

# **CONSULTATION PAPER NO.9 2006**

## **LISTED FUNDS**

### **The proposed Jersey Listed Fund Guide**



# CONSULTATION PAPER

The Jersey Financial Services Commission (the “**Commission**”) invites comments on this consultation paper. Peggy Gielen at Jersey Finance Limited (“**JFL**”) is co-ordinating an Industry response that will incorporate any matters raised by local firms or entities. Her contact details are:

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It is the policy of JFL to make individual responses it receives available to the Commission upon request, unless a respondent specifically requests otherwise.

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**All comments should reach the Commission by 15 December 2006.**

**It is the policy of the Commission to make the content of all responses available for public inspection unless specifically requested otherwise.**

# CONSULTATION PAPER

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# 1 - EXECUTIVE SUMMARY

## OVERVIEW

- 1.1 In October 2006, the Commission announced that it was about to launch the Jersey Listed Fund Guide (the “**Guide**”). The Guide will introduce a streamlined process for authorising and establishing collective investment funds that are both listed on recognised exchanges and markets and are closed-ended (as defined in the Guide) to be known as Listed Funds.
- 1.2 The terms of the Guide have been discussed and agreed with Industry representatives under the auspices of JFL, and are now being presented for wider Industry consultation.

## WHAT IS PROPOSED AND WHY?

- 1.3 From the early part of this year, discussions have taken place with Industry on the future regulation of funds in Jersey. Throughout those discussions a recurrent request has been for a more streamlined authorisation regime for listed closed-ended funds. As things stand at present, if a listed closed-ended fund were to be submitted for approval, it would be dealt with as an unclassified fund, the Commission’s policy on promoters would apply, and it would take at least four weeks to process. Under the current proposal the fund would still be authorised by the Commission but this authorisation should be achieved within three working days of receipt of the application, subject to meeting the conditions contained in the Guide.
- 1.4 The key benefits of the proposals are the certainty that a guide of this nature gives to Industry when competing for new business and the speed in which applications can be processed, and. The Commission is satisfied the new category of fund proposed in this paper meets IOSCO’s Objectives and Principles which the Island is committed to matching.

## Principal features of Listed Funds

- 1.5 A Listed Fund will have the following features:
  - It must be closed-ended meaning that the fund does not permit redemptions at the option of investors.
  - It must be formed as a Jersey company. In time and depending upon demand, it may be possible to adapt the rules to suit other types of structure such as unit trusts and limited partnerships.

- It must be listed on exchanges and markets recognised by the Commission.
- Annual audited accounts must be supplied to the Commission within seven months of the year-end.
- There must be a Jersey-based monitoring functionary that will conduct due diligence on the investment Manager and monitor its actions.
- The board of directors of the fund company must have at least two Jersey resident directors, and a majority of the board must be independent.
- Risk disclosures are to be made in the offering document.
- Key records must be maintained in Jersey by the Jersey-based monitoring functionary in order to carry out its monitoring functions. Other relevant records should be obtainable on demand.
- The investment Manager must be of good standing, established in an OECD member state or in a jurisdiction with which the Commission has a Memorandum of Understanding, and must be regulated in that state or jurisdiction. Special provision is made where the Manager's activity is not a regulated activity in its home jurisdiction.
- The fund will receive fast-track consent under the Control of Borrowing (Jersey) Order 1958 as amended ('COBO').

1.6 The Guide lists those exchanges and markets recognised by the Commission as providing the requisite levels of investor protection.

1.7 Recognition of further exchanges and markets will not be made as part of the authorisation process for individual funds but may only be made following nomination by Jersey Finance, a review of the exchange's listing rules and after consultation with Industry.

1.8 The same scale of fees will apply to Listed Fund as for Expert Funds.

### **Controlling the structure of the fund**

1.9 The Jersey based monitoring functionary has responsibility for monitoring the actions of the investment Manager, with particular attention to any investment or borrowing restrictions applicable to the fund. The monitoring functionary will be the administrator or the Manager, and will require to have at least two Jersey resident directors.

## **Recognised Stock Exchanges and Markets**

1.10 For the purposes of the Guide, the Commission proposes recognising the stock exchanges of EU Countries, members of the European Free Trade Association who have ratified the European Economic Area Agreement (Iceland, Liechtenstein and Norway). It is also proposing to recognise stock exchanges recognised by the UK Financial Services Authority as:

- Recognised Investment Exchanges;
- Recognised Overseas Investment Exchanges; or
- Designated Investment Exchanges (includes the Channel Islands Stock Exchange)

1.11 There is also provision for the Commission to recognise for the purposes of the Guide any other stock exchanges or markets nominated by JFL. It is envisaged, for example, that the London based Alternative Investment Market (“AIM”) would fall into this latter category.

## **WHO WOULD BE AFFECTED?**

1.12 All persons who are likely to apply for a functionary permit pursuant to the Collective Investment Funds (Jersey) Law 1988 (the “Law”) to act in relation to closed-ended Jersey fund companies intending to list on a recognised exchange or market, and their professional advisors.

## 2 - CONSULTATION

- 2.1 The Commission has issued this consultation paper in accordance with Article 8(2) of the Financial Services Commission (Jersey) Law 1998, as amended, under which the Commission “*may, in connection with the carrying out of its functions - ....consult and seek the advice of such persons or bodies whether inside or outside the Island as it considers appropriate*”.
- 2.2 The Commission invites comments in writing from interested parties on the proposals included in this consultation paper. Where comments are made by an Industry body or association, that body or association should also provide a summary of the type of individuals and/or institutions that it represents.
- 2.3 To assist in analysing responses to the consultation paper, respondents are asked to:
- prioritise comments and to indicate their relative importance; and
  - respond as specifically as possible and, where they refer to costs, to quantify those costs.
- 2.4 Following analysis of the responses to this consultation paper the Commission will issue the Guide.
- 2.5 The Commission’s normal policy is to provide for a minimum consultation period of 12 weeks. However, due to the fact that the matters raised in this consultation paper have already been discussed and agreed with Industry representatives under the auspices of JFL, a truncated consultation period of one month for this wider Industry consultation exercise has been agreed with JFL.

## 3 - THE COMMISSION

- 3.1 The Commission is a statutory body corporate established under the Financial Services Commission (Jersey) Law 1998, as amended. It is responsible for the supervision of financial services provided in or from within Jersey.
- 3.2 The Commission's guiding principles require it to have regard to:
- the reduction of risk to the public of financial loss due to dishonesty, incompetence or malpractice by, or the financial unsoundness of, persons carrying on the business of financial services in or from within the Island;
  - the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;
  - the best economic interests of the Island; and, in pursuit of the above,
  - contributing to the fight against financial crime.

## 4 - PROPOSED LISTED FUND GUIDE

### INTRODUCTION

- 4.1 The Commission proposes introducing a new category of unclassified funds within the Jersey collective investment fund regime to be known as a Jersey Listed Fund. These funds will be subject to a fast-track authorisation process provided certain specified criteria are met, the main requirements being that the funds are closed-ended and will be listed on stock exchanges or markets recognised by the Commission for the purposes of the Guide.

### BACKGROUND

- 4.2 Discussions have taken place with JFL on the future regulation of funds in Jersey. Throughout those discussions a recurrent request has been for a more streamlined authorisation process in relation to listed closed-ended funds. Attention has focussed on closed-ended companies and in particular those that are listed on well-regulated exchanges and markets. Closed-ended funds are more likely to appeal to investors who can afford to forgo the right to redeem units on a regular basis in the manner associated with open-ended schemes. In those cases it is considered that the listing requirements would provide an additional level of investor protection which would enable the Commission to reduce its own regulatory requirements. In addition, by restricting the new type of funds to companies only, advantage could be taken of the obligation to comply with Jersey companies legislation. Importantly, however, such funds would still be authorised by the Commission, albeit on a fast-track basis.
- 4.3 In response to the discussions with JFL, the Commission is therefore willing to introduce a lighter touch regulatory regime for listed, closed-ended funds that are companies incorporated in Jersey.
- 4.4 There is international support for this position in the IOSCO Principles which note that “in some jurisdictions, closed-ended funds are not subject to special licensing or supervisory requirements and are, instead, regulated according to the terms of the relevant listing rules. If this is the case in the assessed jurisdiction, the situation should be duly accounted for, and detailed explanation and assessment of the listing rules applicable should be described.”
- 4.5 Closed-ended funds are not regulated as collective investment schemes in the UK. Following the problems with split-capital investment trusts (a particular type of closed-ended fund), the UK Treasury reviewed the regulation of these and concluded that reliance should continue to be placed on the FSA’s Listing Rules and on UK companies legislation.

- 4.6 At present it is anticipated that only funds in corporate form will be able to take advantage of the proposal. Such funds will be public companies to which the Companies (Jersey) Law 1991 (the “**Companies Law**”) will apply in full. The directors are responsible for the preparation of the company’s annual report and accounts which must be signed by one or more of them in accordance with the requirements of the Companies Law. The directors are also required to produce annual audited accounts and to file them with the company registrar within seven months of the year end. Importantly, directors of Jersey companies owe fiduciary and other duties of care to the company and can be sued by it for breach of those duties. The Companies Law therefore provides an additional level of regulation and redress available to investors.
- 4.7 In summary, there would appear to be international support for the view that the continuing obligations and market disciplines provided by listing rules (of an appropriate exchange or market) can offer a full or partial substitute for regulation of closed-ended investment vehicles. In addition, the Companies Law imposes conditions and regulations on the fund company itself which serve to protect the interests of shareholders or unit holders. Overall, therefore, the Commission is satisfied that the provisions of the Guide meet the standards required by its guiding principles.

## **DETAILED PROPOSALS**

- 4.8 A draft of the Guide is attached at Appendix B. This part of the consultation paper raises questions on particular aspects of the Guide on which your views are sought. Definitions set out in the Guide are adopted here.

### **Definition of a Listed Fund**

- 4.9 A Listed Fund is set out in the Guide as a collective investment fund that falls within Article 3 of the Law and is incorporated as a Jersey company.
- 4.10 Under the terms of the Guide, a Listed Fund must:
- 4.10.1 have a listing on a Recognised Stock Exchange or Market; and
  - 4.10.2 be a Closed-ended Fund.
- 4.11 The expression ‘Closed-ended Fund’ is defined in the Guide to mean a fund which is not open for redemptions at the option of the holders of securities. In the Commission’s view the definition of the expression is to be applied strictly as it is not intended to allow redemptions over any periods of time at the option of the unit holders.

**Is it acceptable, initially at least, for the proposed Listed Fund regime to be confined to funds structured as companies?**

**Do you agree with the definition of a ‘Closed-ended Fund’ for this purpose?**

**If not, please explain why you disagree and what alternative definition do you propose, giving reasons for your proposal?**

### **The Board of Directors of the Fund Company**

4.12 Paragraph 1.5 of the Guide requires a majority of the directors of the board of the fund company (including the Chairman) to be independent. This requirement is intended to reflect current views on good corporate governance in respect of funds and is in any event likely to be a requirement of the relevant listing authority of the exchange where the fund company is listed. It will be a matter for the board to determine whether a director meets the independence requirements established by the listing authority, and whether there are relationships or circumstances (including financial dependence on a director’s relationships with the Manager or Investment Manager of the fund) which are likely to affect, or could appear to affect, the director’s judgement. As a minimum condition of independence, the director should not be a past (within the last five years) or present employee of the Manager or Investment Manager or any of their Associates even if permitted by the relevant listing authority.

**Do you have any comments on the requirement for a majority of the directors to be independent?**

**Do you agree with the position that independence in this context should be assessed by reference to the test applied by the relevant listing authority instead of the Commission applying its own test?**

**If not, what other test would you wish to see applied?**

### **The Investment Manager**

4.13 In addition to the other criteria specified in the Guide, the Investment Manager must be established in an OECD state or jurisdiction or any other state or jurisdiction with which the Commission has entered into a Memorandum of Understanding (or equivalent) on investment business and collective investment funds. It must also be regulated in that state or jurisdiction in relation to managing or advising on investors’ funds. However, where it is proposed that the Investment Manager will act in relation to a property fund, or other type of fund in relation to which the activity of the investment Manager is not a regulated activity

in its home state or jurisdiction, and the Investment Manager is not otherwise regulated in its home state or jurisdiction, the Investment Manager must be either:

- 4.13.1 a subsidiary of a company that is regulated in relation to managing or advising on investors' funds in its home state or jurisdiction; or
- 4.13.2 a listed company with a minimum market capitalisation of at least US\$ 500 million (or its currency equivalent) or a subsidiary of a company with such capitalisation; or
- 4.13.3 a company or partnership with a trading record of at least five years, or whose Principal Persons, who form its span of control, can demonstrate relevant business experience for this period and possess relevant professional qualifications; or
- 4.13.4 in any other case, be granted approval to act in relation to the Listed Fund by the Commission, provided that the other requirements in paragraphs 1.6 and 1.7 of the Guide are met.

**Do you have any comments on the criteria for approving Investment Managers?**

**Do you consider the criteria to be acceptable in respect of those Investment Managers whose activities are not regulated in their home state or jurisdiction?**

- 4.14 As part of the application process for establishing a Listed Fund, the Investment Manager should confirm in writing to the Commission that it satisfies the requirements set out in paragraphs 1.6 and 1.7 of the Guide, and provide documentary evidence in relation to the requirements at paragraphs 1.6.4 and 1.6.5 (and if applicable 1.6.6). In addition, the administrator or Manager (as applicable) must counter-sign such confirmation, stating that it has carried out its own general due diligence against the Investment Manager and has no reason to believe that the statement of the Investment Manager is incorrect.
- 4.15 A footnote to paragraph 1.8 of the Guide makes clear that, in the Commission's view, it is implicit that the due diligence enquiries of an administrator or Manager can only extend to sources of enquiry available to it, and not to those beyond its reach. This should, however, be read in conjunction with the "Dear CEO" letter issued by the Commission on 29 June 2006, which sets out in more detail the Commission's expectations regarding due diligence on the Investment Manager. This letter is available on the Commission's website.

**Do you consider there is sufficient clarity about the due diligence responsibilities of the administrator or Manager in relation to the Investment Manager?**

**Administration/Management requirements and monitoring of the Investment Manager**

- 4.16 Every Listed Fund has to appoint an administrator and/or a Manager, which has at least two Jersey resident directors with appropriate experience together with staff and a physical presence in the Island.
- 4.17 Unless alternative arrangements are put in place by the board of directors of the fund company, the duties of the administrator or Manager (as applicable) shall include the responsibility for monitoring the Investment Manager. Where such alternative arrangements are to be put in place, the Commission should be approached in advance on a case by case basis.
- 4.18 Any delegation of the duties assumed by the administrator or Manager (as applicable) must be subject to and in accordance with the Commission's Policy Statement and Guidance Notes on Outsourcing.
- 4.19 The responsibility of the administrator or Manager (as applicable) in relation to the actions of the Investment Manager should be to take reasonable measures to satisfy itself that such actions do not breach the investment and borrowing restrictions applicable to the Listed Fund as set out in the Offer Document and the Constitutive Documents, and to promptly notify the board of directors of the fund company of any concerns it has in that regard so that appropriate action may be taken.
- 4.20 The administrator or Manager (as applicable) must maintain in Jersey sufficient records (in electronic or documentary form) to enable it to fulfil its monitoring functions, and should be able to obtain other relevant records on demand.
- 4.21 In addition to the monitoring function in 1.14 and 1.15 of the Guide, the board of directors of the fund company must undertake regular reviews of the investment strategy and risk profile of the fund and the investment performance of the Investment Manager. In addition, the board should regularly consider associated matters such as gearing, asset allocation, marketing/investor relations, peer group information and general Industry issues.

**Do you have any comments on the proposals for administration / management?**

**Do you have any comments on the proposed monitoring role of the administrator or Manager?**

## **Custody Arrangements**

- 4.22 The Guide requires all Listed Funds to have adequate arrangements for the safe custody of the property of the fund including, if applicable, prime brokerage arrangements. Such arrangements should be fully disclosed in the Offer Document.
- 4.23 Where a hedge fund appoints a prime broker, the prime broker must be part of a group with a minimum credit rating of A1/P1 or long term equivalent. Prior clearance from the Commission will be required for any prime broker with a rating below this level.

**Do you have any comments on the proposed custody arrangements?**

## **Accounts**

- 4.24 Paragraph 1.22 of the Guide requires accounts of the fund to be filed with the Commission within seven months of the year end. This reflects the position under the Companies Law under which accounts of public companies must be filed with the registrar of companies within seven months of the end of the financial period.

**Do you have any comments on the requirement to file accounts with the Commission within seven months?**

## **The Offer Document of the Fund**

- 4.25 The Guide requires that the Offer Document must comply with the Companies (General Provisions) (Jersey) Order 2002 (the "CGPO"), and confirmation of this it to be provided in the application form. In addition to the specific requirements stated in the CGPO, Article 12 of the CGPO provides that the Offer Document must contain any other material that investors and their professional advisers (if any) would reasonably require to enable investors to make an informed judgement about the merits of participating in the Listed Fund. The Commission considers the additional information set out in paragraphs 2.1.1 to 2.1.24 of the Guide to be material in this context.

**Do you have any comments on the additional information required to be disclosed in the Offer Document?**

## Investment Warning

4.26 Paragraph 2.4 of the Guide requires a listed fund to contain an investment warning in a prominent position in the Offer Document in substantially the following terms:

“This fund has been established in Jersey as a listed fund under a fast-track authorisation process. It is suitable therefore only for professional or experienced investors, or those who have taken appropriate professional advice.

Regulatory requirements which may be deemed necessary for the protection of retail or inexperienced investors, do not apply to listed funds. By investing in this fund you will be deemed to be acknowledging that you are a professional or experienced investor, or have taken appropriate professional advice, and accept the reduced requirements accordingly.

You are wholly responsible for ensuring that all aspects of this fund are acceptable to you. Investment in listed funds may involve special risks that could lead to a loss of all or a substantial portion of such investment. Unless you fully understand and accept the nature of this fund and the potential risks inherent in this fund you should not invest in this fund.”

**Do you consider this warning to be appropriate in the context of the criteria required for a Listed Fund, with particular regard to the references to professional or experienced investors?**

## Recognised Stock Exchanges and Markets

4.27 Appendix 2 of the Guide sets out the criteria by which stock exchanges and markets will be assessed for recognition by the Commission for the purposes of the Guide. It is intended the following will be recognised from the outset:

4.27.1 Stock exchanges of EU countries and members of the European Free Trade Association who have ratified the European Economic Area Agreement (Iceland, Liechtenstein and Norway);

4.27.2 Stock exchanges recognised by the UK Financial Services Authority as:

- Recognised Investment Exchanges;
- Recognised Overseas Investment Exchanges; or
- Designated Investment Exchanges (includes the Channel Islands Stock Exchange).

4.28 Any other stock exchange or market nominated by JFL and recognised by the Commission for the purposes of this Guide.

**Do you have any comments on the criteria for recognising exchanges and markets for the purposes of the Guide?**

**Do you have any comments on the list of exchanges and markets the Commission proposes to recognise from the outset?**

**With reference to the recognition of any future exchanges and markets under paragraph 4.29 above, the Commission envisages that AIM will be put forward for recognition together with any other markets meeting the standards of AIM. Do you have any comments on this proposal?**

## 5 COST BENEFIT ANALYSIS

- 5.1 There are a number of costs associated with the proposals contained in this consultation paper:
- 5.1.1 Fund functionaries and their advisors will incur costs in promoting the new type of fund and implementing procedures to administer the funds.
  - 5.1.2 The Commission's staff will spend time in training and implementing procedures for authorising the new funds, compiling statistics and maintaining records in respect of them.
  - 5.1.3 The Commission will also be involved in rolling out the new Guide to Industry, monitoring levels of interest, and keeping its use by Industry under review.
- 5.2 The benefits are as follows:
- 5.2.1 The new fund will ensure that Jersey remains competitive in the global funds marketplace by offering a new regime designed to receive a fast-track authorisation process which, at the same time, meets international regulatory standards.
  - 5.2.2 The certainty of a fast-track authorisation process will save time and resources for both Industry and the Commission.

## 6 - SUMMARY OF QUESTIONS

REFERENCE	QUESTION
Paragraphs 4.9 - 4.11	<p>Is it acceptable, initially at least, for the proposed Listed Fund regime to be confined to funds structured as companies?</p> <p>Do you agree with the definition of a 'Closed-ended Fund' for this purpose?</p> <p>If not, please explain why you disagree and what alternative definition do you propose, giving reasons for your proposal?</p>
Paragraph 4.12	<p>Do you have any comments on the requirement for a majority of the directors to be independent?</p> <p>Do you agree with the position that independence in this context should be assessed by reference to the test applied by the relevant listing authority instead of the Commission applying its own test?</p> <p>If not, what other test would you wish to see applied?</p>
Paragraph 4.13	<p>Do you have any comments on the criteria for approving Investment Managers?</p> <p>Do you consider the criteria to be acceptable in respect of those Investment Managers whose activities are not regulated in their home state or jurisdiction?</p>
Paragraphs 4.14-4.15	<p>Do you consider there is sufficient clarity about the due diligence responsibilities of the administrator or Manager in relation to the Investment Manager?</p>
Paragraphs 4.16-4.21	<p>Do you have any comments on the proposals for administration / management?</p> <p>Do you have any comments on the proposed monitoring role of the administrator or Manager?</p>

<b>REFERENCE</b>	<b>QUESTION</b>
Paragraphs 4.22-4.23	Do you have any comments on the proposed custody arrangements?
Paragraph 4.24	Do you have any comments on the requirement to file accounts with the Commission within seven months?
Paragraph 4.25	Do you have any comments on the additional information required to be disclosed in the Offer Document?
Paragraph 4.26	Do you consider this warning to be appropriate in the context of the criteria required for a Listed Fund, with particular regard to the references to professional or experienced investors?
Paragraphs 4.27-4.28	<p>Do you have any comments on the criteria for recognising exchanges and markets for the purposes of the Guide?</p> <p>Do you have any comments on the list of exchanges and markets the Commission proposes to recognise from the outset?</p> <p>With reference to the recognition of any future exchanges and markets under paragraph 4.29 above, the Commission envisages that AIM will be put forward for recognition together with any other markets meeting the standards of AIM. Do you have any comments on this proposal?</p>

# APPENDIX A

## LIST OF REPRESENTATIVE BODIES WHO HAVE BEEN SENT THIS CONSULTATION PAPER.

- Jersey Finance Limited
- Jersey Funds Association

# APPENDIX B



## JERSEY FINANCIAL SERVICES COMMISSION

### CLASSIFICATION GUIDE

**DRAFT 14 November 2006**

#### JERSEY LISTED FUND GUIDE

The purpose of this Guide is to define a Listed Fund and to set out the characteristics that such a fund would usually be expected to have. An essential feature of a Listed Fund for the purposes of this Guide is that it must be closed ended.

In all cases, applications for necessary permits and consents should be accompanied by a completed application form, a copy of which is set out at Appendix 1 to this Guide.

A Listed Fund meeting the criteria set out in this Guide may be established using a streamlined authorisation process, as described in Section 3 of this Guide. The Commission aims to authorise Listed Funds within 3 working days of receipt of an application provided the requirements set out in this Guide are complied with. If a Listed Fund does not meet such requirements, derogations and approval may be sought from the Commission on a case-by-case basis, however in such cases it may not be possible to authorise the fund within the stated time frame.

## SECTION 1

### THE STRUCTURE OF THE FUND

#### The Fund

- 1.1 A Listed Fund is a collective investment fund that falls within Article 3 of the Law and is incorporated as a company in Jersey.<sup>1</sup> It will be issued with one or more permits under the Law.
- 1.2 A Listed Fund must:
  - 1.2.1 have a listing on a Recognised Stock Exchange or Market<sup>2</sup>; and
  - 1.2.2 be a Closed-ended Fund.
- 1.3 The board of directors of the fund company is ultimately responsible for the management and control of the Listed Fund in accordance with and subject to the Constitutive Documents and applicable law and this ultimate responsibility cannot be delegated.
- 1.4 At least two Jersey resident directors with appropriate experience must be appointed to the board of the fund company.
- 1.5 A majority of the directors of the board of the fund company (including the Chairman) must be independent. It will be a matter for the board to determine whether a director meets the independence requirements established by the listing authority of the exchange or market where the fund company is listed, and whether there are relationships or circumstances (including financial dependence on a director's relationships with the Manager or Investment Manager of the fund) which are likely to affect, or could appear to affect, the director's judgement<sup>3</sup>. As a minimum condition of independence, the director should not be a past (within the last five years) or present employee of the Manager or Investment Manager or any of their Associates even if permitted by the relevant listing authority.

#### Investment Manager

- 1.6 The Investment Manager should be of good standing and in particular should:
  - 1.6.1 have had no disciplinary sanctions imposed on it by any supervisory authority or professional body in the previous five years;
  - 1.6.2 have no convictions for any offence under the legislation of any country relating to the conduct of financial services business or involving fraud or dishonesty or be the

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<sup>1</sup> The Commission will consider including other types of investment vehicle such as limited partnerships and unit trusts in a revised version of this Guide.

<sup>2</sup> The list of Recognised Stock Exchanges or Markets is given in Appendix 2. It will be a condition of the permits issued by the Commission that the fund is approved for admission to a Recognised Stock Exchange or Market prior to its launch.

<sup>3</sup> Where the rules of the exchange or market are silent on the matter of directors and independence, the directors should have regard to the principles set out in paragraph 1.5.

parent, subsidiary or an associated company of any company which has such a conviction;

- 1.6.3 be able to pay its debts as they fall due;
  - 1.6.4 be established in an OECD state or jurisdiction or any other state or jurisdiction with which the Commission has entered into a Memorandum of Understanding (or equivalent) on investment business and collective investment funds<sup>4</sup>;
  - 1.6.5 be regulated in that state or jurisdiction in relation to managing or advising on investors' funds, subject to 1.6.6;
  - 1.6.6 where it is proposed that the Investment Manager should act in relation to a property fund, or other type of fund in relation to which the activity of the investment manager is not a regulated activity in its home state or jurisdiction, and the requirement in 1.6.5 is not otherwise met by the Investment Manager, be either:
    - 1.6.6.1 a subsidiary of a company that is regulated in relation to managing or advising on investors' funds in its home state or jurisdiction;
    - 1.6.6.2 a listed company with a minimum market capitalisation of at least US\$500 million (or its currency equivalent) or a subsidiary of a company with such capitalisation;
    - 1.6.6.3 a company or partnership with a trading record of at least five years, or whose Principal Persons, who form its span of control, can demonstrate relevant business experience for this period and possess relevant professional qualifications; or
    - 1.6.6.4 in any other case, be granted approval to act in relation to the Listed Fund by the Commission, provided that the other requirements in paragraphs 1.6 and 1.7 are met;
  - 1.6.7 subject to 1.6.6.3, possess relevant experience in relation to managing or advising on investors' funds using similar strategies to those to be adopted by the Listed Fund;
  - 1.6.8 satisfy the Commission's general principles of corporate governance in relation to the span of control over a business as set out in Appendix 3, meeting the four-eyes principle if the Investment Manager cannot handle client monies, and the six-eyes principle if it can handle such monies.
- 1.7 In addition, no Principal Person of the Investment Manager shall:
- 1.7.1 have had any disciplinary sanctions imposed on him by any supervisory authority or professional body in the previous five years; or

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<sup>4</sup> A list of the OECD member states and those countries with which the Commission has entered into a Memorandum of Understanding (either on a bilateral basis or through the IOSCO Multilateral Memorandum of Understanding) covering investment business and collective investment funds may be obtained on the Commission's website, [www.jerseyfsc.org](http://www.jerseyfsc.org), under the 'Funds Business' tab.

- 1.7.2 have been convicted for any offence under the legislation of any country relating to the conduct of financial services business or involving fraud or dishonesty.
- 1.8 As part of the application process for establishing a Listed Fund, the Investment Manager should confirm in writing to the Commission that it satisfies the requirements set out in 1.6 and 1.7 above, and provide documentary evidence in relation to the requirements at 1.6.4 and 1.6.5 (and if applicable 1.6.6). In addition, the administrator or Manager (as applicable) must counter-sign such confirmation, stating that it has carried out its own general due diligence on the Investment Manager and has no reason to believe that the statement of the Investment Manager is incorrect<sup>5</sup>.
- 1.9 In the event that the Investment Manager does not fulfil these criteria (for example, a global institution may have committed a number of regulatory breaches in different jurisdictions) prior clearance should be sought from the Commission. An Investment Manager that has previously been granted consent to establish a Listed Fund may, in satisfaction of the requirement set out at 1.8, confirm in writing to the Commission that there have been no material changes to the information most recently provided to the Commission in that regard.
- 1.10 Where the administrator or Manager (as applicable) become aware of any other issue, in addition to those mentioned in paragraphs 1.6 and 1.7, which might cast doubt on the good standing of the Investment Manager (or any of its Principal Persons), they should bring the matter to the attention of the Commission. Relevant issues might for example include knowledge that the Investment Manager (or any of its Principal Persons) has been the subject of a formal investigation by a supervisory authority or professional body, even if this did not result in a disciplinary sanction.

*Note: If a distributor of a Listed Fund is not the Investment Manager or one of its Associates and it falls within one of the following definitions, the provisions of paragraphs 1.6 – 1.10 inclusive (with the exception of 1.6.7) shall apply to the distributor as if it were an Investment Manager:*

- The distributor is the driving force behind the Listed Fund such that, if the distributor were to withdraw from the proposal, the Listed Fund would not go ahead. Evidence of this would be, for example, the name of the Listed Fund being linked with the distributor.*
- The majority of investors going into the Listed Fund are put into the fund by the distributor or its agents.*

## **Administration/Management**

- 1.11 Every Listed Fund shall appoint an administrator and/or a Manager, which has at least two Jersey resident directors with appropriate experience together with staff and a physical presence in the Island.
- 1.12 Unless alternative arrangements are put in place by the board of directors of the fund company, the duties of the administrator or Manager (as applicable) shall include the responsibility for monitoring the Investment Manager set out in 1.14 and 1.15. Where such alternative arrangements are to be put in place, the Commission should be approached in advance on a case by case basis.

- 1.13 Any delegation of the duties assumed by the administrator or Manager (as applicable) must be subject to and in accordance with the Commission's Policy Statement and Guidance Notes on Outsourcing.

### **Monitoring of the Investment Manager**

- 1.14 The responsibility of the administrator or Manager (as applicable) in relation to the actions of the Investment Manager shall be to take reasonable measures to satisfy itself that such actions do not breach the investment and borrowing restrictions applicable to the Listed Fund as set out in the Offer Document and the Constitutive Documents, and to promptly notify the board of directors of the fund company of any concerns it has in that regard so that appropriate action may be taken.
- 1.15 The administrator or Manager (as applicable) must maintain in Jersey sufficient records (in electronic or documentary form) to enable it to fulfil its monitoring functions, and should be able to obtain other relevant records on demand.
- 1.16 In addition to the monitoring function in 1.14 and 1.15, the board of directors of the fund company must undertake regular reviews of the investment strategy and risk profile of the fund and the investment performance of the Investment Manager. In addition, the board should regularly consider associated matters such as gearing, asset allocation, marketing/investor relations, peer group information and general industry issues.

### **Custody Arrangements**

- 1.17 Every Listed Fund must have adequate arrangements for the safe custody of the property of the fund including, if applicable, prime brokerage arrangements. Such arrangements should be fully disclosed in the Offer Document.
- 1.18 Where a hedge fund appoints a prime broker, the prime broker must be part of a group with a minimum credit rating of A1/P1 or long term equivalent. Prior clearance will be required for any prime broker with a rating below this level.

### **The Name of the Fund**

- 1.19 The name of the Listed Fund must not be undesirable or misleading. If the name of the Listed Fund indicates a particular objective, geographic region or market, this should be reflected in its investment policy and in the manner in which the Listed Fund maintains the majority of its non-cash assets.

### **The Auditor**

- 1.20 An auditor must be appointed for a Listed Fund.
- 1.21 The auditor must have the same qualifications as are required under the Companies (Jersey) Law 1991 as amended.
- 1.22 The audited accounts must be filed with the Commission within seven months of the end of the Listed Fund's financial year.

## **Functionaries**

- 1.23 Any Jersey entity acting as a Functionary to a Listed Fund must be granted a permit under the Law by the Commission to do so and be managed and operated in accordance with any applicable Codes of Practice.

## **Borrowing and Gearing**

- 1.24 There are no restrictions imposed upon the level of borrowing or gearing adopted by a Listed Fund, provided that the approach to borrowing or gearing is clearly disclosed in the Offer Document. If the fund is permitted to borrow money in excess of 200% of the net asset value of the fund, full details of the manner in which the risk posed by such borrowing is to be managed must be set out in the Application Form submitted to the Commission. In such a case, the Commission reserves the right to undertake additional scrutiny.

## SECTION 2

### THE OFFER DOCUMENT OF THE FUND

#### General

- 2.1 The Offer Document must comply with the requirements set out in the CGPO and confirmation of this should be provided in the Application Form. In addition to the specific requirements stated in the CGPO, Article 12 of the Order provides that the Offer Document must contain any other material information that investors (including a person who cannot be expected to have any special knowledge of investments of the nature being offered) would reasonably require to enable investors to make an informed judgement about the merits of participating in the Listed Fund. The Commission considers the following additional information to be material:
- 2.1.1 the structure of the Listed Fund, including brief particulars of all documents constituting the Listed Fund and details of how to obtain complete copies of such documents;
  - 2.1.2 the Functionaries to the Listed Fund, including details such as their registered office, place and date of incorporation, details of share capital and the manner in which Functionaries may be appointed and replaced;
  - 2.1.3 biographical and other relevant information of directors, including current employment and relevant experience, other directorships, including of fund companies managed by the same Manager or Investment Manager, current or past employment or other material connections with the Manager or Investment Manager, length of service , qualifications and significant shareholdings;
  - 2.1.4 the identity of the independent directors (including the Chairman) determined in accordance with paragraph 1.5 , and, if relevant, the reasons why the Board has determined a director to be independent notwithstanding factors that might appear to impair that status;
  - 2.1.5 the policies and procedures for the appointment, and replacement of directors (including the Chairman);
  - 2.1.6 the manner in which the board of directors will operate, including how it will review the investment strategy and the risk profile of the fund and its investment performance, delegate or allocate operational responsibilities to the various Functionaries, including particularly the Manager, and will exercise oversight of the way in which these responsibilities are fulfilled;
  - 2.1.7 the structure, composition and summary terms of reference of board committees;
  - 2.1.8 any conflicts of interest that may exist in relation to the Listed Fund;
  - 2.1.9 the investment objective and investment management strategies to be employed by the Listed Fund (including the Listed Fund's approach to borrowing and gearing), and any investment or borrowing restrictions applicable to the Listed Fund;

- 2.1.10 the manner in which changes likely to have a material effect on investors may be made to the Listed Fund, noting that any changes that would be contrary to the terms of this Guide or contrary to any of the Commission's published policies applicable to Listed Funds will require the prior consent of the Commission;
- 2.1.11 the basis upon which dealing in the Listed Fund is to take place, including the expected level of activity on the secondary market;
- 2.1.12 the basis upon which any subsequent offerings in the Listed Fund may be made;
- 2.1.13 the basis upon which the value of the property of the Listed Fund is to be calculated;
- 2.1.14 the manner in which securities of the Listed Fund are to be created, issued and paid for;
- 2.1.15 the manner in which votes to be held by holders of securities will be conducted, and the manner in which meetings of holders of securities are to be convened and managed generally;
- 2.1.16 the fees, charges and expenses payable from the property of the Listed Fund;
- 2.1.17 the address at which the most recent audited annual report and accounts of the Listed Fund may be inspected;
- 2.1.18 the manner in which any voting rights in underlying assets held by the Listed Fund will be exercised;
- 2.1.19 the safe custody arrangements for the property of the Listed Fund including disclosure, if applicable, of prime broker arrangements;
- 2.1.20 in the case of umbrella structures, details of the "ring-fencing" of assets within sub-funds, or, if there is no such arrangement, a statement to the effect that "in the event of the Listed Fund being unable to meet liabilities attributable to any particular sub-fund out of the assets attributable to such sub-fund, the excess liabilities may be met out of the assets attributable to the other sub-funds" and an explanation of the manner in which such liabilities may be apportioned; and
- 2.1.21 statements to the effect that:

"Further information in relation to the regulatory treatment of Listed Funds domiciled in Jersey may be found on the website of the Jersey Financial Services Commission at [www.jerseyfsc.org](http://www.jerseyfsc.org)".

"The directors of the company have taken all reasonable care to ensure that the facts stated in this document are true and accurate in all material respects, and that there are no other facts the omission of which would make misleading any statement in the document, whether of fact or of opinion. The directors accept responsibility accordingly."

- 2.2 Nothing in any of the Constitutive Documents of a Listed Fund may exclude the jurisdiction of the courts of Jersey to entertain an action concerning the Listed Fund.

- 2.3 In the event that an Offer Document is issued in a language other than English, a copy of an English language version of the document must be lodged with the Commission. A statement should be included in both the original Offer Document and the translation stating which version will take precedence in the event of a dispute.
- 2.4 Any variations from the requirements imposed by the CGPO must be set out in the Application Form.

### **Investment Warning**

- 2.5 All Listed Funds must contain an investment warning in a prominent position in the Offer Document in substantially the following terms:

“This fund has been established in Jersey as a listed fund under a fast-track authorisation process. It is suitable therefore only for professional or experienced investors, or those who have taken appropriate professional advice.

Regulatory requirements which may be deemed necessary for the protection of retail or inexperienced investors, do not apply to listed funds. By investing in this fund you will be deemed to be acknowledging that you are a professional or experienced investor, or have taken appropriate professional advice, and accept the reduced requirements accordingly.

You are wholly responsible for ensuring that all aspects of this fund are acceptable to you. Investment in listed funds may involve special risks that could lead to a loss of all or a substantial portion of such investment. Unless you fully understand and accept the nature of this fund and the potential risks inherent in this fund you should not invest in this fund.”

### **Ongoing Requirements**

- 2.6 All material changes to information provided to the Commission in connection with a Listed Fund should be notified to the Commission as soon as possible and in any event within 28 days of such change taking place.
- 2.7 The Commission must be informed immediately if a Listed Fund is refused permission to be listed on a Recognised Stock Exchange or Market, or if such permission is revoked or if there is any other material event such as a suspension of trading in the securities of the Listed Fund or any investigation into the fund or any of its functionaries.
- 2.8 Any change to a Listed Fund that would not meet the criteria set out in this Guide or that would breach any permit condition applicable to that Listed Fund will require the prior consent of an officer of the Commission.

## SECTION 3

### AUTHORISATION OF THE FUND

- 3.1 In order to authorise a Listed Fund, the Commission must receive a completed copy of the Application Form.
- 3.2 The administrator or Manager (as applicable) shall:
  - 3.2.1 complete and sign a copy of the Application Form;
  - 3.2.2 arrange for such form to be countersigned on behalf of the board of the fund company;  
and
  - 3.2.3 forward a copy of the completed Application Form and the stated supporting documentation to the Commission.
- 3.3 Upon receipt of a completed Application Form, the Commission will take steps to authorise the Listed Fund and/or its functionaries as the case requires.
- 3.4 Applications will normally be processed within three working days except in cases where derogations are being sought. In the event that the Application Form states that the Listed Fund complies with the terms of this Guide, or that any deviation from the terms of this Guide has previously been agreed in writing by an officer of the Commission, the Commission will authorise the Listed Fund in reliance upon the Application Form. In other cases the Commission will discuss with the applicant those deviations that have not been previously agreed. However in those cases it may not be possible to meet the stated time frame.
- 3.5 The relevant permit application forms and fees shall be submitted at the time the application is made and prior to the issue of any permits and consents.
- 3.6 For an umbrella Listed Fund, an incorporated cell company, or a protected cell company which has already been granted permits under the Law, a sub-fund, incorporated cell or protected cell permit application and fee will need to be submitted for each additional sub-fund, incorporated cell or protected cell that is added prior to amended permits being issued. In the case of an incorporated cell company, the incorporated cell permit application form is to be used.

## DEFINITIONS

“Applicable Rules” has the meaning to be assigned to it in any Codes of Practice.

“Application Form” means the application form set out in Appendix 1 to this Guide.

“Associate” means any company which is a subsidiary or a holding body of that company or a subsidiary of any such holding body and any individual, partnership or other unincorporated association or firm which has direct or indirect control of that company and any company which is directly or indirectly controlled by any such individual, partnership or other unincorporated association, or firm. For these purposes, ‘holding body’ and ‘subsidiary’ shall have the meanings set out in the Companies (Jersey) Law 1991 as amended.

“CGPO” means the Companies (General Provisions) (Jersey) Order 2002 as amended from time to time.

“Closed-ended Fund” means a fund which is not open for redemptions at the option of holders of securities.

“Codes of Practice” means such Codes of Practice for Permit Holders as may from time to time be issued by the Commission and be in force pursuant to Article 15 of the Law or under the Financial Services (Jersey) Law 1998 as amended from time to time.

“Collective Investment Fund” has the same meaning as in Article 3 of the Law.

“Commission” means the Jersey Financial Services Commission.

“Constitutive Documents” means the principal documents constituting the Listed Fund, which may include:

- the memorandum and articles of association;
- the fund rules;
- the administration agreement;
- the investment management agreement;
- the investment advisory agreement;
- the management agreement, if applicable; and
- where the fund has a custodian in Jersey, the agreement appointing such a custodian.

“Functionary” means any of the functionaries referred to in Part 2 of the Schedule to the Law.

“Incorporated Cell Company” has the meaning set out in the Companies (Jersey) Law 1991 as amended.

“Investment Manager” includes an investment adviser and may be the Manager if no separate investment manager is to be appointed<sup>6</sup>.

“Law” means the Collective Investment Funds (Jersey) Law, 1988, as amended from time to time.

“Manager” means the functionary to whom the board of directors has delegated overall responsibility for the executive management of the fund.

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<sup>6</sup> In a fund of funds, the investment managers of the underlying funds will not be considered Investment Managers for the purpose of this Guide.

“OECD” means the Organisation for Economic Co-Operation and Development.

“Offer Document” means any prospectus or other offering document offering units in an Expert Fund for subscription, sale or exchange and includes any listing document.

“Outsourcing Policy” means the “Policy Statement and Guidance Notes on Outsourcing” issued by the Commission on 19 August 2002 (as amended).

“Protected Cell Company” has the meaning set out in the Companies (Jersey) Law 1991 as amended.

“Principal Person” has the meaning set out in the Law.

“Recognised Stock Exchange or Market” means an exchange or market listed in Appendix 2, as amended from time to time.

“Securities” refers to those securities issued by the Listed Fund representing the rights of holders with regard to the assets of the Listed Fund and which are units within the meaning of the Law.

“Holder of securities” means a person registered as the holder of securities in a Listed Fund.

“Umbrella” in relation to structure or fund means there is more than one class of redeemable shares or units and where the assets are held as a single pool.

**APPENDIX 1**

**Jersey Listed Fund  
Application Form for Authorisation**

[insert name of Fund] (the “Fund”)

<p>1. The Fund meets all of the criteria set out in the Listed Fund Guide published by the Jersey Financial Services Commission.</p>	
<p>2. The Fund meets all of the criteria set out in the Listed Fund Guide published by the Jersey Financial Services Commission save in the following respects, which have been previously approved in writing in respect of the Fund by an officer of the Commission.</p>	
<p>3. The Fund meets all of the criteria set out in the Listed Fund Guide published by the Jersey Financial Services Commission save in the following respects, which have not been previously approved in writing in respect of the Fund by an officer of the Commission.</p>	

Please tick one of the above boxes and complete as appropriate.

Please note that in giving replies to the attached Summary of Fund, the Commission would appreciate it if references to the Fund documents and to correspondence with the Commission could be kept to a minimum. Repeated cross-references in this manner increases the time taken to process the application and may result in approval being delayed.

## SUMMARY OF FUND

1	What name is proposed for the Fund?	
2	Which consent(s) under the Control of Borrowing (Jersey) Order 1958, as amended, will be sought?	
3	Please confirm that the Fund is a collective investment fund as defined in Article 3 of the Collective Investment Funds (Jersey) Law, 1988 .	
4	Please confirm that the CGPO and the other provisions of paragraphs 2.1 have been complied with. If derogations are required, please provide details.	
5	Will the Fund have a single class or multi class series or umbrella structure?	
6	Will the Fund be constituted as a Protected Cell Company (PCC) or an Incorporated Cell Company (ICC)?	
7	<p>Is the Fund a hedge fund?</p> <p>7.1 If the Fund is a hedge fund, what are the characteristics that support this description?</p> <p>7.2 If the Fund is a hedge fund and the applicant wishes to take advantage of the terms of paragraph 1.18, please confirm that a prime broker will be appointed that is part of a group with a minimum credit rating of A1/P1 or long term equivalent, and please provide details of the rating.</p>	
8	What will the Fund invest in?	
9	Please name the recognised exchange(s) or market(s) on which the Fund will be listed.	
10	Has an application to list the Fund been made? If so, what is the expected date of listing?	
11	What is the minimum investment level (if any)?	
12	What is the expected life of the Fund?	
13	Who will have the responsibility for monitoring the Investment Manager in accordance with paragraphs 1.14 and 1.15?	

14	Who will be responsible for the safe custody of the Fund's assets?	
15	Will an investment in the Fund involve any unusual risk factors? If so, please give details.	
16	Please list any conflicts of interest that may arise in respect of the Fund.	
17	Please confirm that a majority of the directors (including the Chairman) are considered to be "independent".	
18	What is the full legal title of the Investment Manager?	
19	What is the Investment Manager's registered office?	
20	Is the Investment Manager a regulated financial business? If so, please provide the name of the overseeing regulatory body, with a contact name (if possible).	
21	If the fund is a property fund or other type of fund in relation to which the activity of the Investment Manager is not regulated, please confirm that the Investment Manager meets one or more of the criteria set out in 1.6.6.1, 1.6.6.2 and 1.6.6.3, and specify which ones. If none of the criteria are met, and an approval is required under 1.6.6.4, please provide details.	
22	If the Investment Manager or its ultimate holding company has a website, what is the address?	
23	What is the maximum level of borrowing permitted by the Fund?	
24	If the maximum level of borrowing exceeds 200%, what procedures are in place to manage the risk to which this gives rise?	

**Functionaries<sup>7</sup> and others**

Type	Name	Domicile	Permit required under CIF?
Fund Company			
Manager			
Administrator			
Registrar			
Investment Manager			
Investment Adviser			
Distributor			
Subscription Agent			
Redemption Agent			
Premium Receiving Agent			
Prime Broker			
Policy Proceeds Paying Agent			
Purchase Agent			
Repurchase Agent			
Custodian			
Depository			
Auditor			
Any other functionary (please give title)			

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<sup>7</sup> It is not necessary that there be a functionary appointed for each of the positions set out in the list.

The following documents are included with this application:

1. The following permit application forms:
2. Cheque in the sum of £[ ] made payable to the Jersey Financial Services Commission.
3. Latest draft of the Offer Document.
4. In the event that the Offer Document is in a language other than English, a copy of an English language version of the document that is materially identical to the Offer Document.
5. A structure chart of the Fund.
6. The Investment Manager's confirmation with supporting documentation (if applicable), counter-signed by the administrator or Manager (as applicable).
7. Personal Questionnaires for directors or any other Principal Person as defined in Article 1 of the Law in respect of any new Functionaries based in Jersey who have not previously been approved. With regard to those directors and Principal Persons who have already received approval, the Commission requires to be notified of any material change to the information previously provided. Please refer to the Personal Questionnaire and Associated Guidance Notes on the Commission's website under the 'Funds Business' tab - 'Personal Questionnaire'.

## DECLARATION

I/We declare that the information given herein and in any documents included in support of this application is accurate, complete and correct to the best of my/our knowledge and belief.

For and on behalf of: \_\_\_\_\_, the administrator or Manager  
(as applicable) in relation to the Fund.

Signature: \_\_\_\_\_

Name (printed): \_\_\_\_\_

Position/title: \_\_\_\_\_

Date: \_\_\_\_\_

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I/We declare that we accept ultimate responsibility for the management and control of the Fund in accordance with and subject to the Constitutive Documents and applicable law and that proper systems and procedures will be implemented in respect of the Fund to meet the Commission's Policy Statement and Guidance Notes on Outsourcing.

For and on behalf of: \_\_\_\_\_, the board of directors of the  
Fund.

Signature: \_\_\_\_\_

Name (printed): \_\_\_\_\_

Position/title: \_\_\_\_\_

Date: \_\_\_\_\_

It should be noted that every permit under the Collective Investment Funds (Jersey) Law, 1988, and every Control of Borrowing consent is issued, inter alia, "**on the basis of the information provided...**" It is therefore important that any material changes prior to the launch of the Fund to answers supplied in this checklist are brought to our attention as soon as possible.

## Guidance Notes

1. In the majority of cases, this form will be completed and signed by the administrator or Manager (as applicable). However, the Commission may accept applications completed by another Functionary to the Fund, provided that functionary is an entity regulated under the Collective Investment Funds (Jersey) Law 1988 as amended and subject to any Codes of Practice issued and in force in relation thereto.
2. The form must be countersigned for and on behalf of the board of directors of the fund company.
3. In order to ensure that relevant consents and permits are issued as soon as possible, it is imperative that any proposed deviations from the Listed Fund Guide or any relevant Order applicable to Offer Document contents be set out in detail, complete with page references and (if applicable) references to any correspondence from the Commission in relation to such proposed deviations.
4. This form must be signed personally by the persons described in notes 1 and 2 above and not by their authorised representatives, lawyers or attorneys acting under a power of attorney.

## APPENDIX 2

### Recognised Stock Exchanges or Markets

The list of Stock Exchanges or Markets recognised by the Commission for the purposes of the Listed Fund Guide will be based on the following criteria:

1. Stock Exchanges of EU Countries and members of the European Free Trade Association who have ratified the European Economic Area Agreement (Iceland, Liechtenstein and Norway);
2. Stock Exchanges recognised by the UK Financial Services Authority as:
  - 2.1. Recognised Investment Exchanges;
  - 2.2. Recognised Overseas Investment Exchanges; or
  - 2.3. Designated Investment Exchanges (includes the Channel Islands Stock Exchange).
3. Any other Stock Exchange or Market nominated by Jersey Finance Limited and recognised by the Commission for the purposes of this Guide

For the purposes of paragraph 1, the relevant stock exchanges are as follows:

Austria:	Wiener Bourse
Belgium:	Euronext
Bulgaria	Bulgarian Stock Exchange (with effect from 1 January 2007)
Cyprus:	Cyprus Stock Exchange
Czech Republic:	Prague Stock Exchange
Denmark:	Copenhagen Stock Exchange
Estonia	Tallin Stock Exchange
Finland:	Helsinki Stock Exchange
France:	Euronext
Germany:	Deutsche Bourse
Greece:	Athens Stock Exchange
Hungary:	Budapest Stock Exchange
Iceland:	Iceland Stock Exchange
Ireland:	Irish Stock Exchange
Italy:	Borsa Italiana

Latvia:	Riga Stock Exchange
Lithuania:	National Stock Exchange of Lithuania
Luxembourg:	Bourse de Luxembourg
Malta:	Malta Stock Exchange
Netherlands:	Euronext
Norway:	Oslo Bors
Poland:	Warsaw Stock Exchange
Portugal:	Lisbon Stock Exchange
Romania:	Bucharest Stock Exchange (with effect from 1 January 2007)
Slovakia:	Bratislava Stock Exchange
Slovenia:	Ljubljana Stock Exchange, Inc
Spain:	Bolsas y Mercados Espanoles
Sweden:	Stockholmborsen
United Kingdom:	London Stock Exchange

For the purposes of paragraph 2, the following stock exchanges are recognised and approved:

Recognised Investment Exchanges:

London Stock Exchange plc

Recognised Overseas Investment Exchanges:

National Association of Securities Dealers Automated Quotations [NASDAQ]  
The Swiss Stock Exchange [SWX]

Designated Investment Exchanges:

American Stock Exchange  
Australian Stock Exchange  
Bermuda Stock Exchange  
Bolsa Mexicana de Valores  
Bourse de Montreal Inc  
Channel Islands Stock Exchange  
Chicago Stock Exchange  
Hong Kong Exchanges and Clearing Limited  
Johannesburg Stock Exchange

Korea Stock Exchange  
New York Stock Exchange  
New Zealand Stock Exchange  
Osaka Securities Exchange  
Pacific Exchange  
Philadelphia Stock Exchange  
Singapore Exchange  
Tokyo Stock Exchange  
Toronto Stock Exchange

For the purposes of paragraph 3, potential candidates under this heading include the Alternative Investment Market (“AIM”)

## APPENDIX 3

### Span of Control Requirements

A guidance note in relation to the “span of control” principle referred to at 2.7.6 can be found on the Commission website at:

[www.jerseyfsc.org/trust\\_company\\_business/guidance\\_notes/spanofcontrol.asp](http://www.jerseyfsc.org/trust_company_business/guidance_notes/spanofcontrol.asp) .

This Appendix summarises this principle for guidance purposes only. All Investment Managers are advised to read the guidance note and to discuss its contents with their Jersey legal adviser in order to ensure that they satisfy the principle.

In the context of the Investment Manager, the principle requires that the Investment Manager be able to demonstrate that its business is actively managed by two or three skilled, experienced individuals: two persons if the Investment Manager cannot handle client monies, three if it can.

The “four eyes” or “six eyes” are the principal persons of the business, who must be able to exercise executive power on behalf of the Investment Manager. These individuals must be actively involved in the day-to-day management of the business and able to exercise executive powers on behalf of the Investment Manager. Normally, such persons will be directors of the Investment Manager.

**They must be able to demonstrate independence, competence, experience and integrity and be able to effectively exercise management control over the Investment Manager. Together, the persons providing the “four or six eyes” should be able to demonstrate a balance of appropriate qualifications, skills and experience. As part of the independence requirement care must be taken where members of the same family form principal persons of the Investment Manager.**

Although the individuals making up the span of control do not need to be involved in the day-to-day execution of the Investment Manager’s policy, they should have day-to-day involvement in general management as well as knowledge of and influence upon the way in which the company’s strategy is being implemented through day-to day policy.

The Commission acknowledges there may be exceptional circumstances for allowing some degree of relaxation of the principles outlined above. Each request for a relaxation will be considered on its merits and on a case by case basis, however, it must be borne in mind that requests of this nature will not be granted lightly and that, once granted, are not to be treated as setting a precedent notwithstanding any similarity of circumstances. Furthermore, consideration of such requests may increase the time taken to process an application.