GUIDE

GUIDE TO REGULATION OF FUNDS IN JERSEY

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PREFACE

This Guide provides an outline description of the categories of regulation of investment funds in Jersey by the Jersey Financial Services Commission (the **JFSC**).

We recognised that this Guide will not completely answer detailed questions which clients and their advisers may have; it is not intended to be comprehensive. If any such questions arise in relation to the contents, they may be addressed to any member of the team, using the contact information provided at the end of this Guide.

Appleby
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1. TYPES OF INVESTMENT FUNDS

Investment funds in Jersey may be established using companies, limited partnerships or unit trusts. Unless otherwise specified, they may be established as open-ended or closed-ended vehicles.

Fund classes that are not regulated include Unregulated Funds and Very Private Funds.

- **Unregulated Funds**

Funds which meet the criteria to qualify as unregulated eligible investor funds or unregulated exchange traded funds are exempt from Jersey regulatory requirements.

An unregulated eligible investor fund is a scheme or arrangement established in Jersey and in which only eligible investors may invest.

An “eligible investor” is an investor who makes a minimum initial investment of US$1 million or the currency equivalent (which can be made either at the initial offering or by subsequent acquisition) or an institutional or professional investor, as defined in the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008 (the **Unregulated Funds Order**).

An unregulated eligible investor fund may be open or closed-ended and transfers of interests are possible but only to other eligible investors. While it is possible to list unregulated eligible investor funds on stock exchanges, transfer restrictions will apply.

An unregulated exchange traded fund is a scheme or arrangement established in Jersey which is a closed-ended fund and which is listed or to be listed on one or more prescribed stock exchanges.

An unregulated exchange traded fund is not subject to the investor criteria or restrictions on transfer applicable to unregulated eligible investor funds.

Provided there is compliance with the Unregulated Funds Order, unregulated funds are not subject to regulatory review or oversight. Each type of fund is required to file a notice with the Registrar of Companies in Jersey confirming its establishment and to include a prescribed investment warning in its offering document.

Unregulated funds are exempt from Jersey regulatory requirements provided they are not marketed in the EU or other EEA States. Where they are to be marketed in the EU or other EEA States, please see the Alternative Investment Fund Manager Directive section in this Guide for further information.

For further information on unregulated funds, please refer to the Appleby “Guide to Unregulated Funds in Jersey”.

- **Very Private Funds**

A fund is classified as a “very private” fund where the fund vehicle is established for a small group of co-investors - not exceeding 15 in number - or for a single purpose, and there is no general offer of shares or units.

Very private funds only require consent from the JFSC to issue securities in the fund pursuant to the Control of Borrowing (Jersey) Order 1958 (**COBO**). It is therefore possible for a very private fund to be formed within a short period of time.

There is great flexibility in the way in which very private funds can be structured and operated and therefore they may be appropriate for single investor vehicles, joint ventures and co-investment structures.

Fund classes that are lightly regulated include COBO Funds and Private Placement Funds.

- **COBO Funds**

Private "COBO only" funds are funds which are offered to not more than 50 investors and are not listed on a stock exchange. They are subject to a degree of regulation by the JFSC but still only subject to regulatory control pursuant to COBO (as with very private funds).

The COBO consent issued to the fund will contain limited conditions as an on-going form of regulating the fund. Prior to issuing the COBO consent, the JFSC will undertake a preliminary review of the "promoter" to the scheme to ensure that it satisfies the JFSC's promoter policy as well as a review of the private placement memorandum.

- **Private Placement Funds**

A Private Placement Fund is a closed-ended investment fund established in Jersey or, if outside Jersey, managed in Jersey, participation in which is offered to not more than 50 potential investors each of whom is a Professional Investor, a Sophisticated Investor or an investment manager. A Private Placement Fund is regulated pursuant to the JFSC's Jersey Private Placement Fund Guide.

Private Placement Fund criteria include:

- Sophisticated Investors must make a minimum initial investment or initial investment commitment of £250,000 or currency equivalent.
- "Professional Investor" definition includes investment institutions and professionals and their family investment structures.
- A Jersey regulated administrator must provide at least registered office services to the fund company or limited partnership (where it is a Jersey company or limited partnership), to the trustee or manager (where it is a Jersey unit trust) and to the relevant Jersey based service provider (e.g. general partner or manager) where the fund vehicle itself is not established in Jersey.
- The same administrator must also provide support to the Private Placement Fund in relation to its anti-money laundering obligations.
- Two Jersey resident directors with appropriate experience, must sit on the board of the fund company if a Jersey company or the fund company or its manager if not a Jersey company.
- If the Private Placement Fund comprises one or more limited partnerships, whether established in Jersey or outside, it must have at least one general partner which is either a company incorporated in Jersey with two Jersey resident directors or a limited partnership that has at least one general partner, which is a company incorporated in Jersey with two Jersey resident directors.

Very private funds, COBO funds and private placement funds fall outside of the regulatory control of the Collective Investment Funds (Jersey) Law 1988 (**CIF**).

The fund's Jersey service providers (e.g. investment manager, general partner or trustee) may also benefit from regulatory exemptions under the Financial Services (Jersey) Law 1998 (**FS Law**) where each investor is either a professional investor or is investing at least £250,000 and, in each case, formally acknowledges a prescribed investment warning.

Regulated fund classes include Expert Funds, Listed Funds, Eligible Investor Funds, Unclassified Funds and Recognised Funds.

- **Unclassified Funds**

  Collective investment schemes, the units in which are to be offered to more than 50 investors or are to be listed and which are open-ended or operate on a principle of risk spreading, will be regulated by the JFSC under CIF unless they meet the criteria set out in the Unregulated Funds Order.

  Funds regulated under CIF are either unclassified funds (including sub-classes of expert funds and listed funds) or recognised funds. See below for further detail on recognised funds.

- **Expert Funds**

  It is possible for an unclassified fund to be subject to a fast track approval provided all of the investors qualify as expert investors. This type of fund is known as an “Expert Fund” and is regulated pursuant to the JFSC Expert Fund Guide.

  Expert investors must expressly acknowledge an investment warning and invest at least US$100,000, or equivalent currency.

  Fund criteria include:

  - The investment manager must be regulated in an OECD member state or in a jurisdiction with which the JFSC has entered into a memorandum of understanding or otherwise approved by the JFSC.
  - An expert fund is available only to expert investors.
  - The offer document for an expert fund must comply with certain content requirements.
  - The fund itself must be a Jersey company or have a Jersey general partner (if a limited partnership) or a Jersey trustee (if a unit trust) and the fund company, corporate general partner or corporate trustee should have at least two Jersey resident directors.
  - An expert fund must have a Jersey “monitoring functionary”, being either an administrator or a manager in Jersey to ensure compliance by the investment manager with the investment and borrowing restrictions of the fund.

- **Listed Funds**

  An unclassified fund which complies with the requirements of the JFSC Listed Fund Guide can also benefit from a lighter touch regulation. The JFSC Listed Fund Guide provides a fast track process for the establishment of corporate closed-ended funds which are listed on a recognised stock exchange or market.

  Fund criteria include:

  - The investment manager of a listed fund must be established in an OECD member state, or in a jurisdiction with which the JFSC has entered into a memorandum of understanding, or has otherwise been approved by the JFSC.
  - Listed funds must have at least two Jersey resident directors with appropriate experience and a Jersey “monitoring functionary”, being either an administrator or a manager in Jersey, to ensure compliance by the investment manager with the investment and borrowing restrictions of the fund.
  - The fund must be a closed-ended Jersey company.
  - There is no minimum subscription and listed funds are available to any investor category.

- **Eligible Investor Fund**

  An eligible investor fund is an unclassified collective investment fund, the interests in which are only available for subscription, purchase or exchange by an "Eligible Investor". The definition of Eligible Investor includes professional investors, individuals or entities who have agreed to pay consideration of not less than US$1 million for the subscription, purchase, exchange or acquisition of interests in the fund or individuals or entities whose property has a total market value of not less than US$10 million or the equivalent in another currency.

  Eligible Investors must sign and provide to the fund a declaration stating they have received, understood and accepted a prescribed investment warning.

  Fund criteria include:

  - The investment manager must be regulated in an OECD member state or in a jurisdiction with which the JFSC has entered into a memorandum of understanding or otherwise approved by the JFSC.
  - An eligible investor fund is available only to eligible investors.
  - The offer document for an eligible investor fund must comply with certain content requirements.
  - The fund itself may take any legal form permitted under Jersey law.
  - An eligible investor fund must have a Jersey "monitoring functionary", being either an administrator or a manager in Jersey to ensure compliance by the investment manager with the investment and borrowing restrictions of the fund.
  - Every eligible investor fund should have adequate arrangements for the safe custody of the property of the fund.

  The JFSC will regulate an unclassified fund and its promoter in accordance with its policies and the fund and promoter will need to ensure compliance with the same. Again, the JFSC will need to be satisfied as to the promoter's reputation, track record, experience, spread of ownership, and financial resources.

  The JFSC will also review the prospectus (or other offering documents), constitutional documents of the fund and any material agreements.

  While there is considerable flexibility as to how unclassified funds may be structured and operated, certain well-established standards form the basic benchmarks against which the JFSC evaluates unclassified funds. For example, applicable regulatory guidelines may be relaxed depending on the minimum investment level and whether the fund is open-ended, which is more regulated, or closed-ended. Where there is a lower minimum investment amount, there will be greater regulation by the JFSC. Where the fund is an open-ended fund, it will require a Jersey resident manager and custodian. However, for a closed-ended fund, no separate custodian is required.

  Further, the investment objectives and restrictions of the fund must be appropriate to the risk sensitivity of the type of investor for whom the fund is designed. Where appropriate, prominent investment warnings must be included in the fund prospectus or offering document.

- **Recognised Funds**

  Recognised funds are funds which wish to take advantage of Jersey's Designated Territory status under the United Kingdom Financial Services and Markets Act 2000 (**FSMA**) so that they may be marketed freely to the public in the United Kingdom under the FSMA, subject to compliance with United Kingdom regulatory marketing requirements. The requirements for the constitutional documents of such funds, their mode of operation, the categories of investments and assets they can acquire and the investment restrictions which they must follow are set out in detail in the Collective Investment Funds (Recognized Funds) (Rules) (Jersey) Order 2003, as amended, and the Collective Investment Funds (Recognized

Funds) (Permit Conditions for Functionaries) (Jersey) Order 1988, as amended. Funds within this category are the most highly regulated under Jersey law and are subject to a statutory compensation scheme for the protection of investors.

2. AUTHORISATION PROCEDURE

The authorisation procedure by the JFSC for unclassified funds (which are not expert funds, eligible investor funds or listed funds) is divided into three stages: an initial review stage during which the proposal as a whole is reviewed, the identity of the promoter is vetted and "in-principle" consent is obtained; the "document review" stage, and; the "licensing" stage.

It usually takes up to two weeks to obtain in principle consent for a fund where the promoter is not known to the JFSC. Once the JFSC has indicated in principle that the application may proceed, the draft fund documentation and its prospectus or other offering document must be prepared and submitted for the document review stage together with any other regulatory applications. The JFSC will indicate whether the documentation is satisfactory within two to four weeks and the regulatory permits, certificates, registrations and consents, as the case may be, are usually issued within a matter of a few business days thereafter.

There is a streamlined approval process for expert funds and the expert fund can be established within three business days of the filing of the complete application and supporting documentation with the JFSC. For further information, please refer to the Appleby "Guide to Expert Funds in Jersey".

As with the expert fund policy, there is a streamlined approval process for listed funds and the listed fund can also be established within a short period following the filing of the complete application and supporting documentation with the JFSC. For further information, please refer to the Appleby "Guide to Listed Funds in Jersey".

There is a streamlined approval process for private placement funds and the private placement fund can be established within three business days of the filing of the complete application and supporting documentation with the JFSC.

For eligible investor funds, the regulatory authorisation procedure is also streamlined and is a one stage process centring on filing an application and supporting paperwork with the JFSC certifying that the applicant fund meets the parameters set out for an eligible investor fund.

For Unregulated Funds there is no approval process and their establishment must simply be notified to the JFSC.

Approval for a Very Private Fund is obtained merely by submission of a letter of request.

3. REGULATION OF SERVICE PROVIDERS

Many of the funds which are established in Jersey are promoted by groups which do not have a physical presence in the Island. Accordingly, the funds are operated on a "fully administered basis" by existing banking and fund administration groups established in Jersey.

These service providers are regulated pursuant to the FS Law and should be registered to conduct "fund services business". The service providers should be managed and operated in accordance with the JFSC's Codes of Practice for Fund Services Business.

Promoters with no existing offices or staff in Jersey who wish to establish a presence in Jersey, so as to be able to administer their own fund or undertake investment management or other functions relating to the fund from Jersey, will need to obtain registration under the FS Law. If the new activity is to have staff or business premises in Jersey, consent will also be required under the Regulations of Undertakings and Development (Jersey) Law 1973, as amended.

4. **ALTERNATIVE INVESTMENT FUND DIRECTIVE**

With effect from 22 July 2013, the Alternative Investment Funds (Jersey) Regulations 2012 (**AIF Regulations**) apply to alternative investment funds (**AIFs**) and alternative investment fund managers in Jersey marketing AIFs within the EU or other EEA States pursuant to the Alternative Investment Fund Managers Directive.

Under the provisions of the AIF Regulations, AIFs will be required to apply for an AIF certificate from the JFSC and will be subject to Codes of Practice.

However, regulated funds are exempt from the requirement to have an AIF certificate provided the relevant fund has notified the JFSC of its intention to market within the EU or other EEA States and has received written consent to do so. It must still comply with the Codes of Practice applicable to AIFs though.

Funds which before 22 July 2013 were not collective investment funds for the purposes of the collective investment funds law in Jersey and which are to market within the EU or other EEA States must now obtain an AIF certificate from the JFSC or obtain the JFSC's written consent and comply with the AIF codes.

Where the assets under management are below €100m (or €500m, where the AIF is unleveraged, closed ended and with a lock in period of at least five years) the Codes of Practice will still apply but will have a limited application.

Unregulated funds which before 22 July 2013 were not collective investment funds for the purposes of and as defined in the collective investment funds law in Jersey but AIFs and which will be marketed in the EU or other EEA States, are required to convert to a regulated fund. The most appropriate regulated classifications for conversion are an Eligible Investor Fund or Listed Fund pursuant to the JFSC's Guide to Jersey Eligible Investor Funds and Guide to Listed Funds, respectfully.

5. **TAXATION OF FUNDS IN JERSEY**

Investment funds established in Jersey are not liable to any Jersey income tax burden. Distributions paid out to Jersey resident and non-Jersey resident investors are made on a gross basis without deductions in respect of Jersey tax. Investors will be taxed in accordance with the legislation applicable in the country in which they reside.

Collective investment funds are listed as International Service Entities 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. They do not have to charge Goods and Services Tax (**GST**) on their supplies and qualify for exemption from being charged GST.

There are no capital gains taxes or value added taxes or stamp duties in Jersey on securities transactions.

EU Savings Tax

Jersey is not subject to the EU Savings Tax Directive but has introduced mandatory automatic exchange of information regarding payments to EU resident individuals with effect from 1st January 2015 in respect of payments of interest and other similar income which may include dividends and distributions out of funds to individual beneficial owners resident in an EU Member State paid by a paying agent situated in Jersey. This supports Jersey's commitment to international standards on transparency and is in accord with the signing of agreements for the automatic tax information exchange with the USA and the UK.

Based on the provision 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 Chief Minister's Department of the States of Jersey, distributions by a Fund should not constitute interest payments for the purposes of the automatic exchange of information and therefore neither the Fund nor any paying agent appointed by it in Jersey should be obliged to provide information.

The above automatic exchange of information requirements do not apply to interest or other affected payments to bodies corporate or to non-EU resident individuals although Jersey has signed separate inter-governmental agreements with both the UK and the USA for automatic exchange of information.

FATCA / UK FATCA

On 22 October 2013 the Chief Minister of Jersey signed an intergovernmental agreement with the United Kingdom (**UK-Jersey IGA**) under which certain disclosure requirements will be imposed in respect of certain investors in a Jersey entity who are resident in the United Kingdom. The UK-Jersey IGA also contains details of an Alternative Reporting Regime for UK resident non-domiciled individuals. Subsequently, the Chief Minister of Jersey also signed a similar intergovernmental agreement with the United States on 13 December 2013 (**US-Jersey IGA**). The UK-Jersey IGA and the US-Jersey IGA were ratified and implemented into Jersey domestic law by regulations brought into force on 18 June 2014. The States of Jersey have published draft guidance notes on these regulations. Under the US-Jersey IGA, an entity will not be required to report information to the IRS under an FFI Agreement; rather, such entity will be required to report information in respect of direct and certain direct U.S. investors to the Comptroller of Taxes in Jersey. Failure to comply with the requirements of the regulations will result in financial penalties or other sanctions being imposed under Jersey law. For further information in relation to taxation of funds in Jersey, please contact Appleby.

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

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