Jersey Financial Services Commission

Eligible Markets

The following guidance is indicative of the matters a manager will need to take into account, using such information as is available to him and taking advice as appropriate, in order to be satisfied that, in broad terms, the market/exchange is fair, clean, liquid and orderly. However the items listed below are not necessarily exhaustive, nor are they in any particular order of relative importance. An overall view will need to be taken on each market/exchange.

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1 Introduction

1.1 These Guidance Notes are published by the Jersey Financial Services Commission (the **JFSC**) under Article 100 (4)(c) of the Collective Investment Funds (Recognised Funds) (General Provisions) (Jersey) Order 1988 as amended (the **GPO**), in order to assist managers of recognised funds in their duty of assessing whether a particular securities or derivatives market qualifies as an eligible market under Article 100(2) to (4) of the GPO. Interpretation of the GPO is ultimately a matter for the courts to determine and legal advice may therefore need to be obtained where appropriate.

1.2 The duty of the manager under Article 100(2) to (4) has to be discharged after consultation with the trustee/custodian. The duty of the trustee/custodian is twofold. Firstly to ensure, as previously, that adequate custody arrangements can be provided for the market in question. Secondly that the manager is exercising his duty in a manner which does not exceed the powers conferred on him by Part VI of the GPO. In the context of eligible markets this means that the trustee/custodian must be satisfied that the manager has taken all reasonable steps in arriving at this decision that the market in question is eligible.

1.3 It should be noted that under this Eligible Markets regime, transferable securities which are admitted to official listing in a member state remain 'approved securities'. It should also be noted that a Securities Fund is still permitted to invest up to 10% of the property of the fund in transferable securities which are not approved securities.

1.4 The Eligible Markets regime replaces the list of Approved Markets and approved options and futures markets with a duty on the manager to only invest or deal (for approved securities and derivatives purposes) in those other markets (on which transferable securities are not admitted to the official listing) in member states and markets in non-member states, which the manager considers meet the criteria required for securities markets. Those criteria are that the market must be regulated, operate regularly, be recognised and be open to the public. Furthermore, in exercising that duty the manager is required to have regard in particular to the need for adequate liquidity in the market and the ability to repatriate funds.

1.5 In the exercise of this duty the manager must use his integrity and competence in making a judgement as to what constitutes an 'Eligible Market'. This Guidance is intended to assist managers in that task.

2 Market Criteria

2.1 A market established in a member State on which transferable securities admitted to official listing are dealt in or traded will be a matter of fact. But in assessing whether any other securities market in a member State and securities market in non-member States, or any derivatives market/exchange is liquid and meets the four criteria described in paragraph 4, the manager will need to consider in respect of each criterion a number of features of the securities or derivatives market/exchange in question as appropriate. The particular characteristics of each market/exchange must be considered individually by the manager.

3 Liquidity and Repatriation of Funds

3.1 The manager is required to have regards in particular to the overall liquidity of the market/exchange; whether securities and/or derivatives can be bought and sold in a

reasonable time, at best execution and in adequate amounts; the procedures and restrictions (if they exist) on the repatriation of funds; all bearing in mind in particular the open-ended nature of a collective investment fund and the requirement of the GPO that the manager must at all times during the dealing day be willing to redeem units, including large redemptions, at a price arrived at under the GPO.

4 Regulated

4.1 The market/exchange must be subject to supervision by an authority which should be a statutory body, an agency of national or state Government, a department of such Government, or another body designated for the purpose by one of these. Additionally a manager will need to take into account:

4.1.1 The degree to which members are subject to formal supervision by the market/exchange or another body, and in particular whether that supervision include levels of capital;

4.1.2 The powers of the market/exchange and supervising body to intervene in members' business in the event of misconduct, financial difficulties or otherwise, including the power to reject applicants, terminate membership and delist a security;

4.1.3 The initial 'listing' standards and ongoing supervision of securities traded on the market/exchange including the publication of prospectuses and audited annual financial statements;

4.1.4 The everyday availability of current information about securities, derivatives, quotation, transactions, prices and spreads;

4.1.5 Requirements for the issue of contract notes (or their equivalents);

4.1.6 Whether there is a requirement for trade reporting to the market/exchange or other supervisory body of the securities/derivatives the manger is intending to buy;

4.1.7 Whether the clearance and settlement arrangements normally used for transactions on the market/exchange are prompt and secure;

4.1.8 The risk of loss in event of insolvency of a member of the market/exchange; and

4.1.9 How the market/exchange investigations and deals with complaints.

5 Operating Regularly

5.1 The market/exchange must have regular trading hours during which the investments listed or admitted to dealing on that market may be dealt in. Additionally the manager will need to take into account:

5.1.1 The availability and timing of price and volume information and the way it is distributed; and

5.1.2 In respect of securities the degree and speed with which, companies listed on the market/exchange must release price sensitive information, and the medium through which that information is distributed.

6 Recognized

6.1 The market/exchange must be recognised or registered as a market/exchange and/or self-regulatory organisation by an authority which should be a statutory body, or an agency of

national or state Government, a department of such Government or another body designated for the purpose by one of these.

7 Open to the Public

7.1 Investments listed or admitted to dealing on the market/exchange must be freely available for trading by the public directly, or through members of the market/exchange, during normal trading hours. Additionally, the manager will need to take into account the extent to which overseas investors are permitted to hold securities listed on the market/exchange.

8 General

8.1 In respect of any particular market/exchange it is the duty of the manager, after consultation with the trustee/custodian with regard to safe custody, to consider all the above characteristics of that market/exchange, or the lack of them, and any other characteristics which the manager considers relevant, in order to determine whether that market/exchange should be an 'Eligible Market' for approved securities and derivative investment purposes.

8.2 It is also the manager's duty, after consultation with the trustee/custodian with regard to safe custody, to continue to be satisfied that a market/exchange considered to be eligible continues to exhibit the characteristics which led to that decision and to ensure that there are no new events or characteristics which undermine that eligibility. If a market/exchange ceases to be eligible then investments on the market/exchange will need to be at such a level that the 10% limit of the fund allowed to be invested in unapproved securities overall is not exceeded, and/or no new derivative exposures created. Such an event will generally be treated as an inadvertent breach of the GPO (see Article 97).

9 Provision of Eligible Markets in the Prospectus and Trust Deed/Memorandum, Articles or Fund Rules

9.1 The GPO provides, in the interests of investor information and protection, that the Prospectus must contain a list or lists of the securities and derivatives exchanges/markets, falling within paragraph (2) of Article 100, that the manager has decided after consultation with the trustee/custodian are eligible, and which the Fund intends to invest through or deal on. The prospectus may include in the list, or refer to in general terms any markets in member states which are eligible by virtue of paragraph (1) of Article 100.

9.2 The GPO also now provides that the Trust Deed/Memorandum, Articles or Fund rules must contain a statement that the fund has, for 'Eligible Market' purposes, the power to invest in any of the securities and derivatives exchanges/markets which are eligible in relation to that fund.

10 Transitionals

10.1 Trust Deeds

In case of a unit trust the amendment to the GPO requires the provisions, referred to in above, to be included in the trust deed when the trust deed is next amended for any other reason. From the date of first amending of the Prospectus to comply with the eligible markets regime

until the time of next amending of the trust deed, the GPO provides that the deed will be taken to contain this provision.

10.2 Memorandum, Articles or Fund Rules

In the case of an open-ended investment company the amendment to the GPO requires the provisions, referred to above, to be included in the Memorandum, Articles or Fund Rules when the Memorandum, Articles or Fund Rules are next amended for any other reason. From the date of first amending of the prospectus to comply with the eligible markets regime until the time of next amending of the Memorandum, Articles or Fund Rules, the GPO provides that the Memorandum, Articles or Fund Rules will be taken to contain this provision.

11 Prospectus

11.1 Funds launched after the GPO has been amended will of course be required to provide in the prospectus the list or lists of those markets the manager has designated as 'eligible'.

11.2 For existing funds for the period of time between the coming into force of the amended GPO (i.e. 1 December 1995) and updating the prospectus (a maximum of twelve months), the old approved markets and approved options and futures market regime will continue in force for such a fund. Once a manager updates a prospectus, the trust deed, Memorandum, Articles or Fund Rules will be taken to include the provision set out in paragraph 15 above and the old approved markets and approved futures and options markets regime will cease to exist for that fund.

12 Meetings

12.1 Amending the deed/Memorandum, Articles or Fund Rules by introducing the statement, as referred to in paragraph 15 above, will not require a meeting of unitholders/shareholders. Similarly, amending the prospectus to introduce the lists of 'Eligible Markets' and which do not result in additions to the previous 'Eligible Markets' regime, does not require a meeting of unitholders/shareholders.

12.2 However, the introduction of a list of 'Eligible Markets' which, whilst remaining within the fund's investment objectives, results in a widening of the previous 'Approved Markets' or approved options and futures market regime, will require the approval of an extraordinary resolution at a meeting or unitholders/shareholders unless:

12.2.1 The trustee/custodian and manager have agreed in writing that the amendment is of minimal significance; or

12.2.2 The trustee/custodian and unitholders/shareholders have been informed in writing of the intended amendment, and at least 90 days have elapsed since the revised prospectus become available before the amendment is relied upon.

12.3 Similarly, once a list of 'Eligible Markets' has been introduced, the addition of other markets/exchanges to that list will require the same procedure as set out above to be carried out, regardless of whether those markets were included in the previous 'Approved Markets; or approved options and futures market regime.

12.4 The introduction of a list of 'Eligible Markets' or an addition of a market/exchange to an existing list which will result in a departure from the fund's stated investment objectives will

not be permitted until that departure has been approved by an extraordinary resolution at a meeting of holders called for that purpose.

12.5 Markets may be removed from the list without a meeting or 90 days' notice provided the decision is properly taken and notified to the trustees.

13 Other Regulatory Requirements

13.1 The initial introduction of a list or lists of 'Eligible Markets' in the prospectus is considered by the JFSC to be an alteration to the prospectus unless that list does not result in additions to the previous 'approved markets' or approved options and futures markets regime. Thereafter any additions to the list or lists will be regarded as an alteration to the fund regardless of whether the subsequent markets/exchanges were included in the previous 'Approved Markets' or approved options and futures market regime.

13.2 The new 'Eligible Markets' regime represents a change in regulatory approach by replacing prescriptive regulation with duty on managers. To underpin the new arrangements the JFSC, on visits to managers, and when inspecting reports and accounts, will pay particular attention to any new markets, designated by the manager as eligible, and will wish to see evidence of due deliberation by the manager in coming to and continuing with his decision.

13.3 In accordance with the written undertaking given by the JFSC to HM Treasury, the JFSC will endeavour to ensure that managers of Jersey recognized funds will only invest in markets if their investment advisers have already advised or managed schemes authorised by SIB to invest in the same market. HM Treasury have indicated that this is an interim arrangement until such time that sufficient experience has been gained in operating the eligible markets regime in the UK. They have also indicated their willingness to be flexible and modify this requirement if it were to be a problem for a particular fund manager in the future.

13.4 The JFSC considers that the above Guidance and procedures should enable managers to exercise their professionalism in a proper manner and that the additional flexibility should not lead to any lessening in the standards of investor protection.

13.5 Nevertheless the JFSC will keep the new system under close review and will modify the GPO and this Guidance as necessary in light of experience.