licensee is a member of a group, the policy must also take into account any circumstances of which the licensee is, or should be, aware of which may give rise to a conflict of interest relating to other members of the group.
- (3) The conflicts of interest policy must include the following –
 - (a) identification, with reference to the business carried out by or on behalf of a licensee, of the circumstances which do, or may, give rise to a conflict of interest entailing a material risk of damage to the interests of one or more market participants, counterparties, or other parties; and
 - (b) specific procedures to be followed to manage such conflicts.
- (4) A licensee must ensure that any procedures implemented, under this Rule, are designed to ensure that relevant persons engaged in any business involving a conflict of interest carry on that business at a level of independence appropriate to the size and organisation of the licensee and the nature, scale and complexity of the business and of the group to which it belongs.
- (5) Procedures to be followed and any measures adopted must include, where appropriate –

- (a) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of conflict of interest, where the exchange of that information may harm and/or has the potential to harm the interests of one or more market participants, counterparties or other parties;
 - (b) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, market participants, counterparties or other parties whose interests may conflict; or who otherwise represent different interests that may conflict, including those of the licensee;
 - (c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity; where a conflict of interest may arise in relation to those activities;
 - (d) procedures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out activities; and
 - (e) procedures to prevent or control the simultaneous or sequential involvement of a relevant person in activities where such involvement may impair the proper management of conflict of interests.
- (6) If the adoption of the practice of one or more of these procedures does not ensure the requisite degree of independence, a licensee must adopt alternative or additional measures and procedures as necessary.
- (7) Where procedures to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage and/or potential damage to the interests

of market participants, counterparties and other parties will be prevented, the licensee must clearly disclose the general nature and sources of conflicts of interest to the party before undertaking business on its behalf or providing services to it.

5.2 Record of services or activities giving rise to detrimental conflict of interest

- (1) A licensee must keep, and regularly update, a record of its activities in which a conflict of interest entailing a material risk of damage and/or potential damage to the interests of one or more market participants, counterparties or other parties has arisen or may arise.

5.3 Gifts and inducements

- (1) A licensee must take reasonable steps to ensure that neither its directors, employees nor any of its agents –
 - (a) offers or gives; or
 - (b) solicits or accepts

any gifts, or other direct or indirect benefit, which is likely to conflict with any duties of the recipient, or the recipient's employer, owed to a market participant, counterparty or other party, in connection with a licensee's activities.

PART 6 - ACCOUNTING RECORDS AND FINANCIAL STATEMENTS

6.1 Accounting records

- (1) A licensee must keep accounting records, in English, which are sufficient to show and explain its transactions and –
 - (a) disclose, with reasonable accuracy, at any time, the current financial position of the licensee; and
 - (b) enable the licensee to demonstrate its continuing compliance with Part 6 of these Rules.
- (2) Where a licensee outsources the activity of keeping accounts it should have daily access to this information.

6.2 Audited financial statements

- (1) A licensee must prepare audited financial statements covering the period from the preceding accounting reference date, or in the case of a new business from the date of incorporation, to the next accounting reference date. These must, at a minimum, include –
 - (a) accounts complying with generally accepted accounting principles; and
 - (b) an auditor's report which must include a statement of financial resources certified by the auditor confirming that the appropriate financial resources requirement specified in Part 11 of these Rules is satisfied.
- (2) A licensee must prepare, within one month of the month end, a statement of financial resources in respect of each month. It must be made available to the Commission, on request.

- (3) Audited financial statements must be prepared –
- (a) for a period which is no longer than 12 months from the previous accounting reference date; or
 - (b) where the licensee is preparing audited financial statements from the period of incorporation to the accounting reference date, audited financial statements must be prepared to the date notified to the Commission at the time of making the application for a licence.
- (4) A licensee must notify the Commission, immediately, of any change to its accounting reference date. The notification must include a statement of reasons for the change.
- (5) Copies of the audited financial statements must be submitted to the Commission no later than four months after the accounting reference date.
- (6) A licensee must give immediate written notice, to the Commission, where it has reason to believe that the auditor may qualify the accounts.

6.3 Auditor

- (1) A licensee must appoint an auditor and confirm to the Commission that the auditor is qualified.
- (2) A licensee must provide the Commission with immediate written notice of a change of its auditor, including a statement of reasons for the change.

PART 7 - RECORD KEEPING

7.1 Retention requirements

- (1) In this Part, the retention periods set out are absolute. They continue to apply after the surrender of a licence and where a licensee ceases to do business.
- (2) The retention periods set out in Rule 7.2 are subject to the further requirements of Rule 7.3, where applicable.

7.2 Records

- (1) All records prepared in order to comply with these Rules must be retained for a period of at least six years.
- (2) A licensee must keep, for a period of six years, a record of occurrences that have, or may have, involved an alleged breach of any applicable legislation, and the steps taken with a view to ensuring that such occurrences do not recur.
- (3) Unless otherwise stated, all material records and permanent data, prepared in order to comply with these Rules, must be retained for the duration of the relevant relationship and also for a period of at least six years starting from the date that the relationship ceased. For the purpose of this Rule, the term 'relationship' includes any direct relationship a licensee has with a market participant or any other party for whom the licensee is providing services.
- (4) A licensee must keep, and properly maintain, records relating to its operation of an investment exchange and any other activities affecting the operation of that exchange, in English and capable of being verified and audited, to demonstrate compliance with the legislation.

- (5) A licensee must make such records available at any time to the Commission, its employees and any person authorised by it, upon its request, on or before the date specified by the Commission.
- (6) A licensee must review, at least annually, the ease of retrieval of, and condition of paper and electronic records; including telephone records and recordings. Where applicable, this must include an annual review of any trading system used by the licensee to ensure that records are easily retrievable.

7.3 Destruction of records or files

- (1) A licensee must ensure that it, and its directors and employees and other persons, to the extent that they are under its power and control, must not, without the express written consent of the Commission, amend, destroy, make further entries in, or erase any record or file which is, or may be, relevant to any matter which is the subject of any kind of investigation, disciplinary or other process, or appeal under the Law or the rules and Regulations or Ordinances made under it.

PART 8 - COMPLAINTS

8.1 Complaints procedure

- (1) A licensee must have, and ensure compliance with, a written procedure for the effective consideration and fair and proper handling of any complaints relating to its operation of an investment exchange.
- (2) A licensee must ensure that each of its officers and employees responsible for dealing with market participants and the public are, at all times, aware of the complaints procedure and the obligation to follow it.

Guidance Note:

It is expected that all complaints are reviewed by, at least, a senior officer of the licensee who is independent of the circumstances giving rise to the complaint.

An example of an appropriate person could be the compliance officer.

8.2 Complaint notifications

- (1) If a complaint remains unsettled for longer than three months from the date of a licensee becoming aware of the complaint, the licensee must inform the Commission, in writing, within 14 days, and must also advise the complainant that they may inform the Commission directly of the complaint.
- (2) A licensee must inform the Commission, in writing, within 14 days, of it becoming aware of a significant complaint and must also advise the complainant that they may inform the Commission directly of the complaint.

- (3) A licensee must inform the Commission, in writing, within 14 days, of it becoming aware of a series of complaints regarding any one employee, whether a current employee or not.
- (4) For the purposes of this Rule, where a licensee has given a substantive response in relation to a complaint or significant complaint, unless and until the licensee has received an indication from the complainant that the response is unsatisfactory, the licensee is entitled to treat the complaint as settled and resolved after the expiry of four weeks from the date of its response.

8.3 Record keeping regarding complaints

- (1) A licensee must maintain a register in which it records any complaints received, along with sufficient details to allow it to be able to demonstrate that it has dealt with, or is dealing with, such complaints in accordance with these Rules.

PART 9 - CLIENT MONEY

9.1 Client money

- (1) For the purposes of these Rules, client money is money, in any currency, which in the course of operating an investment exchange, a licensee holds for, or receives from, or owes to a client. Client money may be held in different currency to that of receipt.
- (2) Client money must be held separately from the licensee's own money, in one or more client money bank accounts.

Guidance Note:

A licensee, or its agent, holds or receives money where either that money is not immediately due and payable on demand to the licensee for its own account, or, although due and payable, is held or received in respect of any obligation of the licensee which has not yet been performed.

A licensee, or its agent, owes money where it is due and payable to a client.

9.2 Client money bank accounts

- (1) All money which is client money and which is received by a licensee, and all money payable by a licensee which becomes client money, must be held in a client money bank account.
- (2) If not already confirmed by the bank, when a licensee opens a client money bank account, it must give written notice to the approved bank, requiring the bank's written acknowledgement that –
 - (a) all money standing to the credit of that account is held by the licensee as trustee and that the bank is not entitled to combine the account with any

other account, or to exercise any right of set-off or counter-claim against the money in that account, in respect of any sum owed to it on any other account of the licensee;

- (b) interest earned on the account will be credited to the account or to an account of the same type; and
 - (c) the title of the account sufficiently distinguishes the account from any other account containing money that belongs to the licensee and is in the form requested by the licensee.
- (3) If, in the case of a client money bank account with an approved bank outside Guernsey, the bank declines to provide the acknowledgements required above, or if the licensee has any other ground for believing that client money will not be protected as effectively as it would be if held in a client money bank account in Guernsey, the licensee must not pay or transfer client money into that account.
- (4) Client money held or received by a licensee must be paid either into a client money bank account as soon as possible, and in any event no later than the next business day, or to the client concerned.
- (5) Money held or received by a licensee, in the form of a cheque, a bank draft, or electronic transfer drawn in favour of the licensee which includes client money, must be paid into a client money bank account unless it represents money payable to one client only in which case it may be endorsed over or paid to the client concerned, or as the client directs.
- (6) Money received which is not client money should be paid out of the client money bank account no later than one business day after the day on which the money had been cleared. This does not apply to amounts of less than £25, or equivalent.

9.3 Payments from client money bank accounts

- (1) Money ceases to be 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.
- (2) The following items may be withdrawn from a client account –
- (a) money, not being client money, paid into the account for the purpose of opening or maintaining the account;
 - (b) money paid into the account in contravention of these Rules;
 - (c) money properly required for payment to or on behalf of a client;
 - (d) money properly required for or towards payment for the purchase of units, shares, partnership interests, or of a debt due to the licensee from a client other than in respect of fees and commission;
 - (e) money properly required for, or towards, payment of fees or commissions payable to the licensee and specified in a statement delivered to the client showing how those fees and commissions have been calculated;
 - (f) money drawn on a client's authority or in conformity with any contract between the licensee and the client;
 - (g) money which may be properly transferred into another client money bank account;
 - (h) if a cheque is paid into a client money bank account and that cheque includes money which is not client money, that money must be withdrawn from the account as soon as cleared funds are credited to the account in respect of that cheque; and
 - (i) interest withdrawn from the client money bank account.
- (3) Money must not be withdrawn from a client account for, or towards, payment of fees or commissions payable to the licensee unless those fees or commissions have

been calculated in accordance with the formula disclosed to clients in the relevant permanent data communication.

- (4) Where a licensee draws a cheque or other payable order the money does not cease to be client money until the cheque or order is dispatched.
- (5) Where a licensee makes a payment to a client from an account other than a client money bank account, the sum of money in the client money bank account equivalent to the amount of that payment, will not become due and payable to the licensee until the client or other party has received that payment in cleared funds.
- (6) Where a licensee has contracted to rebate commission to a client, the amount becomes client money when it becomes payable and should be settled within the timeframe agreed in the contract.
- (6) No money, other than money required to be paid under these Rules, must be paid into such an account unless the money is the licensee's own money –
 - (a) and it is required to be paid for the purpose of opening or maintaining the account and the amount is the minimum amount required for the purpose; or
 - (b) it is paid to restore, in whole or in part, any money paid out of the account in contravention of these Rules, or to restore the account out of an overdraft position.

9.4 Operation of client money bank accounts

- (1) A licensee must maintain records sufficient to demonstrate compliance with this Part.
- (2) A licensee must, at least once a month, reconcile the balance on each client money bank account, as recorded by the licensee, with the balance on that account as set out on the statement issued by the approved bank.

- (3) The client money bank account must not become overdrawn and there must not be a shortfall in client money upon reconciliation with the statement issued by the approved bank.
- (4) In the event of a breach, the licensee must immediately restore the account.

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PART 10 - OPERATING AN INVESTMENT EXCHANGE

Guidance Note

The Commission recognises that an investment exchange could facilitate the listing and/or trading of many different types of securities, which each have their own distinct characteristics and properties. Furthermore, some investment exchanges might also operate the settlement system for any trading facilitated by it.

Therefore, in the following sections of this Part, certain rules will state “where relevant”, “where applicable” or use equivalent words. This is in recognition of the fact that the requirements of the rules, where this is stated, might not apply to the securities of certain types of issuer, or to the specific nature of the services facilitated by an investment exchange.

For example, certain requirements relating to the listing of shares in a company will not be relevant in respect of the listing of a bond; or requirements relating to an investment exchange which facilitates trading and/or settlement might not be relevant to an investment exchange which simply facilitates the listing of securities.

However, where rules are not caveated as referred to above, then such rules will apply in all cases.

10.1 Rules of an investment exchange

- (1) A licensee must establish, maintain and document its own rules relating to members of the investment exchange operated by it; the listing of issuers’ securities on the investment exchange; and where relevant to an investment exchange’s business, the trading and/or settlement of securities on that investment exchange.
- (2) The rules of an investment exchange operated by a licensee must be designed to set appropriate standards of behaviour, promote investor protection, and ensure fair markets.
- (3) The rules of an investment exchange operated by a licensee must be submitted to the Commission, and receive the Commission’s agreement in writing prior to their coming into effect.

- (4) The rules of an investment exchange operated by a licensee must provide it with comprehensive and effective supervisory, investigative and enforcement powers, including the power to take action to enforce regulatory, administrative, or investigative requirements or decisions. Such powers must include the power for the licensee to be able to order the suspension, or other appropriate action, of trading in securities, where considered appropriate and necessary.
- (5) The rules of an investment exchange operated by a licensee must not be drafted such that they create anti-competitive situations.

Guidance Note

Anti-competitive situations may include situations where an investment exchange acts in an exclusionary, unfair or inequitable manner when governing access to the exchange, or when taking action with respect to the enforcement, or promulgation or interpretation of its rules and procedures in a way that is not fair and equitable to similarly placed market participants.

- (6) Any proposed material changes to the rules of an investment exchange operated by a licensee must be sent by way of notice, in advance, to the Commission and receive the Commission's agreement in writing prior to coming into effect.

Guidance Note

For the purposes of Rule 10.1(6), the Commission considers a material change to be one which impacts all, or a particular sector of, issuers or members on an ongoing basis.

A modification, waiver or derogation from a rule which is made in respect of a specific Issuer or Member on an *ad hoc* basis is not considered to fall within the scope of Rule 10.1(6), but rather, would be subject to the requirements of Rules 10.1(7) and 10.1(8).

- (7) A licensee operating an investment exchange must exercise discretion in good faith when considering any proposal to derogate, modify or waive any of its rules, and ensure that any such derogation, modification or waiver will not result in any undue risk to investors or markets.
- (8) Subject to the requirements of Rule 10.1(7), where a licensee operating an investment exchange does derogate, modify or waive any of its rules, it must notify the Commission immediately, or on a periodic basis if agreed in advance with the Commission in writing.
- (9) An investment exchange operated by a licensee must keep a separate register to log all instances of its members' and issuers' non-compliance with the exchange's rules and any codes or equivalent. This register must also record any action taken, whether by the licensee, relevant members or issuers, in response to any breaches along with any steps taken towards rectification and future prevention.

10.2 Rules relating to members of an investment exchange

- (1) The rules relating to members of an investment exchange operated by a licensee must:
 - (a) set out the requirements for membership;
 - (b) set out the procedure for membership applications;
 - (c) establish the requirement for new and existing members to be fit and proper;
 - (d) establish any codes of conduct in respect of members and / or their membership of the investment exchange;
 - (e) establish any arbitration, disciplinary and appeals provisions in respect of members and/or their membership of the investment exchange; and
 - (f) establish any continuing obligations required of a member.

10.3 Rules relating to the listing of an issuer's securities on an investment exchange

- (1) The rules relating to the listing of an issuer's securities on an investment exchange, where relevant to the nature of the security being listed, must –
 - (a) govern the listing of securities;
 - (b) establish the conditions which are applicable for the admission of an issuer's securities to the Official List;
 - (c) set out the procedure for listing applications;
 - (d) establish the requirement for new and existing issuers to be fit and proper;
 - (e) establish any codes of conduct in respect of issuers and / or the listing of their securities on the investment exchange;
 - (f) establish any arbitration, disciplinary and appeals provisions in respect of issuers and / or the listing of their securities on the investment exchange;
 - (g) set requirements regarding the content and distribution of the issuer's listing document, or other offering documents;
 - (h) establish any continuing obligations required in respect of an issuer and its securities which are listed on the investment exchange;
 - (i) establish any requirements regarding provision of relevant, up to date, financial information, including, where applicable, the provision of annual audited financial statements, and interim financial reporting;
 - (j) where applicable, establish the accounting standards to be used, which must be of high quality and internationally acceptable; and

- (k) where applicable, set the requirement for the appointment of a suitably qualified auditor which is independent of the issuer.

10.4 Rules relating to the trading and / or settlement of securities on an investment exchange

- (1) Where relevant to the nature of the business conducted by an investment exchange operated by a licensee, any rules relating to the trading and / or settlement of an issuer's securities on that investment exchange must, where relevant to the nature of the security –
 - (a) set out the conditions which are applicable for the admission of an issuer's securities to trading;
 - (b) govern the trading and settlement of securities transactions;
 - (c) provide for fair and orderly trading; and
 - (d) establish objective criteria for the efficient execution of orders.

10.5 Disclosure requirements relating to issuers whose securities are listed and / or traded on an investment exchange

- (1) The rules and the associated regulatory regime of an investment exchange operated by a licensee must, to the extent applicable to the nature of a security, ensure the full, timely, and accurate disclosure of risks, financial results and other information which is material to investors making informed investment decisions concerning the securities of issuers listed and, where relevant, traded on the investment exchange, on an ongoing basis.

- (2) Requirements in the rules of an investment exchange operated by a licensee must include, where relevant to the nature of the issuer's listed securities, the obligation for the following disclosures to be made:
- (a) relevant important information about an issuer and its activities;
 - (b) details of how up to date financial information regarding an issuer may be accessed when audited financial statements included in an offering document are no longer current;
 - (c) information about those who have a significant interest in an issuer;
 - (d) information material to the price or value of a security;
 - (e) the frequency and nature of periodic financial reporting;
 - (f) details of shareholder voting decisions;
 - (g) provisions for any advertising of public offerings outside of the listing document;
 - (h) details of material related party transactions, including transactions involving directors and senior management of an issuer;
 - (i) periodic disclosure of information about director and senior management compensation and risk management processes;
 - (j) the most significant specific and general risks material to the offering;
 - (k) details of changes in controlling interests and substantial holdings above a specified threshold, and transactions which may result in changes in controlling interests and substantial holdings above such threshold;
 - (l) information necessary to informed decision making with respect to tender offers, take-over bids, and any other transactions intended to effect a change of control or that potentially may result in a change of control, or that may consolidate control, or whose effect may result in a fundamental corporate change;

- (m) details of holdings of directors and senior management of an issuer; and
 - (n) details of the identity and holdings of those persons who hold beneficial ownership of an issuer.
- (3) The rules of an investment exchange operated by a licensee must require disclosures by issuers to be accurate, sufficiently clear and comprehensive, and reasonably specific and timely.
 - (4) The rules of an investment exchange operated by a licensee must ensure that proper responsibility is taken for the provision and content of disclosures by issuers.
 - (5) A licensee must ensure that the circumstances under which a derogation from the requirements of full and timely disclosure are limited and that appropriate mitigating safeguards are applied in such circumstances, and are clearly disclosed.

Guidance Note

Where two or more persons are acting in concert, the disclosure requirements in the above Rules will apply to those persons collectively, even where each of their own interests in the issuer might, individually, fall outside of the disclosure requirements.

10.6 Rights of holders of securities in a listed company

- (1) A licensee must ensure that an investment exchange under its operation ensures that the holders of securities in a company admitted to listing and / or trading on that investment exchange are treated in a fair and equitable manner and that their basic rights are respected. Such rights, where relevant, include:
 - (a) the right to register and transfer ownership;
 - (b) where the securities have voting rights, the right to vote on:
 - (i) the election of directors;
 - (ii) corporate changes affecting the terms and conditions of their securities; and

- (iii) other fundamental corporate changes;
- (c) the right to participate on an informed basis in voting decisions, where the securities have voting rights;
- (d) the right to give proxies or voting instructions and for these to be actioned in an efficient and effective manner;
- (e) the right to receive timely notice of shareholder meetings and voting decisions, and to be given reasonable time in which to consider proposals;
- (f) the right to participate equitably in dividends and other distributions, when and if declared, including distributions upon liquidation;
- (g) the right to have reasonable and equal opportunities to participate in any benefits accruing to the shareholders under any proposal which would result in a party acquiring a substantial or controlling interest in the company;
- (h) the right to receive fair and equal treatment, including for minority shareholders, in relation to a proposal as described in Rule 10.6(1)(g); and
- (i) the right to hold the company, its directors and senior management accountable for their involvement or oversight resulting in breaches of relevant legislation.

10.7 Official list

- (1) An investment exchange operated by a licensee must develop, maintain and document appropriate operational policies and procedures to enable it to maintain and operate its Official List effectively and accurately.

10.8 Regulatory and supervisory functions

- (1) A licensee operating an investment exchange must accept responsibility for –

- (a) the admission of an issuer's securities to the Official List of the investment exchange operated by the licensee, by reference to its rules and its policy on issuer suitability;
- (b) the admission of members by reference to its rules and policy on member suitability;
- (c) the suspension or cancellation of an issuer's securities from the Official List of the investment exchange operated by the licensee, by reference to its rules and its policy on issuer suitability;
- (d) the readmission of an issuer's securities to the Official List of the investment exchange operated by the licensee, in accordance with its rules, following suspension save where suspension was at the request of the issuer and the licensee concludes that the criteria for readmission are not met;
- (e) the suspension or cancellation of an entity's membership of the investment exchange operated by the licensee, in accordance with its rules;
- (f) the readmission of a member to membership of the investment exchange operated by the licensee, in accordance with its rules following suspension save where suspension was at the request of the member and the licensee concludes that the criteria for readmission are not met;
- (g) the monitoring of ongoing member compliance with any anti-money laundering, counter terrorist financing, and counter the financing of proliferation of weapons of mass destruction legislation;
- (h) the monitoring of ongoing issuer compliance with its rules;
- (i) the monitoring of ongoing member compliance with its rules;

- (j) where relevant, the enforcement, against members and / or issuers, of its rules; and
- (k) liaising with the Commission and other regulatory authorities and organisations, as applicable, on all matters relating to the operation of the Official List and its membership. Where such liaison is with statutory regulatory bodies in jurisdictions outside of the Bailiwick of Guernsey, any communications with that body must be made in accordance with Rule 4.3.

10.9 Trading systems and access to markets

- (1) Where an investment exchange operated by a licensee facilitates the trading of securities listed upon it, the licensee must ensure that access to the investment exchange's trading systems is fair and transparent, and that the systems themselves afford equal treatment for all users.
- (2) Where such trading is facilitated by an investment exchange operated by a licensee:
 - (a) the policies and procedures relating to order execution, as well as any order cancellation, must be established, disclosed, and applied fairly;
 - (b) the trading system's order routing procedures must be clearly disclosed and fairly applied, and must not be inconsistent with good practice, including requirements for client precedence, prohibition of front running and trading ahead of customers;
 - (c) the trading system must include safeguards to ensure the principles of fairness are maintained even where there are latency differences resulting from different technical options for connection to it;
 - (d) where the trading system facilitates direct electronic access and / or automated trading, the licensee must ensure there are appropriate and effective systems and controls to enable the management of the associated risks, including those relating to fair and orderly trading; and

- (e) the licensee must have suitable trading control mechanisms, including trading halts, volatility interruptions and limit up / limit down controls, to deal appropriately with volatile market conditions.

10.10 Transparency of trading

- (1) Where an investment exchange operated by a licensee facilitates trading of the securities listed upon it, the licensee must ensure that timely access to relevant information about such trading is available to investors.
- (2) Where such trading is facilitated by an investment exchange operated by a licensee, either:
 - (a) pre-trade and post-trade information must be provided to market participants in a timely manner; and
 - (b) information on completed transactions must be provided on an equitable basis to all market participants

or, in markets where an absence of real time transparency is permitted:

- (c) the conditions for such absence of real time transparency must be clearly defined.

Guidance Note

Pre-trade information concerns the posting of firm bids and offers, in both quote and order-driven markets, as a means of enabling intermediaries and investors to know, with some degree of certainty, whether, and at what prices, they can deal.

Post-trade information relates to the prices and volumes of individual transactions actually concluded.

10.11 Large exposures and default risk

- (1) Where an investment exchange operated by a licensee facilitates the trading of securities listed upon it and also operates the settlement system for such trading, it must have effective mechanisms to continuously monitor and evaluate the risk of open positions, or credit exposures on unsettled trades, that are sufficiently large to expose a risk to the market or to a clearing firm.
- (2) Such mechanisms must include:
 - (a) qualitative or quantitative trigger levels appropriate to the market, for the purpose of identifying large exposures on a continuous, ongoing basis, and a process for evaluating cases where such trigger levels are reached;
 - (b) the ability to access information, if required, on the size and beneficial ownership of positions held by direct customers of market intermediaries;
 - (c) the power to take appropriate action against a market participant that does not provide the relevant information needed to evaluate an exposure; and
 - (d) the general power to require market participants carrying or controlling large positions to reduce their exposures, or take other relevant actions.
- (3) A licensee must have effective policies and procedures for dealing with market participants who are in default. The procedures must be fully disclosed to market participants and must include details of the circumstances under which action may be taken by the exchange in respect of any default, and the scope of those actions that might be taken.

10.12 Short selling on equity markets

- (1) Where an investment exchange operated by a licensee operates a market for trading equities which facilitates short selling, it must have policies, procedures, controls, and enforcement powers appropriate to the equity market in question, which:

- (a) are designed to minimise the potential risks that could adversely affect the orderly and efficient functioning and stability of the market, including the settlement of failed trades;
- (b) include a reporting regime that provides timely short selling information to the licensee and / or the market;
- (c) promote settlement discipline, including regular monitoring by the licensee of settlement failures;
- (d) include the surveillance, by the licensee, of short selling activities; and
- (e) allows for exceptions for certain types of transactions intended to facilitate the efficient functioning and development of the market.

Guidance Note

The types of transaction which might fall within the scope of Rule 10.12(1)(e) could, for example, include those relating to:- *bona fide* hedging, market making and arbitrage activities.

10.13 Fees and charges

- (1) A licensee must publish full details of the fees and charges applicable to the investment exchange it operates in a clear and transparent manner, which can be readily and easily accessed by existing and potential market participants and any other parties who might make use of the services of that licensee.

Guidance Note

Rule 10.13 might be met by a licensee publishing the fees and charges on a clearly marked and publicly accessible page of its website.

10.14 Market monitoring

- (1) A licensee must undertake sufficient and appropriate checks, monitoring and scrutiny to satisfy itself of:
 - (a) ongoing issuer compliance with the rules of the investment exchange it operates;
and
 - (b) ongoing member compliance with the rules of the investment exchange it operates.

10.15 Market surveillance

- (1) A licensee must take reasonable steps, including the establishment and maintenance of policies procedures and systems to satisfy itself that the business conducted on the investment exchange operated by it and facilitated by that investment exchange, is conducted in a legitimate and orderly manner and affords fairness, efficiency, transparency and proper protection to investors including –
 - (a) monitoring of trading activity;
 - (b) the review of movements in prices and transactions; and
 - (c) news alert monitoring.
- (2) a licensee must inform the Commission within one business day, of it becoming aware of –
 - (a) price movements in excess of certain trigger levels above or below the starting price at opening, as agreed in advance in writing with the Commission; and
 - (b) transactions where market abuse is suspected based on the information reasonably available to a licensee.

- (3) A licensee operating an investment exchange must have suitable policies, procedures and systems to enable it to detect and investigate unusual transactions on the investment exchange's trading system and other events, which might be, or help facilitate market abuse or other fraudulent acts, including:
- (a) market and/or price manipulation,
 - (b) insider trading,
 - (c) front running,
 - (d) other fraudulent or manipulative practices relating to securities or derivatives,
or
 - (e) misrepresentations of, or misleading, material information.

Guidance Note

A licensee should refer to the Commission's Code of Market Conduct for a description of behaviours which are considered to amount to market abuse.

- (4) A licensee must ensure that its policies, procedures and controls and its market monitoring and market surveillance mechanisms permit the audit of the execution and trading of all transactions on the investment exchange which it operates.

Guidance Note

A licensee's market surveillance activities should take account of the nature of trading undertaken on or reported to the investment exchange operated by it. For example, where an investment exchange facilitates continuous trading "on market", it is expected that such surveillance is undertaken on an ongoing basis.

Where trading is intermittent, including instances where auction platforms are used, the frequency of relevant market surveillance activities should be suitably synchronised with such trading.

Where the securities of issuers are traded "off-market" and the trades subsequently notified to a licensee, it is expected that market surveillance checks are undertaken promptly upon receipt by the licensee of trade details, and where these fall within the scope of Rule 10.15(2), the Commission should be notified without delay.

10.16 Safeguards for investors

- (1) The rules and practices of a licensee operating an investment exchange must ensure that business conducted by means of that investment exchange's facilities is conducted in an orderly manner and affords proper protection to its investors.
- (2) A licensee must limit trading on the investment exchange to investments in which there is a proper market.
- (3) A licensee operating an investment exchange must either itself provide satisfactory procedures, including default procedures, for the settlement of transactions on that investment exchange or ensure such provision by means of services provided under clearance systems approved by it.
- (4) A licensee must either itself have, or secure the provision on its behalf of, satisfactory arrangements for recording the transactions effected on an investment exchange operated by it.
- (5) A licensee must ensure that no market participant unfairly gains an advantage in the market operated and overseen by the licensee.

10.17 Settlements

- (1) The mechanism used to settle transactions conducted on the investment exchange operated by a licensee must be regularly monitored by the licensee to ensure effective operation. A licensee must document such monitoring accordingly. This Rule applies where the function is undertaken by the licensee itself or is outsourced by it to another party.

10.18 Market information

- (1) A licensee must ensure systems are in place to enable market information, relevant to the types of securities listed and/or traded upon the investment exchange operated by it, to be easily accessed and clearly displayed.
- (2) A licensee must notify the Commission of any material change in the system for displaying market information in respect of the investment exchange operated by it.

10.19 Membership

- (1) A licensee must notify the Commission of the proposed introduction or abolition of any category of membership of the investment exchange operated by it.
- (2) In relation to individual members of an investment exchange operated by it, a licensee must notify the Commission within 14 days of the following –
 - (a) information identifying new members which must include their –
 - (i) name;
 - (ii) address; and
 - (iii) category of membership;
 - (b) any change to the member's details submitted in accordance with this Rule;

- (c) when a member resigns from the investment exchange operated by the licensee, the member details as submitted in accordance with this Rule and the effective date of resignation;
- (d) the suspension of a member by the licensee, including –
 - (i) the effective date of the suspension;
 - (ii) the duration of the suspension;
 - (iii) the reasons for its actions;
 - (iv) any other action taken in relation to that member; and
 - (v) whether the member appeals against the decision and the outcome of any such appeal.
- (e) the compulsory cancellation or expulsion of a member by the licensee, including –
 - (i) the effective date of the expulsion;
 - (ii) the reasons for its actions;
 - (iii) any other action taken in relation to that member; and
 - (iv) whether the member appeals against the decision and the outcome of any such appeal;
- (f) when it investigates the affairs of a member or appoints another person to do so, including –
 - (i) the reasons for the investigation;

- (ii) the investigations terms of reference;
- (iii) the findings of any such investigation; and
- (iv) any action taken as a result;

Guidance Note

An exchange is not required by this Rule to notify the Commission regarding supervisory visits or inspections carried out in the course of routine supervision, or in respect of enquiries made as part of the procedure for investigating complaints.

Rather, this Rule relates to investigations in respect of actual, or suspected: malpractice; significant breaches of law, rules or regulations; or other matters which are likely to adversely impact investor protection, market integrity, or the reputation of the licensee or the Bailiwick.

(g) when it has taken any disciplinary action against either a member, or an employee of a member, and that action is relevant and material to the carrying on of controlled investment business, to include –

- (i) the name of the person concerned;
- (ii) details of the action taken;
- (iii) reasons for the action; and

(iv) whether an appeal is lodged against the disciplinary action, and if so, the subsequent outcome of the appeal;

(h) when it liquidates or restricts the open positions of a member, or issues instructions to that member to do likewise, including –

- (i) the member's name;

- (ii) the nature and size of the positions liquidated or restricted; and
 - (iii) the reasons for its actions;
- (i) when a member is in default, including –
- (i) the member's name;
 - (ii) the reasons for the action;
 - (iii) the name of the clearance system on which the member clears business;
and
 - (iv) where appropriate, a summary of the member's open positions, margin liability and cash and collateral balances in respect of the member's segregated customer accounts and other accounts.

10.20 Human and technical resources

- (1) A licensee must have human resources sufficient for the proper performance of its functions.
- (2) The board has responsibility for ensuring that the information technology systems are sufficient to support the functions of the licensee. The board's consideration must have reference to –
 - (a) the organisation, management and resources of those responsible for the licensee's information technology function;
 - (b) the arrangements for controlling and documenting the design, development, implementation and use of information technology systems; and

- (c) the resilience, reliability, integrity and security of its critical systems.
- (3) A licensee must be prepared for dealing with failures of its information technology systems, and such contingencies must form part of the business continuity plan required by Rule 4.6.
- (4) The board must conduct a review, at least annually, of the performance of the licensee's information technology systems and consider whether they are still appropriate and sufficient for the functions carried out by the licensee.

10.21 Skill, care and diligence

- (1) A licensee must act with due skill, care and diligence towards the members, issuers and other counterparties to the investment exchange operated by it, as well as the Commission.
- (2) A licensee must treat all members and applicants for membership of the investment exchange operated by it in a fair and consistent manner.

PART 11 – PRUDENTIAL

11.1 Financial resources requirement

- (1) A licensee must ensure that it maintains adequate financial resources and professional indemnity insurance at all times, the levels of which must be sufficient, in the view of the board, to meet the licensee's commitments and to withstand the risks and potential risks to which its business is subject.
- (2) A licensee must also, at all times, maintain a level of regulatory capital not less than—
 - (a) 50% of the licensee's annual operating expenses, as shown in its latest annual audited financial statements (or, if about to commence the first period of trading, or a change in the operating model has led to a significantly different projected expenditure, six months budgeted operating expenses), plus 50% of the annual cost of any relevant operational services provided to the licensee by related or third parties which are not reflected in the financial statements of the licensee; or
 - (b) the level of capital identified in the licensee's wind down plan, as required by Rule 11.4, that is needed to achieve an orderly wind down of the licensee's business,whichever is the higher amount, or
- (c) such other amount as the Commission may prescribe in writing to a licensee.

Guidance Note

An example of the circumstances under which the Commission might seek to utilise Rule 11.1(2)(c) could be where it considers there are material additional risks present, which are not mitigated by the levels of capital required under Rules 11.1(2)(a) and (b). These might include foreign exchange risk, risk of counterparty default, off-balance sheet assets or liabilities (including contingent liabilities) or principal positions which the licensee has taken, and which are not otherwise mitigated.

11.2 Liquidity Requirement

- (1) A licensee must maintain adequate liquid assets at all times, the level of which must be:
 - (a) sufficient, in the opinion of the board, to meet the licensee's commitments as they arise and to withstand the risks and potential risks to which its business is subject; and
 - (b) sufficient to allow for an orderly wind down of its business as identified in the licensee's wind down plan required at Rule 11.4.
- (2) The board's consideration of the appropriate liquidity levels to meet Rule 11.2(1) must be documented.

Guidance Note

In certain circumstances the Commission might impose a prescriptive minimum liquidity requirement on a licensee, by means of a modification of these Rules or by a condition on its licence under the Law.

Such circumstances might, for example be where a licensee is, or becomes, exposed to a material level of settlement risk.

11.3 Notifications regarding capital and liquidity requirements

- (1) A licensee must notify the Commission, immediately, where –
 - (a) the level of regulatory capital held falls below the regulatory monitoring limit, including setting out the circumstances which have led to that position, whether the board considers that any action is necessary to prevent the regulatory capital requirement being breached, the rationale behind such consideration and details of any action which will be taken or has been taken where relevant;
 - (b) it is in breach of its regulatory capital requirement or liquidity requirement, including setting out in writing the steps that it is taking, or has taken, to remedy the breach; or
 - (c) it anticipates being in breach of its regulatory capital requirement or liquidity requirement within one month, including setting out in writing the steps that it proposes to take to avoid the breach or that it has already taken.

11.4 Wind-down plan

- (1) A licensee must establish, maintain and document a wind-down plan, which is considered and approved by the board. The plan must identify the steps to be taken and the appropriate levels of capital and liquidity which must be maintained to allow for an orderly wind-down of its business. The wind down plan must include provision for the acquisition of run-off insurance at a level considered appropriate by the board and an appropriate allowance for the cost of acquiring such run-off insurance.
- (2) The wind-down plan must be regularly reviewed as new risks to the investment exchange emerge and / or the licensee's activities change, and in any event, at least annually.

- (3) A copy of the wind-down plan must be submitted to the Commission as part of the application for a licence and at every subsequent update of the plan.

11.5 Liabilities of related entities

- (1) A licensee must give immediate, written notice, to the Commission, where it has reason to believe that –
 - (a) the liabilities of a subsidiary of the licensee exceed that subsidiary's assets;
or
 - (b) the liabilities of the licensee's holding company or parent company exceed that holding company's or parent company's assets.

11.6 Insurance arrangements

- (1) A licensee must maintain insurance cover which is commensurate with the size and nature of its business. Such cover must include professional indemnity insurance and insurance against employee dishonesty or fraud.
- (2) The minimum indemnity limit for any one claim, and in the aggregate, for a licensee's professional indemnity insurance must equal or exceed the greater of:
 - (a) such amount which is, in the opinion of its board, sufficient to meet its commitments and to withstand the risks to its business, or
 - (b) three times the licensee's relevant annual turnover based on the latest audited financial statements or, for new businesses, estimated figures for the first year, or

(c) £3 million.

- (3) For the purposes of this Rule, “relevant annual turnover” means annual turnover less any income which is derived from any function which is covered by a statutory limitation of liability.

Guidance Note

The relevant annual turnover should be based on the latest audited financial statements at the time of PII renewal.

Insurance cover based on a prior year’s audited financial statements does not need to be amended before the next annual renewal following release of the following year’s financial statements. However, a licensee should consider whether to arrange additional cover if the audited financial statements show a material increase in relevant annual turnover.

- (4) Notwithstanding the requirements of Rule 11.6(2), a licensee is not required to have aggregate insurance cover exceeding £10 Million provided that the board has considered and decided that such level of cover is appropriate and sufficient for its business. The licensee must be able to evidence the board assessment if requested by the Commission.

Guidance Note

Rule 11.6 (4) is also applicable for a licensee which is part of a group and relies on PII cover provided by the group. In this case, the consideration should ensure that the group PII is appropriate for the licensee.

Excess:

Consideration should be given to the excess per claim on the PII policy and whether it is appropriate for the licensee taking into account its financial position. Specifically, the licensee should ensure that it will be able to fund the excess if a claim is made on the PII policy.

- (5) A licensee must maintain, at all times, cover for:
- (a) negligence, errors, or omissions by the licensee or its employees;

- (b) any liability for the dishonest or fraudulent acts of employees which may fall on the licensee;
- (c) liabilities of its employees who, in the course of their duties to the licensee, perform functions in their own names;
- (d) liabilities which the licensee might incur, in any jurisdiction, in which it should reasonably foresee that it may be held liable for damages and costs;
- (e) where relevant, ombudsman awards; and
- (f) legal costs.

Guidance Note

Employee – in section 79, the Law defines “employee” as “an individual who has entered into or who works under (or, where the employment has ceased, who worked under) a contract of employment”.

For the purposes of Rule 11.6(5)(a), the policies should cover current and former employees and any person under contract to perform services or duties to or on behalf of the licensee. (Note – time limitation may apply to the period of cover for former employees and will be dependent on the date of cessation of employment.)

In meeting Rule 11.6(5)(b), some licensees may rely on a different insurance instrument for indemnity against such liabilities, provided that the licensee is satisfied with such insurance arrangements. Insurance policy wordings vary greatly, and a licensee should consider whether its policy provides the required cover. For instance, these may be covered under “crime”, “fraud”, or “fidelity”. Some policies may contain limitations on “dishonest or fraudulent acts”, such as a carve out on deliberate dishonest acts. Where there is such limitation, or exception, the licensee should assess whether the policy is considered appropriate for its business.

Rule 11.6(5)(e) – applies to licensees which carry out activities within the scope of the Channel Islands Financial Ombudsman.

- (6) Where a licensee relies on captive insurance to meet requirements under this Part, the captive insurer must be licensed under the Insurance Business (Bailiwick of

Guernsey) Law, 2002, or a captive insurer of an equivalent status in Jersey, Gibraltar, Bermuda, Isle of Man or a country which is a full member of OECD.

Guidance Note

Notifications relating to PII:

Principle 10 of the Commission's Principles of Conduct of Finance Business establishes that a licensee should deal with the Commission in an open and co-operative manner and keep the regulator promptly informed of anything concerning the firm which it might reasonably be expected to disclose.

When a licensee makes a notification under a PII policy to its insurer, the licensee should consider whether a notification should also be made to the Commission.

PART 12 – ADDITIONAL NOTIFICATIONS

Guidance Note

This section sets out the circumstances (which have not previously been covered in these Rules) in which a licensee is required to make a notification to the Commission. If the licensee is faced with a scenario which is similar but not exactly the same as those which are referred to in this Rule, guidance should be sought from the Commission as to whether a notification must in fact be made to it.

12.1 Compliance with Rules

- (1) A licensee must give immediate written notice and details to the Commission where it has reason to believe that it will be unable to comply with, or demonstrate compliance with, the requirements of these Rules.
- (2) If any event happens or circumstances arise which make it impossible or impracticable for a licensee to discharge any of its regulatory or supervisory functions, it must notify the Commission immediately, specifying the action it is taking, and/or has taken and/or proposes to take to deal with the situation.

12.2 Name and address

- (1) A licensee must give the Commission immediate written notice of –
 - (a) a change in the registered or equivalent name of the licensee;
 - (b) a change in any business name under which the licensee carries on controlled investment business in Guernsey;

- (c) a change in the address of the head office or principal place of business of the licensee;
- (d) a change in the address of the registered office of the licensee; or
- (e) a change in the address for the service of any notices or documents.

12.3 Governance

- (1) A licensee must notify the Commission within 14 days of the establishment, or abolition, of a committee of the board to which it has delegated the making or enforcement of rules.
- (2) Notification, of a committee under this Rule, must include the terms of reference of the committee.
- (3) The Commission must be notified within 14 days of any changes to the composition or terms of reference of any committee which falls under this Rule.

12.4 Key employees

- (1) A licensee must notify the Commission, in writing and within 14 days, of any changes to key employees as set out in sections 40, 41 and 42 of the Law, providing reasons for the change, and must only act on those changes in accordance with the relevant sections of the Law and these Rules.

12.5 Other Key appointments and resignations

- (1) The Commission must be informed within 14 days of the appointment of, or the ceasing to act, of–

- (a) any person to a body to which the board has delegated rule making powers;
 - (b) any person to a body with responsibility for disciplinary matters in respect of an investment exchange operated by the licensee;
 - (c) any person appointed by the licensee to an appeals panel established by the licensee;
 - (d) an arbitrator appointed by the licensee or a person appointed to an arbitration panel established by the licensee; or
 - (e) any person to a body with responsibility for investigating complaints in respect of business transacted on the investment exchange operated by the licensee.
- (2) Where a person ceases to act, the notification must include a statement of reasons.

12.6 Information regarding key employees and appointments

- (1) The licensee must provide the Commission with written notice within 14 days of it becoming aware of any of the following changes in relation to any persons carrying out the roles set out in Rules 12.4 and 12.5:
- (a) change of name;
 - (b) the refusal of any application for or the revocation or suspension of any license, authorisation or registration under any legislation relating to finance business;
 - (c) the imposition of disciplinary measures or sanctions by a regulatory authority, including a Self-Regulatory Organisation, or professional body in relation to the individual's professional or business activities; or

- (d) the making of an order by a court disqualifying that individual from serving as a director of a company or from being concerned with the management of a company.
- (2) A notice made must include a statement of the circumstances and all known matters related to the reason for the notification.

12.7 Disciplinary matters

- (1) A licensee must give written notice, to the Commission, as soon as it has reason to believe that any of the following apply to any of its directors or employees –
 - (a) engagement in activities involving fraud, wherever or howsoever committed;
 - (b) conviction for any offence involving fraud or other dishonesty, wherever or howsoever committed;
 - (c) engagement in activities involving dishonesty in relation to the licensee's controlled investment business in Guernsey, or in relation to finance business wherever or howsoever conducted;
 - (d) conviction for any offence under legislation relating to finance business in Guernsey or elsewhere; or
 - (e) the institution of *saisie, désastre*, bankruptcy, sequestration or similar proceedings.
- (2) A licensee must give written notice, to the Commission, immediately on the summary dismissal of any employee and the reasons for this dismissal, which includes employees under probation.
- (3) A record must be maintained of the names of any employees disciplined by a licensee for any breach of the Law, rules, Regulations or Ordinances or for any

other conduct which may reasonably be expected to affect the conduct of the licensee's controlled investment business, including particulars of –

- (a) the offence for which the employee was disciplined; and
- (b) steps taken to discipline the employee,

and details must be submitted, to the Commission, within seven days of the employee being disciplined.

12.8 Trading hours

- (1) Where relevant, a licensee must notify the Commission immediately of –
 - (a) any change, whether permanent or temporary, in the hours during which business may be conducted by means of the facilities of the investment exchange operated by the licensee;
 - (b) any trading halt⁷; or
 - (c) any suspension in trading of any investment.

⁷ For the purposes of these Rules a trading halt shall include a halt in the trading of investments on an investment exchange operated by a licensee as a whole or in relation to a sector, but it shall not include a halt in the trading of individual investments.

Guidance Note

The requirements of Rule 12.8(1)(a) are intended to keep the Commission suitably informed of the trading hours of an investment exchange, and in particular in relation to the hours during which continuous trading may be undertaken (where an exchange facilitates such continuous trading).

Where, for example, an investment exchange facilitates trading on a non-continuous or intermittent basis or uses an auction platform, it is expected that the basis of the timings of access to such facilities as well as any subsequent changes to such basis should be notified to the Commission in order to satisfy the requirements of this Rule.

12.9 Categories of investments listed or traded on an investment exchange operated by a licensee

- (1) A licensee must notify the Commission immediately of any proposed new category, or changes to existing categories, of investments listed or traded on the investment exchange operated by it. The notification must include an explanation of any new category of investment proposed.
- (2) A licensee must notify the Commission within 14 days where it discontinues or suspends the listing or trading of any category of investments listed or traded on the investment exchange operated by it.

Guidance Note

For the purposes of Rule 12.9, examples of different “categories of investments” might include: Equities, Bonds, Special Purpose Acquisition Companies, Commodities etc.

12.10 Offences

- (1) A licensee must immediately notify the Commission if, in the course of its business, it becomes aware of any person that –

- (a) has been carrying on unauthorised controlled investment business; or
 - (b) has committed a criminal offence under the Law in the course of carrying on controlled investment business,
- including all details known to the licensee.

12.11 Subsidiaries

- (1) A licensee must give immediate written notice, to the Commission, of the formation, acquisition, disposal or dissolution of a subsidiary.
- (2) The notice must specify the following –
 - (a) the subsidiary's name; and
 - (b) the subsidiary's principal business, if any.

12.12 Holding company

- (1) A licensee must give immediate written notice to the Commission if it either becomes, or ceases to be, a subsidiary of another company or entity.
- (2) The notice must specify the following –
 - (a) the holding company's, or entity's, name;
 - (b) its principal business;
 - (c) the names of its directors (or equivalent); and
 - (d) the address of its registered office.

12.13 Insolvency and legal proceedings

- (1) A licensee must immediately notify the Commission in writing of the proposal or occurrence of any of the following –
 - (a) the presentation of a petition for the winding up of the licensee;
 - (b) the appointment of a receiver, administrator, liquidator or trustee of assets of the licensee;
 - (c) the making of a composition or arrangement with creditors of the licensee; and
 - (d) where the licensee is an unincorporated association, a resolution to wind up the association.
- (2) A licensee must immediately notify the Commission in writing if civil proceedings are instituted against it –
 - (a) arising out of the contravention or alleged contravention of applicable legislation; or
 - (b) which might be expected to have a significant impact on the financial stability of the licensee.
- (3) A licensee must notify the Commission of any other legal proceedings instituted by or against it.

12.14 Other matters affecting business

- (1) A licensee must give immediate written notification, to the Commission, of any of the following –

- (a) the presentation of an application for the winding-up⁸ of a subsidiary or holding company of the licensee;
- (b) the serving of an administration order on the licensee or a company which is a subsidiary or holding company of the licensee;
- (c) the granting, withdrawal, or refusal of an application for, or revocation of, any license, authorisation or registration to carry on finance business under any legislation relating to finance business whether in Guernsey or elsewhere;
- (d) the appointment of inspectors by a statutory or other regulatory authority, including a Self-Regulatory Organisation, or Recognised Professional Body to investigate the affairs of the licensee or the investment exchange operated by it;
- (e) the imposition of disciplinary measures or sanctions on the licensee or its directors in relation to its finance business by any regulatory authority, including a Self-Regulatory Organisation, or Recognised Professional Body;
- (f) the bringing against the licensee or its directors of any material legal action or proceedings, or any arbitration to which the licensee is a party, relating to finance business; or
- (g) the conviction of the licensee for any offence under legislation relating to finance business, companies or bankruptcy or of any offence involving fraud, dishonesty and/or similar offence(s).

⁸ Other than a petition for the voluntary winding-up for the purposes of reconstruction or amalgamation.

12.15 Proposed changes to business plan

- (1) A licensee must give immediate written notice, to the Commission, of any proposed significant change in its business plan.

12.16 Periodic and ad hoc reporting to the Commission

- (1) A licensee must provide such other information as may be reasonably requested by the Commission, including both periodic and *ad hoc* submissions of information.

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PART 13 – GENERAL PROVISION

13.1 Interpretation

- (1) In these Rules, terms have their ordinary meaning unless specifically defined in the Law or in this Rule.

- (2) In these Rules, the following definitions should be followed –

“accounting reference date” means the date to which the licensee’s accounts are prepared;

“agent” means, in relation to a licensee, any person, including an employee, who acts under the instruction of a licensee;

“annual audited expenditure” means either –

- (a) an estimate of budgeted expenditure for the first twelve months which is submitted to the Commission, in the case of a licensee which has not yet commenced its controlled investment business; or

- (b) the expenditure as stated in the reported results in the immediately preceding period’s audited financial statements

and, in either case, excluding any remuneration to directors whether through salary, bonuses, or other benefits; this should exclude fees and commissions payable which are directly attributable to fees and commissions receivable and should also exclude depreciation and amortisation of non-current assets;

“approved bank” means a person who is licensed under The Banking Supervision (Bailiwick of Guernsey) Law, 2020, or is registered under The Banking Business (Jersey) Law, 1991 (as amended), or authorised under the Isle of Man Financial

Services Act 2008 (as amended), or is authorised to carry on a banking or deposit-taking business under the law of the UK, of any EU member State, or under the law of any country or territory which may be listed in notices issued by the Commission;

“board” has the meaning given to it in the Companies (Guernsey) Law, 2008⁹ or, in the case of an unincorporated entity, the committee or managing board of a partnership or other similar governing body;

“client money bank account” means an account at an approved bank in the name of a licensee which includes, in its title, an appropriate description to distinguish the money in the account from a licensee’s own money;

“complaint” means any oral or written expression of dissatisfaction, whether justified or not, for or on behalf of a person about the provision of, or failure to provide, a financial service which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience;

“current assets” means assets falling to be realised within one year of the accounting reference date;

“finance business” has the meaning given to it in the Financial Services Commission (Bailiwick of Guernsey) Law, 1987¹⁰, as amended;

“generally accepted accounting principles (“GAAP”)” includes those accepted in–

- (a) the UK;
- (b) the United States; or
- (c) any other country approved in writing by the Commission;

⁹ Order In Council No. VIII of 2008, as amended.

¹⁰ Ordres en Conseil Vol.XXX, p.243, as amended.

“issuer” means a company or other legal person or undertaking, including a public sector issuer or fund, any of whose securities are or are proposed to be the subject of an application for listing and/or, where relevant, trading on an investment exchange operated by a licensee or some of whose securities are already listed and/or, where relevant, traded on such an investment exchange;

“licensee” means an entity licensed under the Law (although it should be noted that these Rules are applicable only to licensees which are specifically licensed to conduct the restricted activity of operating an investment exchange);

“listed” means admitted to the Official List of an investment exchange;

“market participant” means any member, issuer or other party with or for whom an exchange carries on, or intends to carry on, controlled investment business;

“material records” means such records that would be necessary for the purposes of establishing a complete and accurate record of all aspects of a licensee’s conduct of controlled investment business;

“member” means a company, partnership or other legal entity which has been admitted to membership of an investment exchange operated by a licensee and whose membership has not been terminated;

“non-current assets” means any assets that are not current assets;

“OECD” means The Organization for Economic Cooperation and Development;

“Official List” means the list of securities admitted to listing on an investment exchange operated by a licensee and which is maintained and published by that licensee operating the investment exchange;

“permanent data” means such records, documents or data as are considered material for the establishment and ongoing proper conduct of controlled investment business of a licensee;

“public” has its ordinary meaning;

“Recognised Professional Body” means a body which regulates the practice of a profession; reference to the practice of a profession does not include references to carrying on a business consisting wholly or mainly of controlled investment business;

“regulatory adjustments” means any additions or deductions as specified in writing to a licensee by the Commission;

“regulatory capital” means a licensee’s total assets, less its total liabilities (as reported in its latest audited financial statements, or its latest management accounts, whichever is more current), less non-current assets, less any investment in a subsidiary, less debtors arising from sales or other transactions to associates, less any deficiencies where the liabilities of a subsidiary of a licensee exceed its assets, less any contingent liabilities that require disclosure or provision under GAAP, less any position risk and counterparty risk calculated in accordance with Schedule 1 to these rules, less the amount of the excess on the licensee’s PII policy, plus any creditors arising from purchases or other transactions from associates; subject to any regulatory adjustments;

“regulatory monitoring limit” means an amount equivalent to the regulatory capital requirement for a licensee which operates an investment exchange, as set out in Rule 11.1(2), plus 15% of that sum;

“securities” means any securities which are listed or traded on an investment exchange and which fall within the definition of a controlled investment in Schedule 1 to the Law;

“Self-Regulatory Organisation” means a body, whether a body corporate or unincorporated, which regulates the carrying on of investment business of any kind by enforcing rules which are binding on persons carrying on business of that kind either because they are members of that body or because they are subject to regulation; and

“significant complaint” means a complaint alleging a breach of the Law, *mala fides*, malpractice or impropriety, or repetition or recurrence of a matter previously complained of, whether significant or otherwise.

- (3) The Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016¹¹ applies to the interpretation of these Rules.
- (4) A reference in these Rules to an enactment should be taken to include any amendments, re-enactments (with or without modification), extensions and applications.

¹¹ Order in Council No. V of 2018, as amended.

PART 14 – REVOCATION, CITATION AND COMMENCEMENT

14.1 Revocation of the Investment Exchange (Notification) Rules 1998

- (1) The Investment Exchange (Notification) Rules, 1998, are revoked.

14.2 Citation and commencement

- (1) These Rules shall come into operation on **** and may be cited as the Regulated Investment Exchange Operator Rules 2024 (“the RIEO Rules”).

Dated this

Chairman of the Guernsey Financial Services Commission
For and on behalf of the Commission

SCHEDULE 1

Calculation of a licensee's position risk

Position risk shall be calculated as the sum of:

- 5% of the carry value of any Sovereign Debt held by a licensee;
- 5% of the carry value of any daily dealing money market open ended collective investment scheme held by a licensee;
- 10% of the carry value of any other marketable debt held by a licensee;
- 25% of the carry value of any listed / publicly traded equities held by a licensee;
- 25% of the carry value of any open-ended and closed-ended collective investment scheme, other than a daily dealing money market open ended scheme, held by a licensee;
- 25% of the carry value or 4 times initial margin requirement, whichever is greater, of any other derivative products (as referred to in Schedule 1 to the Law) held by a licensee; and
- 100% of the carry value of any illiquid current assets (being more than 90 days) held by a licensee.

Calculation of a licensee's counterparty risk

Counterparty risk shall be calculated as the sum of:

- Where a licensee's exposure to any one counterparty is at least 25% of the licensee's regulatory capital requirement, 15% of any excess over that 25%; and
- Where a licensee's exposure to any one counterparty is at least 50% of the licensee's regulatory capital requirement, 40% of any excess over 25%.

Guidance Note

Margin Requirement: The margin requirement may only be used as a measure for calculating the position risk of derivative products if it is considered by the board to appropriately reflect that risk.

Counterparty Risk: For the purposes of calculating the counterparty risk, the Commission recognises that not all unsettled bargains should be included. Accordingly, the provisions above only apply to bargains which are unsettled after 15 days (unless the bargain is subject to a legally enforceable guarantee).

Any money held at a bank with terms of less than 90 days should also be excluded from the counterparty risk.