



Guide to
Listed Funds
in Jersey

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PREFACE

The Jersey Financial Services Commission (the “Commission”) has introduced a new regulatory classification for investment funds which are to be domiciled in Jersey and listed on an approved stock exchange (“Listed Funds”). This new funds classification is the latest step in deregulation and modernisation of this important sector of the Jersey investment funds industry while maintaining certain minimum standards and facilitates the speedy establishment of a wide range of alternative investment fund products as well as funds following more traditional investment strategies seeking to list on an approved exchange.

The new Listed Fund classification sits alongside the Expert Fund (introduced in February 2004). The Expert Fund was the first step in a process of deregulation of the funds sector in Jersey and has re-invigorated the sector. In response to a substantial increase in investor demand for listed investment funds and to address a limitation of Expert Funds (as they are targeted only at sophisticated investors; the requirements of most stock exchanges that shares are freely transferable are incompatible with restrictions imposed to ensure only experts may invest) the Commission and the financial services industry in Jersey have co-operated to establish the Listed Fund classification.

The Listed Funds classification introduces a more streamlined authorisation process for the establishment of a collective investment fund in Jersey within the existing regulatory framework of the Collective Investment Funds (Jersey) Law 1988 (the “1988 Law”) where the fund meets the criteria set down for a Listed Fund. Those criteria are set out in a Classification Guide for Jersey Listed Investment Funds issued by the Commission and focus on three key requirements:

- the Listed Fund must have a listing on a recognised stock exchange or market (a list of such exchanges is set out in Appendix 1);
- the investment manager/investment adviser to be appointed for the Listed Fund must satisfy certain fit and proper criteria established by the Commission;
- the Listed Fund must be closed-ended: investors must not have the option to redeem their investment.

It is recognised that this Guide will not completely answer detailed questions which clients and their advisers may have. It is intended to provide a sketch of the subject matter covered. The Guide is, therefore, designed as a starting point for a more detailed and comprehensive discussion of the issues.

Appleby
St Helier, Jersey
August 2009

1. INVESTOR RESTRICTIONS AND RECOGNISED EXCHANGES

There are no investor restrictions or minimum investment limits imposed on investors in Listed Funds. A Listed Fund's offer document must include an investment warning to the effect that it is suitable only for professional or experienced investors or those who have taken appropriate professional advice.

It will be a condition of the certificate issued by the Commission that the Listed Fund is approved for admission to a recognised exchange or market prior to its launch. A list of recognised exchanges and markets is set out at Appendix 1 and includes, particularly, the London Stock Exchange Official List, the Alternative Investment Market of the London Stock Exchange, the Specialist Fund Market of the London Stock Exchange, Euronext and the Channel Islands Stock Exchange. Other exchanges and markets may be added from time to time.

2. LEGAL FORMS AND FUND STRUCTURES

Listed Funds must take the form of a limited company under the Companies (Jersey) Law 1991 as amended. Limited companies may issue par value or no par value shares, and may be protected cell companies or incorporated cell companies as well as traditional structures.

Listed Funds must be established as closed-ended vehicles (i.e. funds which are not open for redemption at the option of holders of securities).

Listed Funds can be set up as single class funds, umbrella funds, multi-class or common investment fund structures, feeder funds or fund of funds.

3. INVESTMENT STRATEGIES AND RESTRICTIONS

The Listed Funds classification seeks to limit duplication of regulation by an approved exchange and the Commission and is not prescriptive as to any asset classes or investment techniques. It will therefore accommodate funds set up to follow orthodox investment strategies as well as private equity and hedge fund strategies. The offering document relating to the Listed Fund will set out details of the objective and investment strategies to be followed by the Listed Fund.

No investment or borrowing restrictions are prescribed for Listed Funds. Accordingly, there is considerable freedom for Listed Funds to tailor their own investment parameters and limitations in the context of the investment strategy and objective which the Listed Fund will follow and the risk appetite of participating investors, subject always to the requirements of the relevant exchange.

If the Listed Fund is permitted to borrow and/or gear itself above 200% of the net asset value of the Listed Fund, the Commission reserves the right to undertake additional scrutiny of the arrangement.

4. INDEPENDENT DIRECTORS

A majority of the directors of the board of the fund company (including the chairman) must be independent. Independence will be determined in accordance with the requirements of the relevant stock exchange on which the fund is listed and is a matter for the board of directors of the Listed Fund. A director who is or has been (within the previous 5 years) an employee of the Manager or Investment Manager or any of their Associates will not be deemed independent.

5. INVESTMENT MANAGER REQUIREMENTS

Certain confirmations have to be provided to the Commission regarding the status of the Investment Manager to be appointed for the Listed Fund. In this context the term Investment Manager also includes an Investment Adviser appointed to the Listed Fund. Typically the Investment Manager will be located outside Jersey and the confirmations focus on providing comfort to the Commission that the Investment Manager is in good standing and a fit and proper person.

The Investment Manager should:

- have had no disciplinary sanctions imposed on it by any supervisory authority or professional body in the previous five years;
- have no convictions for any offence under the legislation of any country relating to the conduct of financial services business or involving fraud or dishonesty or be the parent, subsidiary or an associated company of any company which has such a conviction. If either of the above confirmations can only be given in qualified terms in relation to the Investment Manager, then advance disclosure of the matter should be made to the Commission so that the circumstances can be assessed by the Commission;
- be able to pay its debts as they fall due;
- be established and regulated in an OECD state or jurisdiction or a jurisdiction the subject of a Memorandum of Understanding (or equivalent) signed by the Commission. An exception applies to investment managers of property funds as to which see paragraph 6 below;
- possess relevant experience in relation to managing or advising on the investment of assets using similar investment strategies to those to be adopted by the Listed Fund;
- satisfy the Commission's general principles of corporate governance relating to the minimum number of principals/executives controlling the activities of the Investment Manager. In this regard see the extract of corporate governance principles set out as Appendix 2 of this client guide.

In addition no Principal Person of the Investment Manager shall:

- have had any disciplinary sanctions imposed on him by any supervisory authority or professional body in the previous five years;
- have been convicted of any offence under the legislation of any country relating to the conduct of financial services business or involving fraud or dishonesty.

Where the Investment Manager is not the promoter of the Listed Fund, the entity which is the promoter or acting as principal distributor in connection with marketing of the Listed Fund must satisfy the same general status criteria as referred to above in connection with the Investment Manager.

The Commission has indicated that it will consider, on a case-by-case basis, applications from funds that engage no external investment manager but are in effect self-managed. Appleby advised on the first self-managed structure approved by the Commission.

6. PROPERTY FUNDS

The Commission has recognised that in some jurisdictions property investment is not within the financial regulatory regime and so has made a limited exception to the requirement described above that the Investment Manager must be regulated in its home jurisdiction in relation to managing or advising on investors' funds. To fall within the exception the Investment Manager must be:

- a subsidiary of a company that is regulated in relation to managing or advising on investors' funds in its home state or jurisdiction; or
- a listed company with a minimum market capitalisation of at least US\$500 million or its equivalent or a subsidiary of such a company; or
- a company or partnership with at least 5 years trading record, or whose principals, who form its span of control (see Appendix 2), can demonstrate relevant business experience for this period or possess relevant professional qualifications; or
- be granted approval by the Commission (such approval will not be granted if the other requirements as set out under section 5 above are not met).

7. JERSEY FUND SERVICE PROVIDER REQUIREMENTS

Every Listed Fund must appoint a Jersey-based administrator or manager which is regulated in the island and has a physical presence in Jersey. General administration duties in connection with the Listed Fund may be outsourced by Jersey resident providers to fund administrators outside Jersey subject to compliance with the Commission's regulatory requirements in connection with outsourcing arrangements. Alternatively, so long as a Jersey resident "monitoring functionary" has been appointed, the fund may appoint a fund administrator outside Jersey.

No valuation procedures have been prescribed by the Commission and accordingly NAV and share/unit price estimation and dealing adjustment procedures for hedge funds and fund of hedge funds can be accommodated.

At least two Jersey resident Directors with appropriate experience must be appointed to the fund board. The board of directors is required by the Commission to be ultimately responsible for the management and control of the Listed Fund and this responsibility cannot be delegated.

8. MONITORING OF INVESTMENT MANAGER

The Jersey-based administrator or manager (the "monitoring fund service provider") is obliged to undertake responsibility for monitoring the actions of the Investment Manager. The fund service provider must take reasonable measures to satisfy itself that the actions of the Investment Manager do not breach the investment and borrowing limits (if any) adopted for the Listed Fund and is also required to promptly notify the Fund board of directors of any concerns it has in connection with any such breaches so that appropriate action can be taken. The fund service provider will not however be expected to assume responsibility for the Investment Manager's activities. It must maintain in Jersey sufficient records (in electronic or documentary form) to enable it to fulfil its monitoring functions and be able to obtain other relevant records on demand.

In addition, the Commission requires that the board of directors of the Listed Fund should undertake regular reviews of the investment strategy and risk profile of the fund and the investment performance of the

Investment Manager as well as regularly considering associated matters such as gearing, asset allocation, marketing/investor relations, peer group information and general industry issues. We do not consider this regulatory requirement to be any greater than the duties imposed by law or the requirements of any relevant exchange.

9. CUSTODY/PRIME BROKER ARRANGEMENTS

Every Listed Fund must put in place adequate arrangements for the safe custody of the property of the fund. Prior clearance for any deviation from this requirement would need to be negotiated with the Commission.

Prime brokerage arrangements are permissible for hedge funds. Full details of custody and prime brokerage arrangements must be set out in the offering documentation for the Listed Fund. Non-Jersey based prime brokers can be appointed for hedge funds. Such prime brokers must be part of a group which satisfies minimum credit rating requirements (A1/P1) or long term equivalent. Beyond this no further rules concerning prime brokerage are prescribed. There is no limitation that only prime brokers who segregate client assets may be used. There is no requirement to treat prime brokers as sub-custodians of the fund.

10. FUND SERVICE PROVIDER REGULATION IN JERSEY

Jersey fund service providers appointed for a Listed Fund are required to be regulated in Jersey and subject to Codes of Practice which may be issued by the Commission from time to time.

Each Jersey fund service provider must be registered by the Commission under the Financial Services (Jersey) Law 1998, as amended. If not already registered, registration is applied for at the same time as application is made to the Commission for approval of the Listed Fund.

11. AUDIT REQUIREMENTS

An auditor must be appointed for each Listed Fund. Annual audited reports and accounts will need to be prepared for the Listed Fund and sent to each investor.

12. AUTHORISATION PROCEDURE FOR LISTED FUNDS

The regulatory authorisation procedure is a one-stage process centring on filing an application together with supporting paperwork (including a final or near final form version of the offering document) with the Commission certifying that the applicant fund meets the parameters set out for a Listed Fund (or highlighting any deviations from those parameters).

The monitoring fund service provider must sign the application submitted to the Commission and arrange for the application to be counter-signed on behalf of the Listed Fund.

In addition, the Investment Manager must confirm in writing to the Commission that it satisfies the criteria set out in connection with its role (which are summarised in sections 5 and 6 of this guide). The monitoring fund service provider must countersign the Investment Manager's submission confirming that it has carried out its own due diligence against the Investment Manager.

Upon receipt of a completed Application Form, the Commission will take steps to authorise the Listed Fund and/or its Fund Service Providers as the case requires.

13. CONTENT OF OFFERING DOCUMENTS

The offering document of the Listed Fund must comply with the content requirements set out in the Companies (General Provisions) (Jersey) Order 2002 and the specific requirements of the Jersey Listed Investment Fund Guide. The listing rules of any relevant stock exchange must also be complied with.

A consultation is underway in Jersey with a view to replacing the two different prospectus regimes (which apply depending on whether the fund is open-ended or closed-ended) with a single order relating to offering documents for all collective investment funds regulated under the 1988 Law.

In addition to the specific requirements described above, the offer document for a Listed Fund must contain all the information that investors and their professional advisers (if any) would reasonably require and would reasonably expect to have brought fairly to their attention in the offer document in order to make an informed judgement about the merits of participating in the Listed Fund and the extent of the risks accepted in so participating.

Each Listed Fund must include a prescribed investment warning in a prominent position in its offering document. The text of the investment warning is set out in Appendix 3.

14. TAXATION OF LISTED FUNDS

Collective investment funds established in Jersey are zero rated for the purposes of Jersey income tax and are therefore not subject to Jersey income tax on non-Jersey source income or, save in certain limited exceptions, its Jersey source income (rental income or property development profits arising in respect of Jersey situs real property or land). Distributions paid out of a Jersey resident fund to either Jersey resident or non-Jersey resident investors are made on a gross basis without deductions in respect of Jersey tax.

Listed Funds are listed as International Service Entities (“ISEs”) with the Jersey Comptroller of Income Tax and as such are exempt from registration for the purposes of the Goods and Services Tax (Jersey) Law 2007 and do not have to charge goods and services tax (“GST”) on their supplies and qualify for exemption from being charged GST. In order to retain ISE status an annual fee of £100 is payable.

There are no capital gains taxes nor value added taxes nor stamp duties in Jersey on securities transactions.

Jersey is not subject to the EU Savings Tax Directive but has introduced a retention tax system in respect of payments of interest and other similar income to individual beneficial owners resident in an EU Member State paid by a paying agent situated in Jersey. The retention tax system applies for a transitional period prior to the implementation of a system of automatic exchange of information regarding such payments to EU Member States. During this transitional period, an individual beneficial owner resident in an EU Member State is able to elect not to have retention tax applied but to authorise details of relevant payments to be communicated to the tax authority of his EU Member State.

Based on the provisions of the bilateral agreements negotiated between Jersey and each of the EU Member States, the implementing legislation in Jersey and guidance notes issued by the Policy & Resources Department of the States of Jersey, distributions by a Listed Fund should not constitute interest payments for the purposes of the retention tax system and therefore neither the Listed Fund nor any paying agent appointed by it in Jersey should be obliged to levy retention tax in Jersey.

The above retention tax does not apply to interest or other affected payments to bodies corporate or to non EU resident individuals.

APPENDIX 1

Approved Exchanges and Markets

At the date of this Guide, the Commission has confirmed that the following exchanges or markets are approved for the purposes of the Listed Fund category.

Within the European Union:

Austria:	Wiener Bourse
Belgium:	Euronext
Bulgaria:	Bulgarian Stock Exchange
Cyprus:	Cyprus Stock Exchange
Czech Republic:	Prague Stock Exchange
Denmark:	Copenhagen Stock Exchange
Estonia:	Tallin Stock Exchange
Finland:	Helsinki Stock Exchange
France:	Euronext
Germany:	Deutsche Bourse
Greece:	Athens Stock Exchange
Hungary:	Budapest Stock Exchange
Iceland:	Iceland Stock Exchange
Ireland:	Irish Stock Exchange
Italy:	Borsa Italiana
Latvia:	Riga Stock Exchange
Liechtenstein:	Liechtenstein Stock Exchange
Lithuania:	National Stock Exchange of Lithuania
Luxembourg:	Bourse de Luxembourg
Malta:	Malta Stock Exchange
Netherlands:	Euronext
Norway:	Oslo Bors
Poland:	Warsaw Stock Exchange
Portugal:	Lisbon Stock Exchange
Romania:	Bucharest Stock Exchange
Slovakia:	Bratislava Stock Exchange
Slovenia:	Ljubljana Stock Exchange, Inc
Spain:	Bolsas y Mercados Espanoles
Sweden:	Stockholmborsen
United Kingdom:	London Stock Exchange Alternative Investment Market (“AIM”) Specialist Fund Market

Outside the European Union:

American Stock Exchange
Australian Stock Exchange
Bermuda Stock Exchange
Bolsa Mexicana de Valores
Bourse de Montreal Inc
Channel Islands Stock Exchange
Chicago Stock Exchange
Hong Kong Exchanges and Clearing Limited

Johannesburg Stock Exchange
Korea Stock Exchange
National Association of Securities Dealers Automated Quotations (“NASDAQ”)
New York Stock Exchange
New Zealand Stock Exchange
Osaka Securities Exchange
Pacific Exchange
Philadelphia Stock Exchange
Singapore Exchange
Swiss Stock Exchange (“SWX”)
Tokyo Stock Exchange
Toronto Stock Exchange

APPENDIX 2

Span of Control Requirements

A guidance note in relation to the “span of control” principle applicable to Investment Managers can be found on the Commission website at: http://www.jerseyfsc.org/regulatedentities/trust_spanofcontrol.html.

This appendix summarises this principle for guidance purposes only. All Investment Managers are advised to read the guidance note and to discuss its contents with their Jersey legal advisers in order to ensure they satisfy the principle.

In the context of the Investment Manager, the principle requires that the Investment Manager be able to demonstrate that its business is actively managed by two or three skilled, experienced individuals: two persons if the Investment Manager cannot handle client monies, three if it can.

The “four eyes” or “six eyes” are the principal persons of the business, who must be able to exercise executive power on behalf of the Investment Manager. These individuals must be actively involved in the day-to-day management of the business and able to exercise executive powers on behalf of the Investment Manager. Normally, such persons will be directors of the Investment Manager.

They must be able to demonstrate independence, competence, experience and integrity and be able to effectively exercise management control over the Investment Manager. Together, the persons providing the “four or six eyes” should be able to demonstrate a balance of appropriate qualifications, skills and experience. As part of the independence requirement, care must be taken where members of the same family form principal persons of the Investment Manager.

Although the individuals making up the span of control do not need to be involved in the day-to-day execution of the Investment Manager’s policy, they should have day-to-day involvement in general management as well as knowledge of and influence upon the way in which the company’s strategy is being implemented through day-to-day policy.

The Commission acknowledges there may be exceptional circumstances for allowing some degree of relaxation of the principles outlined above. Each request for a relaxation will be considered on its merits and on a case by case basis, however, it must be borne in mind that requests of this nature will not be granted lightly and that, once granted, are not to be treated as setting a precedent notwithstanding any similarity of circumstances. Furthermore, consideration of such requests may increase the time taken to process an application.

APPENDIX 3

Investment Warning

“This fund has been established in Jersey as a listed fund under a fast-track authorisation process. It is suitable therefore only for professional or experienced investors, or those who have taken appropriate professional advice.

Regulatory requirements which may be deemed necessary for the protection of retail or inexperienced investors, do not apply to listed funds. By investing in this fund you will be deemed to be acknowledging that you are a professional or experienced investor, or have taken appropriate professional advice and accept the reduced requirements accordingly.

You are wholly responsible for ensuring that all aspects of this fund are acceptable to you. Investment in listed funds may involve special risks that could lead to a loss of all or a substantial portion of such investment. Unless you fully understand and accept the nature of this fund and the potential risks inherent in this fund you should not invest in this fund.”

For more specific advice on Listed Funds in Jersey, we invite you to contact one of the following:

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