



Guernsey Financial
Services Commission

Consultation Paper

The Prospectus 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 impact persons who have, or who are proposing to, issue a prospectus in relation to a Category 2 Controlled Investment which is either:

- i) a Bailiwick registered or incorporated entity, or
- ii) which will be promoted or offered to the public in the Bailiwick.

They will also impact persons operating or providing services to a collective investment scheme which is registered under section 8 of the Protection of Investors (Bailiwick of Guernsey) Law, 2020 and which is subject to the Registered Collective Investment Scheme Rules, 2021.

They might also be of interest to investors who have, or are proposing to acquire, an interest in such Category 2 Controlled Investments or Registered Collective Investment Schemes, as are referred to above.

How to respond

Responses to this Consultation Paper are sought by 3 March 2025.

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 a proposed improved set of rules relating to the issuance of prospectuses both in respect of Category 2 Controlled Investments generally, and also specifically in respect of Collective Investment Schemes which are registered under Section 8 of the Protection of Investors (Bailiwick of Guernsey) Law, 2020 (“the POI Law”) and which are subject to the Registered Collective Investment Scheme Rules, 2021.

The proposals in this paper seek to reduce the administrative burden of regulation in some areas and ensure the Bailiwick continues to apply standards which are comparable with peer jurisdictions.

The proposed rules are intended to replace the existing Prospectus Rules, 2021 but do not fundamentally change the regulatory framework or the Commission’s approach in relation to prospectuses and other offering documents. However, whilst they adopt the same format, the changes they introduce are considered sufficient to warrant a replacement of the existing rules rather than simply making amendments to those existing rules.

For ease of reference a set of the proposed new rules is attached to this consultation paper which are in tracked format in order that the changes from the current rules may be easily identified.

1.1 Background

The current Prospectus Rules, 2021 state:

“(4) Unless specifically agreed otherwise by the Commission these Rules apply to every prospectus in relation to -

(a) registered investment schemes

(b) an offer by a company or limited partnership, that is registered in the Bailiwick; or a unit trust that is governed by any of the laws of the Bailiwick of any Category 2 controlled investment; or

(c) an offer to the public in the Bailiwick of any Category 2 controlled investment, wherever the offeror is domiciled.”

These rules then set out a list of various circumstances and classes of investment which are exempt from the requirements of the rules.

The rules then establish the information which is required to be disclosed in a prospectus, the requirements regarding the circulation of a prospectus, and how changes to the information contained in a prospectus should be handled.

Certain rules apply solely to prospectuses of Registered Collective Investment Schemes, and some solely to prospectuses relating to offers of Category 2 Controlled Investments. Others apply to both.

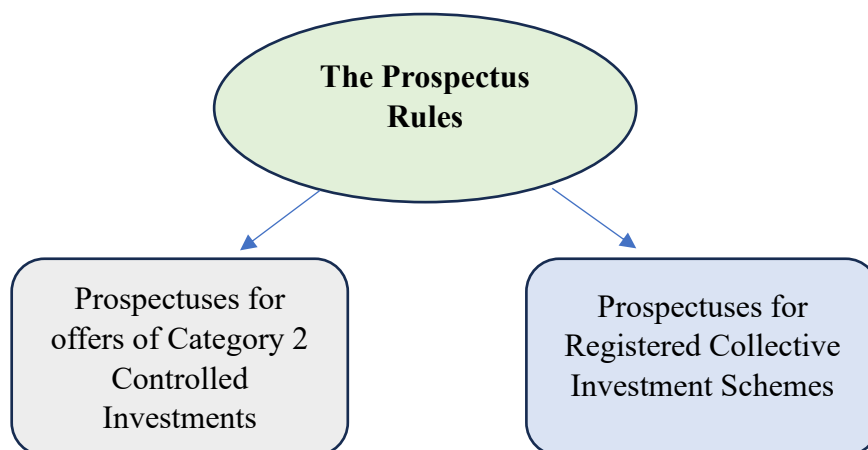


Figure 1: Application of the Prospectus Rules

Whilst the current Prospectus Rules were updated in 2021 as part of the Commission’s wider revision of laws project, such update was largely to align the rules with the revisions made at that time to the POI Law and to introduce a consistent drafting style across the various rules made by the Commission. Otherwise, the Prospectus Rules have remained largely unchanged in the depth and breadth of their scope and requirements since their introduction in 2008.

2. Reasons for the proposed changes

The proposed changes are the result of the Commission’s consideration of several factors, including:

- Requests from individual firms and industry associations representing wider sectors of the finance industry, to broaden the scope of exemptions contained within the rules to take account of circumstances which had not been anticipated when the existing rules were first drafted.
- The outcomes of an internal review by the Commission of the extent to which its regulatory framework continues to meet the relevant core principles established by the International Organization of Securities Commissions (“IOSCO”). IOSCO is the global standard setting body for securities market regulators – meeting its core principles helps ensure that a jurisdiction’s framework is up-to-date and consistent with international standards.
- A review of how the Prospectus Rules and the Registered Collective Investment Scheme Rules work together to form an effective regulatory framework in respect of registered funds.

Other minor changes have been made to add clarity.

The key proposed changes to the various parts of the rules are explored in more detail below.

3. Proposed changes to the current Prospectus Rules

The following sections describe the key proposed changes to various sections of the rules. Where reference is made to Part Numbers, these relate to the Part Numbers in the current Prospectus Rules, which are also planned to be retained in the proposed new rules.

Each section includes tick boxes, allowing respondents to indicate their agreement or otherwise with the proposed changes, and question boxes where respondents may add any further

comments in respect of that part of the proposed new rules, including the reasons where respondents have answered “No” to any of the tick boxes.

Readers should refer to the attached tracked version of the proposed new rules to understand the full detail of the key changes referred to below as well as any other less significant or minor amendments. For reference purposes, a diagram summarising how the proposed changes will impact differently on prospectuses for Registered Collective Investment Schemes and on those relating to Category 2 Controlled Investments may also be found at Appendix 1.

3.1 Part 1 of the Rules - Introduction

The key proposed changes to this section relate to the persons who are exempted from the application of the rules under Rule 1.1(5).

It is proposed that the exemptions will be extended such that a promotion of a Category 2 Controlled Investment to a “Professional Investor” would not fall within the scope of the rules. A “Professional Investor” is newly defined in Part 6 of the rules, the definition closely matching that used in the Private Investment Fund Rules, 2021 in respect of Route 2 Applications made under the Private Investment Fund framework. For the avoidance of doubt this proposed exemption would only relate to promotions of Category 2 Controlled Investments and not to Registered Collective Investment Schemes, which would remain within scope of the Prospectus Rules.

Question 1: Do you agree with this proposed change?

Y/N

It is also proposed that the exemptions are extended to cover promotions of Category 2 Controlled investments to an identifiable category of persons, not exceeding 200 in number (up from 50 in the current rules) other than Professional Investors.

Question 2: Do you agree with this proposed change?

Y/N

Other exemptions proposed in the new rules relate to offers in respect of certain court sanctioned schemes, offers which are subject to the Takeover Code, and offers of Category 2 Controlled Investments which are in the process of being listed on certain stock exchanges (which builds on the current exemption for such entities which are already listed).

Question 3: Do you agree with these proposed changes?

Y/N

Question 4: Do you have any comments in respect of the proposed changes to Part 1 of the rules, as set out above, and if you have answered “No” to any of the tick boxes, would you like to provide the reasons?

3.2 Part 2 of the Rules – Information to be Specified in the Prospectus

The key proposed changes to this section relate to the disclosures required in a prospectus.

It is proposed that new requirements will be introduced for registered collective investment schemes to disclose valuation methodology (including the publication and / or availability of prices / NAV); the clear disclosure of fees, charges, and expenses; the arrangements for the issue and redemption of units in a scheme; and details of the investment manager and any investment advisor. Based upon our reviews of existing prospectuses, in practice, such disclosures are often already being made, however the intention of these changes is to formalise the requirements to ensure the regulatory framework around registered collective investment schemes meets the relevant IOSCO standards.

Question 5: Do you agree with these proposed changes?

Y/N

A requirement for the disclosure of any borrowing limits or restrictions is also proposed, for any prospectus. Again, our experience is that such disclosures are often already being made, but the introduction of the requirement will formalise disclosure of this important information.

Question 6: Do you agree with this proposed change?

Y/N

Another proposed change in relation to registered collective investment schemes is an amendment to the requirement for the disclosure of persons with a significant beneficial ownership in certain service providers to a scheme, such that a disclosure will only be required where that holding constitutes a potential or actual conflict of interest. This change is in response to representations made by industry representatives that, in many cases, such ownership interests do not actually represent a conflict, and the change will therefore avoid the possible need for derogations from the rules to be requested in such circumstances.

Question 7: Do you agree with this proposed change?

Y/N

Other minor changes have been made to this part to add clarity to requirements.

Question 8: Do you have any comments in respect of the proposed changes to Part 2 of the rules, as set out above, and if you have answered “No” to any of the tick boxes, would you like to provide the reasons?

3.3 Part 3 of the Rules – Statements to be included as set out in the Schedules

It is proposed that Schedule 2 to the rules (which sets out the text of the mandatory disclosure regarding the risk that the prices and income from investments can go down as well as up), will be amalgamated with Schedule 1 (which sets out other mandatory statements to be included in

a prospectus). It is further proposed that the existing wording of Schedule 1 will be amended to better align with the Registered Collective Investment Scheme Rules.

It is proposed that Part 3 of the rules will be amended to reflect the amalgamation of Schedules 1 and 2.

Question 9: Do you agree with these proposed changes?

Y/N

Question 10: Do you have any comments in respect of the proposed changes to Part 3 of the rules, as set out above, and if you have answered “No” to the tick box, would you like to provide the reasons?

3.4 Part 4 of the Rules - Circulation

Minor changes are proposed to this section of the rules, to add clarity to the steps required before a prospectus may be circulated. These include: a clarification that the application fee relates to prospectuses for Category 2 Controlled Investments (for registered collective investment schemes the fee forms part of the overall application fee for the scheme); and a clarification that circulation of a prospectus in respect of a new registered collective investment scheme requires the Commission to have first issued its declaration of registration in respect of that scheme.

Question 11: Do you agree with these proposed changes?

Y/N

Question 12: Do you have any comments in respect of the proposed changes to Part 4 of the rules, as set out above, and if you have answered “No” to the tick box, would you like to provide the reasons?

3.5 Part 5 of the Rules – Information to be Provided to Investors

An extension is proposed to the range of specific prospectus disclosures which need to be immediately notified to investors and the Commission, if amended.

In this respect, there are certain matters that are required to be disclosed under the current rules, which if changed, would normally be notified to investors, but for which there is no formal requirement to do so in the current rules. The proposed amendments seek to address this, and thereby ensure that investors and the Commission are kept up to date with key information.

In addition to the matters which currently require notification, the proposed amendments extend such notification requirements to include changes to the offeror’s:

- valuation methodology and provision of pricing / NAV information;

- fees and charges;
- issue and redemption procedures; and
- manager or investment adviser

where the prospectus relates to a registered collective investment scheme, and

- investment strategy and any investment restrictions;
- borrowing and hedging powers and restrictions; and
- voting and other rights.

for all prospectuses.

While this proposal will improve the minimum required disclosures to investors it is not anticipated that in practice there will be any material increase in notifications because notifiable events are likely to occur infrequently.

Question 13: Do you agree with these proposed changes?

Y/N

Question 14: Do you have any comments in respect of the proposed changes to Part 5 of the rules, as set out above, and if you have answered “No” to the tick box, would you like to provide the reasons?

4. Next steps

Following the closing date of 3 March 2025 the Commission will review and consider the feedback and comments received and, where considered appropriate, introduce any further changes in the proposed new rules. The Commission will then issue a public feedback paper and publish final rules.

Appendix 1 – Summary of Impact

Summary of how the proposed changes will impact on prospectuses for Registered Collective Investment Schemes vs. prospectuses relating to offers of Category 2 Controlled Investments

<div style="border: 2px solid brown; padding: 5px; width: fit-content; margin: 0 auto;"> AMENDMENTS TO THE PROSPECTUS RULES </div>			
Proposed Amendment	Applicability of amendment to prospectuses of REGISTERED CIS	Applicability of amendment to prospectuses for CATEGORY 2 SECURITY OFFERING	Amended Rule Reference
Exemption for entities applying for listing	N/A	✓	1.1(5)(c)
Exemption for offers subject to Takeover code	N/A	✓	1.1(5)(e)
Exemption for offers subject to court sanctioned scheme	N/A	✓	1.1(5)(f)
Professional Investor scope exemption	N/A	✓	1.1(5)(g)
200 Person scope exemption	N/A	✓	1.1(5)(h)
Minor changes to personal information disclosure for offerors / promoters	✓	✓	2.1(a)
Clarification of disclosure of goodwill etc.	✓	✓	2.3(1)
Valuation related disclosures	✓	N/A	2.6
Fees and charges disclosures	✓	N/A	2.7
Borrowing Limit disclosure	✓	✓	2.9

Issue and redemption procedure disclosure	✓	N/A	2.10
Prime Broker disclosure	✓	N/A	2.14(2)(b)
Minor changes to Director / Secretary information disclosure	✓	✓	2.15(2)
Manager and Investment Advisor disclosure	✓	N/A	2.18
Service Provider Conflict disclosure amendments	✓	N/A	2.20(1)(c) and associated Guidance Note
Mandatory Risk Disclosure Statement amendment	✓	✓	3.1, and Schedules 1 & 2
Circulation of prospectus clarifications	✓	✓	4.1
Amendments to requirements re changes in content	✓	✓	5.1
Additions and minor amendments to definitions	✓	✓	6.1

Appendix 2 – Draft of The Prospectus Rules and Guidance, 2025

Please see attached draft.