



# Jersey Financial Services Commission

To: Chief Executives (or equivalent) of all Fund  
Functionaries, Jersey Finance Limited and all Jersey law  
firms

Our Ref.:

DJB/laf

4 February 2008

Dear Sir or Madam

## Overview of Securities Division

I am writing to all chief executives for two reasons. The first is to summarise the results of our supervision visits made over the last year, the key findings and our themes for supervisory visits in the coming year. The second is to set out the major objectives facing the Securities Division and the principal issues we shall be seeking to address. This is the first of what I hope will be an annual letter to keep you and your industry colleagues better informed of the Commission's work in the field of securities, and to give you greater insight of what to expect in the next 12 months.

## Key findings from 2007

During last year the Securities Supervision Team under Paul Le Marrec conducted a total of 27 visits on regulated entities locally of which 7 were focused visits and 6 themed. The balance was made up of discovery or pre-permit visits that are generally conducted whenever an entity applies for a functionary permit for the first time.

The theme of the visits for the first half of last year was information to investors and for the second half of the year was corporate governance.

In relation to the themed examinations, in general it appeared that communications with investors were both appropriate and timely. There were very few common findings across the entities reviewed, however one issue was a lack of clarity in disclosing to investors that in the event of a complaint they could address concerns to the Commission.

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INVESTOR IN PEOPLE



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In relation to corporate governance, it has to be said that a number of matters of some concern have emerged. Common findings included:

- Insufficient span of control and lack of attendance at meetings by directors
- No set agenda or formal meeting dates
- Board minutes lack detail
- No clear procedures to ensure the accountability and independence of board
- Alternate directors not approved by the Commission
- No or inadequate consideration of compliance, anti-money laundering, and operational and risk management issues

In addition, other findings common to several entities included:

#### Internal control systems

- Lack of specific fund procedures
- No documented business continuity plan
- No policy regarding conflicts of interest, especially for managed entities

#### Compliance function

- Compliance not reporting to the Board
- No designated Compliance Officer or the CO is not sufficiently independent
- Lack of formal compliance monitoring plan
- Failure to monitor and report on permit breaches

#### Outsourcing

- No written policy on outsourcing
- Failure to adhere to the Commission's guidelines
- No documented assessment of delegate
- Lack of evidence of ongoing monitoring

The Commission is also finding that a number of entities are failing to give notice of a change of directors. This is particularly apparent where the entities have a large number of staff and a significant volume of funds.



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### **2008 On-site Examinations**

In November 2007, the transfer of unclassified fund functionaries from the Collective Investment Funds (Jersey) Law 1988 to the Financial Services (Jersey) Law 1998 took place. Concurrent with this was the introduction of a new class of Fund Services Business – Manager of Managed Entity (“MoME”), and Codes of Practice for Fund Services Business.

During 2008, the themed examinations will be on Managers of Managed Entities. The Commission will also be considering corporate governance and compliance with the recently introduced Codes of Practice during all on-site examinations.

I should like though to take this opportunity to reiterate the Commission’s view, expressed repeatedly during the recent consultation process, that compliance with the Codes is not something that we expect to see in perfect state overnight. The rate of compliance with the Codes is, however, of importance and the Commission’s staff will seek a constructive and proportionate dialogue on this with you and your key staff during the examination process in 2008.

### **2008 Major Objectives**

The major objective for this year is preparation for the forthcoming assessment of the IMF. We understand this is now due to take place in October.

Most of the matters arising from the IMF’s previous visit relating to securities have now been resolved. Following the introduction last year of codes of practice for fund services business, there remain the codes for the funds themselves. A draft of these is in preparation and will be sent out for consultation in the usual course. Amendments have also to be made to the Commission’s policy on outsourcing. In addition, certain subordinate legislation has to be amended for consistency with recent law changes and to eliminate a number of other inconsistencies. For instance, the Collective Investment Funds (Unclassified Funds) (Prospectuses) (Jersey) Order 1995 currently only applies to open-ended companies and unit trusts, while the Companies (General Provisions) (Jersey) Order 2002 applies to closed-ended companies. The intention is to have just one Prospectus Order that will apply to all Jersey unclassified funds including funds established as limited partnerships and closed-ended unit trusts. The scope of this change has previously been the subject of consultation in 2007 and a draft of the Prospectus Order will be sent out for consultation in the near future.



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Certain of the Commission's guides also require amendment following the recent law changes, notably the Non-domiciled Fund Guide. A revised version of this is to be published shortly. Other areas where the Securities Division has had significant input include the funds specific section of the AML Handbook.

Preparing for the IMF assessment is not just about law changes, however, and it is likely to include a review of the Securities Division's policies and procedures in the areas of fund supervision and authorisation. Work is well under way to ensure that such policies and procedures are properly recorded and applied.

In addition to IMF related work, we are also considering the terms of the Unregulated Funds Order to be introduced later this month, and the means by which to update the rules relating to Recognized Funds.

In summary, there is no doubt this year will be a busy one and an important one with the IMF assessment barely eight months away. A good assessment is clearly an imperative in ensuring Jersey is seen in the best possible light, particularly when seeking equivalent status on fund related matters in the future. I am confident that by continuing to work together with you and your industry colleagues we can secure a favourable outcome for the Island in the funds sector.

Yours faithfully

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