

SPRING GREEN CONSULTATION PAPER

MARCH 2021



Guernsey Financial
Services Commission

Part 1 – Board Consideration of Climate-related Risk

In 2011, the Commission published its Finance Sector Code of Corporate Governance (the ‘Code’); with subsequent amendments¹. This Consultation Paper proposes that the Code take specific account of climate change considerations.

Even if limited by current mitigation efforts, climate change will materially alter the world we live in over the coming years. For that reason, licensees need to consider their business strategy and risks in relation to climate change. As a financial services regulator, the Commission is obliged to ensure that licensees consider key risks especially when they extend beyond the immediate time horizon. International regulatory understanding of climate change risk is evolving fast. Licensees should maturely consider this risk, adapt to it in an orderly fashion and continue to keep abreast of standards and market expectations as they develop, not least with regard to disclosure.

The Commission is not planning to set out specific rules or guidance at this time. There is already much in the public domain to help firms in this respect. Emerging requirements and guidance set out by international bodies such as the Task Force on Climate-related Financial Disclosures and the proposed partner body to the International Accounting Standards Board² may be relevant for many firms. What works for one sector or licensee, may not work for another. What licensees cannot do is to ignore climate change; even if, in the event, a licensee concludes that any adjustment to its business strategy and risk profile should be limited.

Directors have a general duty to promote the success of the company and act with due care. The board sets company strategy and risk appetite. Board-level commitment is vital in order to gain assurance that work on climate-related strategy and risks has sufficient standing in the organisation. Amending the Code encourages appropriate consideration of climate change risks; whilst allowing firms to prepare for probable new international standards on climate change disclosure in a balanced fashion.

The Commission is aware that other jurisdictions are already starting to mandate climate change actions and prescriptive climate change non-financial reporting. The Commission is pleased to see the evolution in the currently less than mature reporting standards but considers it premature to mandate what disclosures are necessary until more general international agreement on what standards should apply to what types of financial services firm is reached. That said, it encourages firms to consider and act upon as appropriate international developments in this fast moving area.

The Code is concise. Accordingly, the Commission proposes to add the following requirement:

Climate-Change

The Board should consider the impact of climate change on the firm’s business strategy and risk profile and, where appropriate in the judgement of the board, make timely climate change related disclosures.

This clause becomes 5.2 (1) in the Risk section of the Code. For insurers, it becomes Principle: 18. The placement of the clause is such that it will not require boards to renumber extant clauses.

We would propose that the obligation on boards to comply with the new clause should apply for financial years starting from 1st October 2021.

Q1: Do you have any comments on the proposed amendment to the Corporate Governance Code?

¹The current version of the Code is dated February 2016 and can be found at this [link](#).

² [Consultation Paper on Sustainability Reporting \(ifrs.org\)](#)

Part 2 – Guernsey Green Fund Rules

Thematic Review Findings

During Q4 2020 and Q1 2021, the Commission undertook a thematic review of the Guernsey Green Fund Regime in order to gain an enhanced understanding of our existing Guernsey Green Fund (“GGF”) population and assess how they comply with the Guernsey Green Fund Rules, 2018 (“GGF Rules”). Full details of this review and its findings are provided in a separate report published at the same time as this paper³. The review identified two areas where relatively minor modification to the GGF Rules may be made to better reflect established closed ended fund management practises whilst maintaining the integrity of the regime. The first area related to Section 6(1) of the GGF Rules which requires the Designated Administrator of a GGF to ensure that the scheme is monitored against the notified green criteria and the investment criteria on a monthly basis. Following a review of the types of assets and structures of the GGFs already accredited, it has been suggested that this rule could be perceived as unnecessarily onerous for some closed ended funds. It is therefore proposed to amend the relevant section of the GGF Rules to require monitoring to be performed at a minimum on a quarterly basis, in the case of closed ended funds. It is proposed that the monitoring requirement for open ended funds remain unchanged. The proposed amendment to the drafting of the rule is set out in Appendix 1. The second proposed modification to the GGF Rules is in respect of section 8 of the GGF Rules which requires an accredited fund to include certain disclosures in its prospectus regarding its green status. Certain fund-specific modifications to these disclosure rules have previously been granted to listed green funds to permit the disclosure requirements to be met through the use of market announcements on the LSE. In order to facilitate future disclosures by listed funds it is proposed that an amendment be made to the GGF Rules to allow the disclosure requirement to be met through the use of a recognised stock exchange market announcement. The proposed amendment to the drafting of this rule is set out in Appendix 2. We hope that these deregulatory measures will enable more green funds to be raised more easily for investment into high quality green assets.

Q2: Do you have any comments on the proposed amendments to the GGF Rules?

Feedback on Green Aspects of Discussion Paper

In July 2020 the Guernsey Financial Services Commission published a Fund Growth Omnibus Discussion Paper⁴ (the “Discussion Paper”) seeking feedback on proposals in relation to adoption of the EU Taxonomy for Sustainable Finance as additional alternative green criteria under the GGF Regime and also proposals on the regulation of the activity of verification or certification of Green Financial Products.

Respondents were supportive of the proposal to add the EU Taxonomy for Sustainable Finance to the existing GGF Rules. At the time of writing the final form of the Taxonomy has yet to be agreed. The Commission also notes with interest the plans of the United Kingdom authorities to introduce their own

³ Review of the Guernsey Green Fund Regime – Thematic Review 2020-2021 – <https://www.gfsc.gg/sites/default/files/2021-03/2021%20GGF%20THEMATIC%20PUBLISHED%20REPORT.pdf>

⁴ https://www.gfsc.gg/sites/default/files/20200707%20-%20Funds%20Growth%20Omnibus%20Discussion%20Paper_0.pdf

Green Taxonomy and will monitor future developments with a view to ensuring that the GGF Regime continues to keep pace with emerging international standards.

The second Discussion Paper proposal to create a Green Verifier licence category under our Protection of Investors Regime was not supported by a majority of respondents. This proposal will not be pursued further.

Providing Feedback

Responses to this Consultation Paper are requested by **5 May 2021**

Responses should be submitted through the Commission's Consultation Hub, which can be found at <https://consultationhub.gfsc.gg/>.

Next Steps

This Consultation will be open for a period of 8 weeks, with a closing date for responses of 5 May 2021.

Following the consultation period, the Commission will collate and consider responses provided and feedback will be issued.

APPENDIX 1 – PROPOSED AMENDMENT TO SECTION 6 OF THE GGF RULES

It is proposed that the Current Rule text below is replaced by the Proposed Replacement Text below.

Current Rule

6. OVERSIGHT OF THE FUND

(1) The designated administrator shall ensure that the Guernsey Green Fund is monitored against the notified green criteria and the investment criteria on a monthly basis and where the Scheme contravenes either:-

....

Proposed Replacement Text:

6. OVERSIGHT OF THE FUND

(1) The designated administrator must ensure that the Guernsey Green Fund is monitored against the notified green criteria and the investment criteria. Where the Guernsey Green Fund is an open-ended investment scheme such monitoring must be performed, at a minimum, on a monthly basis and where the Guernsey Green Fund is a closed-ended investment scheme such monitoring must be performed, at a minimum, on a quarterly basis. Where the Guernsey Green Fund contravenes either the notified green criteria or the investment criteria the designated administrator:-

...

APPENDIX 2 – PROPOSED AMENDMENT TO SECTION 8 OF THE GGF RULES

It is proposed that the following text will be inserted following Rule 8(1)(g):

(2) Rules 8(1)(a) and 8(1)(d) do not apply to a Guernsey Green Fund which is listed on a recognised stock exchange and where commensurate disclosure has been made by way of a stock exchange announcement.