

GUIDE TO UNREGULATED FUNDS IN JERSEY

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PREFACE

This Guide is supplemental to the Appleby “Guide to Jersey Investment Funds” and relates to funds which meet the criteria to qualify as Unregulated Eligible Investor Funds or Unregulated Exchange Traded Funds as further set out in this Guide.

It is recognised 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 team, using the [contact information](#) provided at the end of this Guide.

Appleby

Jersey

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1. UNREGULATED ELIGIBLE INVESTOR FUND

An Unregulated Eligible Investor Fund is required simply to notify the Registrar of Companies in Jersey (the **Registrar**) of its establishment and to include a prescribed investment warning in its offering document.

An Unregulated Eligible Investor Fund is available only to eligible investors; these will be investors who invest a minimum of US\$1,000,000 (or currency equivalent) or who otherwise fall within the definition of eligible investor set out in the statutory instrument establishing the new exemption. The full definition of an Eligible Investor is included in Schedule 1. Eligible investors are deemed able to evaluate the financial risks of investing in the Unregulated Eligible Investor Fund and to bear the economic consequences of investment in the Unregulated Eligible Investor Fund including any possibility of the loss of the entire investment. Eligible investors in an Unregulated Eligible Investor Fund must acknowledge in writing receipt and acceptance of an investment warning in a prescribed form, a copy of which is included in Schedule 2.

An Unregulated Eligible Investor Fund may only list on a stock exchange which permits restrictions on transfers of interests in order to ensure that only eligible investors are permitted to invest in the fund.

2. UNREGULATED EXCHANGE TRADED FUND

An Unregulated Exchange Traded Fund is required simply to notify the Registrar of its establishment and to include a prescribed investment warning in its offering document, a copy of which is included in Schedule 3.

An Unregulated Exchange Traded Fund is not subject to the investor criteria or restrictions on transfer applicable to an Unregulated Eligible Investor Fund, however the fund must be closed-ended and the fund units must be listed only on one or more of the exchanges listed in Schedule 4 no later than 90 days after notice of the establishment of the fund is given to the Registrar (or such longer period as is approved by the Jersey Financial Services Commission (**Commission**)).

3. GENERAL

Unregulated Eligible Investor Funds may be open-ended or closed-ended, whilst Unregulated Exchange Traded Funds may only be closed-ended, but either class of fund may take any form recognised under the laws of Jersey including a company, unit trust or limited partnership. Limited partnerships shall have at least one general partner which is a Jersey incorporated company. Unit trusts shall have a trustee or manager which is a Jersey incorporated company.

As the Unregulated Eligible Investor Fund and the Unregulated Exchange Traded Fund are not regulated, there is no requirement for a Jersey resident administrator or any other Jersey resident functionary, nor is there any requirement for Jersey resident directors. In each case, however, the registered office of the fund that is a company must be provided by a person registered in Jersey to carry on fund services business.

It is a requirement that the Unregulated Eligible Investor Fund and the Unregulated Exchange Traded Fund must have procedures in place to ensure that the conditions applicable to the fund continue to be satisfied.

Unregulated funds are exempt from Jersey regulatory requirements provided they are not marketed in the EU or other EEA States. The Jersey Financial Services Commission, to meet its international co-operation obligations, will not authorise or give consent to the marketing of an unregulated fund in the EU or EEA States and unregulated funds which are to be so marketed must convert to regulated status. For further information, see Appleby's Guide to Regulation of Funds in Jersey.

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

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SCHEDULE 1**WHO IS AN ELIGIBLE INVESTOR?**

- “(1) For the purposes of this Schedule, an eligible investor in relation to a fund is a person who at the time of making in relation to the fund a subscription, purchase, or exchange, referred to in paragraph 4 or an acquisition referred to in paragraph 5 is a person specified in any of the clauses of sub-paragraph (2).
- (2) The following persons are specified for the purposes of sub-paragraph (1) –
- (a) a person who has agreed to pay consideration of not less than one million United States dollars, or the equivalent of that amount in another currency, for the subscription, purchase, exchange or acquisition;
 - (b) a person whose ordinary business or professional activity includes or could be reasonably expected to include –
 - (i) the acquisition, underwriting, management, holding or disposal of investments, whether as principal or agent, or
 - (ii) the giving of advice on investment;
 - (c) subject to sub-paragraph (3), an employee, director or shareholder of, or consultant to, a person specified in clause (b);
 - (d) a functionary in relation to the fund or an associate of such a functionary;
 - (e) subject to sub-paragraph (3), a person who –
 - (i) is an employee, director or shareholder of, or consultant to, such a functionary or associate, and
 - (ii) in making the relevant subscription, purchase, exchange or acquisition would acquire units in the fund as remuneration, or reward, as such an employee, director or shareholder or consultant;
 - (f) an individual whose property has a total market value of not less than 10 million United States dollars or the equivalent of that amount in another currency;
 - (g) a company, partnership, limited partnership or limited liability partnership, trust, or unincorporated association, in relation to which one or both of the following requirements is met –
 - (i) its property (or its property and that of its associates) has a total market value of not less than 10 million United States dollars or the equivalent of that amount in another currency,
 - (ii) every shareholder of the company, every partner of the partnership, limited partnership or limited liability partnership, every beneficiary of the trust or every member of the association (as the case requires) would, himself or herself, be an eligible investor in relation to the fund if he or she made in relation to the fund a subscription, purchase, or exchange, referred to in paragraph 4 or an acquisition referred to in paragraph 5;
 - (h) a wholly-owned subsidiary of a company that satisfies clause (g);
 - (i) a trustee of a trust established by a person who is specified in any of clauses (b), (c), (d), (f), (g) and (h) or is an employee, director, shareholder, or consultant, specified in clause (e)(i);

- (j) a trustee of a trust established for the benefit of –
 - (i) a person who is specified in clause (b) or (c) or is an employee, director, shareholder, or consultant, specified in clause (e)(i),
 - (ii) any one or more persons in any one or more of the following classes –
 - (A) the spouse or civil partner of a person specified in sub-clause (i),
 - (B) the issue of such a person,
 - (C) the dependants of such a person, or
 - (iii) a person specified in sub-clause (i) and any one or more persons in any one or more of the following classes –
 - (A) his or her spouse or civil partner,
 - (B) his or her issue,
 - (C) his or her dependants; or
 - (k) a person who in making the subscription, purchase, exchange or acquisition is acting as or for a public sector body.
- (3) For the purposes of –
- (a) sub-paragraph (2)(c), a reference to a shareholder of a person specified in sub-paragraph (2)(b) is a reference to a shareholder in respect of whom the person has signed a declaration that the investment is suitable for the shareholder and that the shareholder is able to bear the economic consequences of the investment, including the possibility of the loss of the entire investment; or
 - (b) sub-paragraph (2)(e), a reference to a shareholder of a functionary or associate specified in sub-paragraph (2)(d) is a reference to a shareholder in respect of whom the functionary or associate (as the case requires) has signed a declaration that the investment is suitable for the shareholder and that the shareholder is able to bear the economic consequences of the investment, including the possibility of the loss of the entire investment.
- (4) To calculate the total market value of an individual's property for the purposes of sub-paragraph (2)(f) –
- (a) add the market value of the movable and immovable property (in Jersey and elsewhere) of the individual (determined as if there were no liability in respect of any of that property) to the market value of the movable and immovable property (in Jersey and elsewhere) of the individual's spouse or civil partner (determined as if there were no liability in respect of any of that property);
 - (b) deduct any liability that is secured over that property of the individual by mortgage, charge or other security or encumbrance;
 - (c) deduct any liability that is secured over that property of the individual's spouse or civil partner by mortgage, charge or other security or encumbrance;
 - (d) deduct any liability of the individual that is not secured as referred to in clause (b); and
 - (e) deduct any liability of the individual's spouse or civil partner that is not secured as referred to in clause (c).

- (5) However, if the sum of the deductions that would be made under sub-paragraph (4)(c) and (e) exceeds the total market value of the movable and immovable property (in Jersey and elsewhere) of the spouse or civil partner, then –
- (a) treat the latter total market value as zero; and
 - (b) do not make the deductions referred to in sub-paragraph (4)(c) and (e).
- (6) A reference to property in sub-paragraph (4) or (5) shall not include the individual's principal residence, or the spouse's or civil partner's principal residence.
- (7) For the purposes of sub-paragraph (2)(g)(i), except in the case to which sub-paragraph (8) applies, to calculate the total market value of the property of a company, partnership, limited partnership or limited liability partnership, trust, or unincorporated association –
- (a) find the total market value of its movable and immovable property (in Jersey and elsewhere) as if there were no liability in respect of that property;
 - (b) deduct any liability that is secured over that property by mortgage, charge or other security or encumbrance; and
 - (c) deduct any liability of the company, partnership, limited partnership or limited liability partnership, trust, or unincorporated association, being a liability that is not so secured.
- (8) For the purposes of sub-paragraph (2)(g)(i), in the case where the total market value of the property of a company, partnership, limited partnership or limited liability partnership, trust, or unincorporated association, and of its associates, is to be calculated –
- (a) find the total market value of its and their movable and immovable property (in Jersey and elsewhere) as if there were no liability in respect of that property;
 - (b) deduct any liability that is secured over that property by mortgage, charge or other security or encumbrance; and
 - (c) deduct any liabilities of the company, partnership, limited partnership or limited liability partnership, trust, or unincorporated association, and of its associates, being liabilities that are not so secured.
- (9) For the purposes of this paragraph –
- “associate” means –
- (a) in relation to a company –
 - (i) a company that is a subsidiary or a holding body of the first-mentioned company or a subsidiary of any such holding body,
 - (ii) an individual, partnership, limited partnership or limited liability partnership, trust, or unincorporated association that has direct or indirect control of the first-mentioned company, or
 - (iii) a company that is directly or indirectly controlled by any such individual, partnership, limited partnership or limited liability partnership, trust, or unincorporated association; or
 - (b) in relation to an individual, partnership, limited partnership or limited liability partnership, trust, or unincorporated association, a company directly or indirectly controlled by the individual,

partnership, limited partnership or limited liability partnership, trust, or unincorporated association;

“holding body” has the same meaning as in the Companies (Jersey) Law 1991[13];

“public sector body” means –

- (a) the States or the government of any country (or territory) outside Jersey;
- (b) a local government of any part of a country (or territory) outside Jersey;
- (c) any international organization the members of which include Jersey or a member state of the European Economic Community; or
- (d) the central bank of any sovereign State, the European System of Central Banks or any other system of central banks;

“subsidiary” has the same meaning as in the Companies (Jersey) Law 1991;

“wholly-owned subsidiary” has the same meaning as in the Companies (Jersey) Law 1991.

7 Investment manager who invests in fund on behalf of non-eligible investors

- (1) This paragraph applies in the case where a person –
 - (a) applies for the subscription, purchase, or exchange, of units in the fund as an investment that is, directly or indirectly, for or on behalf of investors who are not eligible investors; or
 - (b) acquires units in the fund on a stock exchange or stock market as an investment that is, directly or indirectly, for or on behalf of investors who are not eligible investors.
- (2) In that case, a declaration referred to in paragraph 4(2)(b) in relation to the subscription, purchase or exchange, or a declaration referred to in paragraph 5(2)(c) in relation to the acquisition, being a declaration that is signed by the person referred to in sub-paragraph (1), is not complete unless it contains an additional declaration signed by the person that he or she is satisfied –
 - (a) that the investment is suitable for the investors referred to in sub-paragraph (1)(a) or (b), as the case requires; and
 - (b) that they are able to bear the economic consequences of the investment, including the possibility of the loss of the entire investment.”

SCHEDULE 2**WARNING TO ELIGIBLE INVESTOR IN AN UNREGULATED ELIGIBLE INVESTOR FUND**

"This fund has been established in Jersey as an unregulated eligible investor fund. It is only open to eligible investors (within the meaning of Schedule 1 to the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008).

This fund has not been approved or authorised by the Jersey Financial Services Commission. The fund is not regulated by the Jersey Financial Services Commission and is only suitable for professional or experienced investors, or those who have taken appropriate professional advice. Regulatory requirements, which may be seen as necessary for the protection of retail or non-expert investors, do not apply to unregulated funds.

By declaring that you have received this warning and understood and accepted its terms you are expressly agreeing that you are an eligible investor within the meaning of Schedule 1 to the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008. You are also expressly agreeing that you accept the risks in the investment accordingly.

If you are an investment manager acquiring units in this fund as an investment that is, directly or indirectly, for or on behalf of persons who are not eligible investors (within the meaning of Schedule 1 to the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008), by additionally declaring that you are satisfied that the investment is suitable for those investors and that they are able to bear the economic consequences of the investment, including the possibility of the loss of the entire investment, you are declaring that you have sufficient information in order to be satisfied as to the truth of that statement.

You are wholly responsible for ensuring that all aspects of this fund are acceptable to you (and to any persons referred to in the preceding paragraph). Investment in an unregulated fund may involve special risks that could lead to a loss of all or a substantial portion of that investment. Unless you (and those persons, if any) fully understand and accept the nature of this fund and the risks inherent in investing in this fund you should not invest in this fund."

SCHEDULE 3

WARNING ON OFFER DOCUMENT OF UNREGULATED EXCHANGE TRADED FUNDS

A prospectus relating to the fund must contain a prominent warning in the following words:

“This unregulated exchange-listed fund is not regulated in Jersey. The Jersey Financial Services Commission has neither evaluated nor approved:

- (a) the scheme or arrangement of the fund;
- (b) the parties involved in the promotion, management or administration of the fund;
or
- (c) this prospectus.

The Jersey Financial Services Commission has no on-going responsibility to monitor the performance of the fund, to supervise the management of the fund or to protect the interests of investors in the fund.”

SCHEDULE 4

EXCHANGES AND MARKETS

Australia	Australian Stock Exchange
Austria	Wiener Bourse
Belgium	Euronext
Bermuda	Bermuda Stock Exchange
Bulgaria	Bulgarian Stock Exchange
Canada	- Bourse de Montreal Inc - Toronto Stock Exchange
Channel Islands	Channel Islands Stock Exchange
China	Hong Kong Exchanges and Clearing Limited
Cyprus	Cyprus Stock Exchange
Czech Republic	Prague Stock Exchange
Denmark	Copenhagen Stock Exchange
Estonia	Tallinn 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
Japan	- Osaka Securities Exchange - Tokyo Stock Exchange
Latvia	Riga Stock Exchange
Lithuania	National Stock Exchange of Lithuania
Luxembourg	Bourse de Luxembourg
Malta	Malta Stock Exchange
Mexico	Bolsa Mexicana de Valores
Netherlands	Euronext
New Zealand	New Zealand Stock Exchange
Norway	Oslo Bors
Poland	Warsaw Stock Exchange
Portugal	Lisbon Stock Exchange
Romania	Bucharest Stock Exchange
Singapore	Singapore Exchange

Slovakia	Bratislava Stock Exchange
Slovenia	Ljubljana Stock Exchange, Inc
South Africa	Johannesburg Stock Exchange
South Korea	Korea Stock Exchange
Spain	Bolsas y Mercados Espanoles
Sweden	Stockholmborsen
Switzerland	Swiss Stock Exchange
United Kingdom	- London Stock Exchange (the Main Market, Alternative Investment Market (AIM), and Specialist Fund Market but not the Professional Securities Market)
United States of America	- American Stock Exchange - Chicago Stock Exchange - National Association of Securities Dealers Automated Quotations (NASDAQ) <ul style="list-style-type: none">- New York Stock Exchange- Pacific Exchange- Philadelphia Stock Exchange