



## Jersey Financial Services Commission

Chief Executive (or equivalent)  
Of all persons registered to conduct  
Fund Services Business under the  
Financial Services (Jersey) Law 1998

31 May 2012

Dear Sir or Madam

### **Collective Investment Funds (Certified Funds – Prospectuses) (Jersey) Order 2012**

The Collective Investment Funds (Certified Funds – Prospectuses) (Jersey) Order 2012 (the “**Order**”) was made on 17 May 2012 and is due to come into force six months after that date on 17 November 2012. Please [click here](#) for a link to the Jersey Legal Information Board website for a copy of the Order:

The purpose of this letter is to explain the Commission’s views on prospectuses for funds that were in draft form at the date the Order was made, and to comment on the level of detail required to be included within a prospectus where global sub-custodians are used within the same corporate group as the local custodian.

### **Background**

In June 2009, the Commission published Consultation Paper (No. 5 of 2009) (the “**2009 Consultation Paper**”) seeking views on proposals relating to the requirements for prospectuses of Jersey collective investment funds issued with a certificate under the Collective Investment Funds (Jersey) Law 1988 (the “**CIF Law**”).

The 2009 Consultation Paper proposed the introduction of a new Order for fund prospectuses. The proposals involved amending the Companies (General Provisions) (Jersey) Order 2002 (the “**CGPO**”) and revoking the Collective Investment Funds (Unclassified Funds) (Prospectuses) (Jersey) Order 1995 (the “**UFPO**”). The consultation period closed on 31 August 2009.

The objective of the exercise was to encompass the prospectus regulations relating to closed-ended and open-ended Jersey collective investment funds into one Order for the sake of convenience, and to extend the scope of regulation of prospectuses to all types of fund vehicle, to include closed-ended unit trusts and limited partnerships. In addition, the opportunity was taken to introduce a number of new provisions to ensure Jersey continues



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to meet international standards laid down for funds and fund services businesses by the International Organisation of Securities Commissions (“IOSCO”).

The Commission received extensive comments on the 2009 Consultation Paper from Jersey Finance Limited (“**Jersey Finance**”) and the Jersey Funds Association (“**JFA**”). Since the publication of the 2009 Consultation Paper, the Commission has undertaken numerous and very detailed discussions with both bodies in order to deal with issues arising. The decision to proceed with steps to establish the new requirements was communicated to Industry in a feedback paper issued by the Commission in August 2011. Further discussions were held with both Jersey Finance and the JFA to the point where both representative bodies are now content with the Order, subject to addressing the issue of draft prospectuses and the use of global sub-custodians.

### **Draft Fund Prospectuses**

During the consultation process issues arose concerning the position of prospectuses in draft form at the time the Order is made. Such prospectuses are usually issued to prospective investors in the fund in draft form in order to gauge interest and the level of likely investment in the fund before it is formally launched. It was felt that much time and expense will have been undertaken by a promoter in bringing forward a fund proposal to the draft prospectus stage in compliance with the CGPO or the UFPO, and in circulating the draft to prospective investors. In those circumstances it would be unreasonable to require the promoter to re-draft the final prospectus in order to conform to the terms of the new Order. The Commission shares this view. Accordingly, following further discussions with the JFA, the Commission agrees to set out its views on draft prospectuses in the context of the Order and to make the following concession.

The Commission will not require a prospectus to comply with the Order provided the following conditions are satisfied:

1. Evidence is provided to the Commission that a draft form of the prospectus was issued to prospective investors prior to the date which is one month after the Order is made.
2. The final prospectus for which approval is sought is in substantially the same form as that draft prospectus.
3. The prospectus complies with the requirements as to prospectus content which were applicable when the draft prospectus was issued.

The above concession has a limited time span. If a prospectus meeting the above conditions is not issued formally and in final form within one year from the end of the month after the Order is made, it must then comply with the Order in full.



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Once the prospectus is ready to be issued formally, if the Order is in force, consent of the Commission should be requested pursuant to Article 4(2) of the Order. At this stage please confirm that the previously stated conditions have been satisfied.

**Sub-custodians**

Paragraph 8(2) of the Schedule to the Order requires the prospectus to set out details concerning any delegates of a fund service provider in relation to the fund. Concern was expressed by the JFA that the obligation to do so might be unduly onerous where the delegates concerned were sub-custodians within the same corporate group as the local custodian to the fund. For a global fund the number of sub-custodians, and the details to be provided for each of them, could be significant.

The Commission has taken note of these concerns and wishes to give guidance on how the Order should be interpreted where sub-custodians are used. Where the local custodian is a member of an international corporate group, and the sub-custodians engaged by the custodian are also members of the same group, the Commission would not expect the prospectus to list or describe each sub-custodian separately. Reference can simply be made to the use of members of the same corporate group to act as sub-custodians.

Yours faithfully

A handwritten signature in black ink that reads "Roy Geddes".

Roy Geddes  
Deputy Director, Securities