

CHANGES TO THE RULES ON JERSEY FUND PROSPECTUSES

OCORIAN BRIEFING

October 2012

Changes are being made to the regulation of prospectuses issued by Jersey "certified funds" - that is, collective investment funds established under the Collective Investment Funds (Jersey) Law 1988. (This includes Jersey expert funds, but not private schemes, "COBO-only" funds or unregulated funds.)

The changes are being introduced by the Collective Investment Funds (Certified Funds – Prospectuses) (Jersey) Order 2012 (the "New Prospectus Order") and existing legislation has either been amended or revoked to make way for the new order as it comes into force on 17 November 2012.

In some areas the New Prospectus Order will enhance disclosure requirements, bringing Jersey into line with the latest international standards as established by the International Organisation of Securities Commissions (IOSCO). It will also formalise the regulation of certain types of non-corporate certified funds which previously fell outside of the scope of existing regulation.

The New Prospectus Order should also simplify the regulatory review process in that all prospectus requirements for certified funds will be contained within a single order, rather than separate orders depending on the type of certified fund in question (which is the current position).

Who will the changes affect and how?

The New Prospectus Order will affect all certified funds that have issued or will issue a prospectus.

Every new certified fund will have to ensure that its prospectus meets with the content and disclosure requirements of the New Prospectus Order. Every certified fund which is actively marketed will also be required to revise its prospectus whenever a significant change occurs in the matters stated in the prospectus, or if any significant new matter arises which ought to be brought to investors' attention.

All existing prospectuses will need to be amended in order to bring them into compliance with the New Prospectus Order within one year of its commencement date, or earlier if a revision of the prospectus is triggered by a significant change or significant new matter as described above. However, closed-ended funds for which no further offer of units is to be made will not be required to update and amend existing prospectuses.

Who is responsible?

A person who has authorised the contents of a prospectus or any part of it is responsible for those parts authorised by him. Where a fund is established as a company, this would include, for example, the directors of the certified fund.

All persons responsible for a prospectus are potentially liable to any investor who has suffered a loss as a result of any untrue or misleading statement in the prospectus, or the omission from it of any matter which is required to be included by the New Prospectus Order.

What's new in the New Prospectus Order?

Some of the new features of the New Prospectus Order are listed below:

- Unit trusts, limited partnerships and limited liability partnerships, which were not formerly covered by existing regulation, are encompassed within the New Prospectus Order.
- As well as a corporate fund and its directors, the general partner of a certified fund established as a limited partnership must take responsibility for a prospectus, as must the trustee of a unit trust of a certified fund (unless the manager or investment manager/adviser takes responsibility instead).
- Funds (other than closed-ended funds which no longer offer units in relation to which, see above) are required to keep their prospectuses up to date in respect of significant changes.
- The Collective Investment Funds (Unclassified Funds) (Prospectuses) (Jersey) Order 1995 is being revoked and the Companies (General Provisions) (Jersey) Order 2002 is being amended so that it no longer applies to certified funds.
- There is a statutory obligation to disclose a variety of material matters including:
 - details of the constitution and objectives of the fund;
 - particulars of persons involved with the fund (for example, manager, custodian, investment adviser) and their delegates;
 - the characteristics of units in the fund;
 - details of valuation methods, fees, charges and distribution processes;
 - details of subscriptions, redemptions and other transactions in units of the fund;
 - details of the minimum subscription (if any) that must be achieved before units are issued and the possibility of over-subscription;
 - directors' interests and any conflicts of interest;
 - the risks associated with the fund;
 - details of when the fund's audited accounts and annual and interim reports will be published;
 - a feeder fund's prospectus must contain the information specified in the New Prospectus Order in respect of the fund to which the feeder fund is dedicated;
 - other material information; and

- various standard statements must also be included (including as to investors seeking advice, the fact that the Jersey Financial Services Commission is exempt from liability and who is responsible for the prospectus content).

The New Prospectus Order follows extensive industry consultation and comes into force on 17 November 2012.

KEY CONTACTS

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