

# GUIDE TO LISTED FUNDS IN JERSEY

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## PREFACE

This Guide is a summary of the law and procedures relating to listed funds in Jersey.

We recognise that this Guide will not completely answer detailed questions which clients and their advisers may have; it is not intended to be comprehensive. If any such questions arise in relation to the contents, they should be addressed to any member of the Funds and Investment Services Team in the Company Department, using the [contact information](#) provided at the end of this Guide.

### **Appleby**

Jersey

March 2015

## 1. INTRODUCTION

The Jersey Financial Services Commission (the **Commission**) introduced a regulatory classification for investment funds which are domiciled in Jersey and listed on an approved stock exchange (**Listed Funds**). This funds classification is another step in the deregulation and modernisation of this important sector of the Jersey investment funds industry while maintaining certain minimum standards and facilitates the speedy establishment of a wide range of alternative investment fund products as well as funds following more traditional investment strategies seeking to list on an approved exchange.

The Listed Fund classification sits alongside the Expert Fund (introduced in February 2004). The Expert Fund was the first step in a process of deregulation of the funds sector in Jersey and has re-invigorated the sector. In response to a substantial increase in investor demand for listed investment funds and to address a limitation of Expert Funds (as they are targeted only at sophisticated investors, the requirements of most stock exchanges that shares are freely transferable are incompatible with restrictions imposed to ensure only experts may invest) the Commission and the financial services industry in Jersey have co-operated to establish the Listed Fund classification.

The Listed Funds classification introduces a more streamlined authorisation process for the establishment of a collective investment fund in Jersey within the existing regulatory framework of the Collective Investment Funds (Jersey) Law 1988 (the **1988 Law**) where the fund meets the criteria set down for a Listed Fund. Those criteria are set out in a Classification Guide for Jersey Listed Investment Funds issued by the Commission and focus on three key requirements:

- the Listed Fund must have a listing on a recognised stock exchange or market (a list of such exchanges is set out in Appendix 1);
- the investment manager/investment adviser to be appointed for the Listed Fund must satisfy certain fit and proper criteria established by the Commission;
- the Listed Fund must be closed-ended: investors must not have the option to redeem their investment.

## 2. INVESTOR RESTRICTIONS AND RECOGNISED EXCHANGES

There are no investor restrictions or minimum investment limits imposed on investors in Listed Funds. A Listed Fund's offer document must include an investment warning to the effect that it is suitable only for professional or experienced investors or those who have taken appropriate professional advice.

It will be a condition of the certificate issued by the Commission that the Listed Fund is approved for admission to a recognised exchange or market prior to its launch. A list of recognised exchanges and markets is set out at Appendix 1 and includes, particularly, the London Stock Exchange Official List, the Alternative Investment Market of the London Stock Exchange, the Specialist Fund Market of the London Stock Exchange, Euronext and the Channel Islands Stock Exchange. Other exchanges and markets may be added from time to time.

## 3. LEGAL FORMS AND FUND STRUCTURES

Listed Funds must take the form of a limited company under the Companies (Jersey) Law 1991 as amended. Limited companies may issue par value or no par value shares, and may be protected cell companies or incorporated cell companies as well as traditional structures.

Listed Funds must be established as closed-ended vehicles (i.e. funds which are not open for redemption at the option of holders of securities).

Listed Funds can be set up as single class funds, umbrella funds, multi-class or common investment fund structures, feeder funds or fund of funds.

#### 4. INVESTMENT STRATEGIES AND RESTRICTIONS

The Listed Funds classification seeks to limit duplication of regulation by an approved exchange and the Commission and is not prescriptive as to any asset classes or investment techniques. It will therefore accommodate funds set up to follow orthodox investment strategies as well as private equity and hedge fund strategies. The offering document relating to the Listed Fund will set out details of the objective and investment strategies to be followed by the Listed Fund.

No investment or borrowing restrictions are prescribed for Listed Funds. Accordingly, there is considerable freedom for Listed Funds to tailor their own investment parameters and limitations in the context of the investment strategy and objective which the Listed Fund will follow and the risk appetite of participating investors, subject always to the requirements of the relevant exchange.

If the Listed Fund is permitted to borrow and/or gear itself above 200% of the net asset value of the Listed Fund, the Commission reserves the right to undertake additional scrutiny of the arrangement.

#### 5. INDEPENDENT DIRECTORS

A majority of the directors of the board of the fund company (including the chairman) must be independent. Independence will be determined in accordance with the requirements of the relevant stock exchange on which the fund is listed and is a matter for the board of directors of the Listed Fund. A director who is or has been (within the previous five years) an employee of the Manager or Investment Manager or any of their Associates will not be deemed independent.

#### 6. INVESTMENT MANAGER REQUIREMENTS

Certain confirmations have to be provided to the Commission regarding the status of the Investment Manager to be appointed for the Listed Fund. In this context the term Investment Manager also includes an Investment Adviser appointed to the Listed Fund. Typically the Investment Manager will be located outside Jersey and the confirmations focus on providing comfort to the Commission that the Investment Manager is in good standing and a fit and proper person.

The Investment Manager should:

- have had no disciplinary sanctions imposed on it by any supervisory authority or professional body in the previous five years;
- 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 parent, subsidiary or an associated company of any company which has such a conviction. If either of the above confirmations can only be given in qualified terms in relation to the Investment Manager, then advance disclosure of the matter should be made to the Commission so that the circumstances can be assessed by the Commission;
- be able to pay its debts as they fall due;
- be established and regulated in an OECD state or jurisdiction or a jurisdiction the subject of a Memorandum of Understanding (or equivalent) signed by the Commission. An exception applies to investment managers of property funds as to which see section 7 below;
- possess relevant experience in relation to managing or advising on the investment of assets using similar investment strategies to those to be adopted by the Listed Fund;
- satisfy the Commission's general principles of corporate governance relating to the minimum number of principals/executives controlling the activities of the Investment Manager. In this regard see the extract of corporate governance principles set out as Appendix 2 of this client guide.

In addition no Principal Person of the Investment Manager shall:

- have had any disciplinary sanctions imposed on him by any supervisory authority or professional body in the previous five years;
- have been convicted of any offence under the legislation of any country relating to the conduct of financial services business or involving fraud or dishonesty.

Where the Investment Manager is not the promoter of the Listed Fund, the entity which is the promoter or acting as principal distributor in connection with marketing of the Listed Fund must satisfy the same general status criteria as referred to above in connection with the Investment Manager.

The Commission has indicated that it will consider, on a case-by-case basis, applications from funds that engage no external investment manager but are in effect self-managed. Appleby advised on the first self-managed structure approved by the Commission.

## 7. PROPERTY FUNDS

The Commission has recognised that in some jurisdictions property investment is not within the financial regulatory regime and so has made a limited exception to the requirement described above that the Investment Manager must be regulated in its home jurisdiction in relation to managing or advising on investors' funds. To fall within the exception the Investment Manager must be:

- a subsidiary of a company that is regulated in relation to managing or advising on investors' funds in its home state or jurisdiction; or
- a listed company with a minimum market capitalisation of at least US\$500 million or its equivalent or a subsidiary of such a company; or
- a company or partnership with at least five years trading record, or whose principals, who form its span of control (see Appendix 2), can demonstrate relevant business experience for this period or possess relevant professional qualifications; or
- be granted approval by the Commission (such approval will not be granted if the other requirements as set out under section 6 above are not met).

## 8. JERSEY FUND SERVICE PROVIDER REQUIREMENTS

Every Listed Fund must appoint a Jersey-based administrator or manager which is regulated in the island and has a physical presence in Jersey. General administration duties in connection with the Listed Fund may be outsourced by Jersey resident providers to fund administrators outside Jersey subject to compliance with the Commission's regulatory requirements in connection with outsourcing arrangements. Alternatively, so long as a Jersey resident "monitoring functionary" has been appointed, the fund may appoint a fund administrator outside Jersey.

No valuation procedures have been prescribed by the Commission and accordingly NAV and share/unit price estimation and dealing adjustment procedures for hedge funds and fund of hedge funds can be accommodated.

At least two Jersey resident Directors with appropriate experience must be appointed to the fund board. The board of directors is required by the Commission to be ultimately responsible for the management and control of the Listed Fund and this responsibility cannot be delegated.

## 9. MONITORING OF INVESTMENT MANAGER

The Jersey-based administrator or manager (the monitoring "fund service provider") is obliged to undertake responsibility for monitoring the actions of the Investment Manager. The fund service provider must take reasonable measures to satisfy itself that the actions of the Investment Manager do not breach the investment and borrowing limits (if any) adopted for the Listed Fund and is also required to promptly notify the Fund board of directors of any concerns it has in connection with any such breaches so that appropriate action can be taken. The fund service provider will not however be

expected to assume responsibility for the Investment Manager's activities. It must maintain in Jersey sufficient records (in electronic or documentary form) to enable it to fulfil its monitoring functions and be able to obtain other relevant records on demand.

In addition, the Commission requires that the board of directors of the Listed Fund should undertake regular reviews of the investment strategy and risk profile of the fund and the investment performance of the Investment Manager as well as regularly considering associated matters such as gearing, asset allocation, marketing/investor relations, peer group information and general industry issues. We do not consider this regulatory requirement to be any greater than the duties imposed by law or the requirements of any relevant exchange.

#### 10. **CUSTODY/PRIME BROKER ARRANGEMENTS**

Every Listed Fund must put in place adequate arrangements for the safe custody of the property of the fund. Prior clearance for any deviation from this requirement would need to be negotiated with the Commission.

Prime brokerage arrangements are permissible for hedge funds. Full details of custody and prime brokerage arrangements must be set out in the offering documentation for the Listed Fund. Non-Jersey based prime brokers can be appointed for hedge funds. Such prime brokers must be part of a group which satisfies minimum credit rating requirements (A1/P1) or long term equivalent. Beyond this no further rules concerning prime brokerage are prescribed. There is no limitation that only prime brokers who segregate client assets may be used. There is no requirement to treat prime brokers as sub-custodians of the fund.

#### 11. **FUND SERVICE PROVIDER REGULATION IN JERSEY**

Jersey fund service providers appointed for a Listed Fund are required to be regulated in Jersey and subject to Codes of Practice which may be issued by the Commission from time to time.

Each Jersey fund service provider must be registered by the Commission under the Financial Services (Jersey) Law 1998, as amended. If not already registered, registration is applied for at the same time as application is made to the Commission for approval of the Listed Fund.

#### 12. **AUDIT REQUIREMENTS**

An auditor must be appointed for each Listed Fund. Annual audited reports and accounts will need to be prepared for the Listed Fund and sent to each investor.

#### 13. **AUTHORISATION PROCEDURE FOR LISTED FUNDS**

The regulatory authorisation procedure is a one-stage process centring on filing an application together with supporting paperwork (including a final or near final form version of the offering document) with the Commission certifying that the applicant fund meets the parameters set out for a Listed Fund (or highlighting any deviations from those parameters).

The monitoring fund service provider must sign the application submitted to the Commission and arrange for the application to be counter-signed on behalf of the Listed Fund.

In addition, the Investment Manager must confirm in writing to the Commission that it satisfies the criteria set out in connection with its role (which are summarised in sections 6 and 7 of this guide). The monitoring fund service provider must countersign the Investment Manager's submission confirming that it has carried out its own due diligence against the Investment Manager.

Upon receipt of a completed Application Form, the Commission will take steps to authorise the Listed Fund and/or its Fund Service Providers as the case requires.

#### 14. CONTENT OF OFFERING DOCUMENTS

In November 2012 the Collective Investment Funds (Certified Funds – Prospectuses) (Jersey) Order 2012 (the **Prospectus Order**) came into force. The Prospectus Order updated the previous prospectus regulations relating to closed-ended and open-ended Jersey collective investment funds in respect of which a certificate is issued under the Collective Investment Funds (Jersey) Law 1988, and extended the scope of regulation of prospectuses to all fund vehicles including closed-ended unit trusts and limited partnerships.

The offering document of the Listed Fund must comply with the content requirements set out in the Prospectus Order and the specific requirements of the Jersey Listed Investment Fund Guide. The listing rules of any relevant stock exchange must also be complied with.

In addition to the specific requirements described above, the offer document for a Listed Fund must contain all the information that investors and their professional advisers (if any) would reasonably require and would reasonably expect to have brought fairly to their attention in the offer document in order to make an informed judgement about the merits of participating in the Listed Fund and the extent of the risks accepted in so participating.

Each Listed Fund must include a prescribed investment warning in a prominent position in its offering document. The text of the investment warning is set out in Appendix 3.

#### 15. ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE

With effect from 22 July 2013, the Alternative Investment Funds (Jersey) Regulations 2012 (**AIF Regulations**) apply to alternative investment funds (**AIFs**) and alternative investment fund managers in Jersey marketing AIFs within the EU or other EEA States pursuant to the Alternative Investment Fund Managers Directive.

Under the provisions of the AIF Regulations, AIFs will be required to apply for an AIF certificate from the Commission and will be subject to Codes of Practice.

However, a regulated fund (i.e. any Jersey collective investment fund including Listed Funds) is exempt from the requirement to have an AIF certificate provided it has notified the Commission of its intention to market within the EU or other EEA States and has received written consent to do so. It must still comply with the Codes of Practice applicable to AIFs though.

Funds which before 22 July 2013 were not collective investment funds for the purposes of the collective investment funds law in Jersey and which are to market within the EU or other EEA States must now obtain an AIF certificate from the Commission or obtain the Commission's written consent and comply with the AIF codes.

Where the assets under management are below €100m (or €500m, where the AIF is unleveraged, closed ended and with a lock in period of at least five years) the Codes of Practice will still apply but will have a limited application.

#### 16. TAXATION OF LISTED FUNDS

Collective investment funds established in Jersey are zero-rated for the purposes of Jersey income tax and are therefore not subject to Jersey income tax on non-Jersey source income or, save in certain limited exceptions, its Jersey source income (rental income or property development profits arising in respect of Jersey *situs* real property or land). Distributions paid out of a Jersey resident fund to either Jersey resident or non-Jersey resident investors are made on a gross basis without deductions in respect of Jersey tax.

Listed Funds are listed as International Service Entities (**ISEs**) with the Jersey Comptroller of Income Tax and as such are exempt from registration for the purposes of the Goods and Services Tax (Jersey) Law 2007 and do not have to charge Goods and Services Tax (**GST**) on their supplies and qualify for exemption from being charged GST. In order to retain ISE status an annual fee of £200 is payable.

There are no capital gains taxes nor value added taxes nor stamp duties in Jersey on securities transactions.

### **EU Savings Tax**

Jersey is not subject to the EU Savings Tax Directive but has introduced mandatory automatic exchange of information regarding payments to EU resident individuals with effect from 1<sup>st</sup> January 2015 in respect of payments of interest and other similar income which may include dividends and distributions out of funds to individual beneficial owners resident in an EU Member State paid by a paying agent situated in Jersey. This supports Jersey's commitment to international standards on transparency and is in accord with the signing of agreements for the automatic tax information exchange with the USA and the UK.

Based on the provision of the bilateral agreements negotiated between Jersey and each of the EU Member States, the implementing legislation in Jersey and guidance notes issued by the Chief Minister's Department of the States of Jersey, distributions by a Listed Fund should not constitute interest payments for the purposes of the automatic exchange of information and therefore neither the Listed Fund nor any paying agent appointed by it in Jersey should be obliged to provide information.

The above automatic exchange of information requirements do not apply to interest or other affected payments to bodies corporate or to non-EU resident individuals although Jersey has signed separate inter-governmental agreements with both the UK and the USA for automatic exchange of information.

### **FATCA/UK FATCA**

On 22 October 2013 the Chief Minister of Jersey signed an intergovernmental agreement with the United Kingdom (**UK-Jersey IGA**) under which certain disclosure requirements will be imposed in respect of certain investors in a Jersey entity who are resident in the United Kingdom. The UK-Jersey IGA also contains details of an Alternative Reporting Regime for UK resident non-domiciled individuals. Subsequently, the Chief Minister of Jersey also signed a similar intergovernmental agreement with the United States on 13 December 2013 (**US-Jersey IGA**). The UK-Jersey IGA and the US-Jersey IGA were ratified and implemented into Jersey domestic law by regulations brought into force on 18 June 2014. The States of Jersey have published draft guidance notes on these regulations. Under the US-Jersey IGA, an entity will not be required to report information to the IRS under an FFI Agreement; rather, such entity will be required to report information in respect of direct and certain direct U.S. investors to the Comptroller of Taxes in Jersey. Failure to comply with the requirements of the regulations will result in financial penalties or other sanctions being imposed under Jersey law.

## **17. FUNDS CODES OF PRACTICE**

In April 2012, the Commission issued Codes of Practice applicable to all collective investment funds regulated under the 1988 Law (which includes Listed Funds). Please see the Appleby guide to these Codes of Practice.

For more specific advice on listed funds in Jersey, we invite you to contact one of the following:

### Jersey

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For the convenience of clients in other time zones, a list of contacts available in each of our jurisdictions may be found [here](#).

## APPENDIX 1

### APPROVED EXCHANGES AND MARKETS

At the date of this Guide, the Commission has confirmed that the following exchanges or markets are approved for the purposes of the Listed Fund category.

#### Within the European Union:

Austria:	Wiener Bourse
Belgium:	Euronext
Bulgaria:	Bulgarian Stock Exchange
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
Liechtenstein:	Liechtenstein 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
Slovakia:	Bratislava Stock Exchange
Slovenia:	Ljubljana Stock Exchange, Inc
Spain:	Bolsas y Mercados Espanoles
Sweden:	Stockholmborsen
United Kingdom:	London Stock Exchange

Alternative Investment Market (AIM)

Specialist Fund Market

**Outside the European Union:**

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

National Association of Securities Dealers Automated Quotations (**NASDAQ**)

New York Stock Exchange

New Zealand Stock Exchange

Osaka Securities Exchange

Pacific Exchange

Philadelphia Stock Exchange

Singapore Exchange

Swiss Stock Exchange (**SWX**)

Tokyo Stock Exchange

Toronto Stock Exchange

## APPENDIX 2

### SPAN OF CONTROL REQUIREMENTS

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 advisers in order to ensure 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.

**APPENDIX 3****INVESTMENT WARNING**

"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."