Jersey Financial
Services Commission

To: Chief Executives (or equivalent) of all Fund Services Businesses and to Jersey Finance Limited

Our Ref.: DJB/

3 March 2009

Dear Sir or Madam

2008 Overview of Securities Division

This letter summarises the results of our supervision visits made over the last year, the key findings and our themes for supervisory visits in the coming year. It also addresses the major objectives facing the Securities Division and the main issues we shall be seeking to address. Last year I explained our intention to write annually in order to keep you 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.

As you will be aware, the Division was very much involved in preparing for and participating in the IMF Financial Sector Assessment Program at the end of October/beginning of November. At the time of writing the results are still awaited. The assessment finally consisted of a review of our IOSCO self-assessment questionnaire, testing against that, and our AML/securities regimes. Indications received so far show that Jersey has high levels of observance of IOSCO principles in terms of both laws and regulations, and supervisory practice.

The Commission would like to express its thanks to all those in the funds industry who took part in the assessment, and to Industry as a whole for assisting with the large volume of law changes that were required to be introduced in short order in the year leading up to the assessment.

With regard to Recognized Funds, just before the IMF arrived the Commission was assessed last September by the UK Financial Services Authority in order to establish whether the recognized fund regime continued to meet equivalent UK standards. The results were very positive and Jersey's fund regime continues to uphold its equivalent status.

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Work was completed on the transfer of the regulation of fund functionaries from the Collective Investment Fund (Jersey) Law 1988 (the "CIF Law") to the Financial Services (Jersey) Law 1998 (the "FS(J)L"), which took effect on 13 November 2007. Phase II of the legal changes were introduced in February 2008.

With regard to the class of fund services business called "manager of a managed entity" or "MoME", the Commission has prepared a draft guidance note and sought the views of ten industry entities. The results of that survey and the guidance note will be available on the Commission's website shortly.

The Securities Information Unit was established in January 2008 to review accounts, compile statistics and manage various administrative processes for the Funds and IB Teams such as vetting personal questionnaires.

Unregulated funds were introduced in February 2008 with the general partner and trustee exemption implemented in August 2008. Where an unregulated fund is established as a unit trust or limited partnership, the trustee or general partner is no longer required to register under the Financial Services (Jersey) Law 1998 for fund services business. To date the Commission has received notification of 37 unregulated funds.

The Commission's Outsourcing Policy was amended to take into account changes in the regulatory environment arising from the IMF assessment in 2003, but the Commission has agreed to subject the Policy to further review in 2009.

Discussions continue on updating the Collective Investment Funds (Recognized Funds) (Rules) (Jersey) Order 2003 in consultation with Industry and the other designated territories.

On the staffing side, we are pleased to welcome the return of Mike Jones from his secondment with the Australian Securities and Investment Commission. Mike will be deputy director overseeing funds authorisation and supervision, while Darren Boschat will continue with the review of policies and procedures for funds.

In the light of world economic events, the Commission is committed to increasing its levels of fund supervision and to this end additional staff are being recruited. The aim is to increase the extent of interaction with regulated entities, to increase our in-depth knowledge of the industry and to shorten response times.

Key findings from 2008

The Fund Supervision Team conducted 19 visits to regulated entities in 2008. The first focused visit revealed a number of deficiencies both within the registered person itself but also with fund services businesses servicing the registered person. These visits gave rise to further investigations during the year requiring considerable resources from within the Commission. The investigations continue into 2009.

In the second half of 2008, PwC were appointed to undertake 15 reviews of MoMEs. Following the introduction of the Codes of Practice for Fund Services Business (the "FSB Codes") on the 14 November 2007 the Commission received submissions from industry concerning the extent to which the FSB Codes should apply to the activities of managed entities ("MEs"). As a result, the Commission agreed that the full detail of the FSB Codes need not apply to MEs in certain circumstances. Following the introduction of this regime, the Commission received several requests from industry for guidance on aspects of the MoME class of business and the manner in which the high level principles of the FSB Codes might be interpreted in practice.

As a result, the Commission issued a draft guidance note (the "Draft Guidance") to industry in September 2008. Prior to finalising the Draft Guidance, the Commission conducted a series of themed examinations to persons registered to act as MoME with the aim of better understanding current market practice in this area and, in turn, gauging the appropriateness of the guidance as drafted. The objectives of the themed examinations were:

- To gain an insight into the practical measures implemented by industry to demonstrate compliance with the FSB Codes
- To highlight areas of good practice or inconsistencies within the industry when addressing the areas of the FSB Codes or the Draft Guidance
- To identify areas of the FSB Codes or Draft Guidance where additional guidance or clarification is needed by industry.

Each examination resulted in a factual feedback report for the firm in question based on information obtained during these examinations. A key aim of the programme was to facilitate a collaborative process between industry representatives and the Commission resulting in clearer practical guidance being issued where deemed appropriate. The summary report, which will be published in the next day or so, sets out the key findings from the themed examinations as well as the comments received directly from practitioners, and highlights areas where additional guidance or clarification was requested. The guidance note will be issued at the same time.

2009 On-site Examinations

The recent turmoil on financial markets has yet again brought to light the importance of independent valuations of fund assets as well as the fair treatment of investors, not least in connection with fund suspensions. During the 2009 themed examinations the Commission's focus will be on all aspects concerning the valuation of assets. However, as usual, the Commission will also consider corporate governance and compliance with the codes of practice.

With the introduction of the FSB Codes over a year ago, and the publication of the Guidance Note for a Manager of a Managed Entity in Q1, the Commission would expect Industry to have moved further towards being largely compliant with the FSB Codes by the end of 2009.

2009 Major Objectives

In the letter last year I explained that, following the introduction of codes of practice for fund services business, there remained the codes for the funds themselves. These have now been prepared and will be issued for three months' consultation in the near future.

Last month saw the introduction of exemptions from registration for distributors based outside Jersey where they are licensed in their home jurisdiction and are only distributing UCITs or funds with equivalent status to our own recognized funds.

With regard to the Commission's policy on outsourcing, the Jersey Funds Association and Jersey Finance Limited have established a working party to review the policy and to recommend changes insofar as it applies to fund services businesses. You may recall that last year a number of relatively minor changes were made in order to meet IOSCO's standards and the Commission undertook to review the whole policy this year in conjunction with Industry.

Progress continues to be made with merging the two Orders dealing with prospectuses for Jersey certified funds, namely the Collective Investment Funds (Unclassified Funds) (Prospectuses) (Jersey) Order 1995 and the Companies (General Provisions) (Jersey) Order 2002.

Chief Executive (or equivalent)

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The intention is to have just one Prospectus Order, provisionally called the Collective Investment Funds (Certified Funds - Prospectuses) (Jersey) Order 200-, that will apply to all Jersey certified funds, including funds established as limited partnerships and closed-ended unit trusts. In future, the Companies (General Provisions) (Jersey) Order 2002 will apply only to non-fund public companies and the Collective Investment Funds (Unclassified Funds) (Prospectuses) (Jersey) Order 1995 will be revoked. A draft of the proposed new Order will be issued for consultation in the next few months.

The Securities Division will also be undertake a review of the COBO regime in consultation with Industry, and will continue to engage in discussions about updating the rules for recognized funds.

Other areas where the Securities Division will have significant input include the funds specific section of the AML Handbook, the draft Client Assets Order, the Non-domiciled Fund Guide and the Open-ended Collective Investment Fund Guide.

The Division will also be contributing to the response to the IMF assessment once received, and will look to implement any recommended changes.

In summary, last year was exceptionally busy with preparation for the IMF assessment, a number of significant law changes, and the introduction of the unregulated fund regime. Time this year will be spent in evaluating and commenting on the draft IMF assessment and preparing the Commission's response. From a regulatory perspective, while there is scope for improvement, it is encouraging to note from our on-site examinations that steady progress continues to be made in respective of compliance with the FSB Codes, and that the role of the MOME is being further clarified and understood with Industry.

Yours faithfully,

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