

COLLAS DAY | COMMERCIAL

Funds update

January 2009

At a time when the global economy is battering down the hatches in preparation for a rough crossing in 2009, Guernsey continues in its efforts to enhance its competitive edge in the funds industry by introducing a number of key changes to its regulatory regime at the back end of 2008.

Fast-tracking of licence applications

A facility for fast-tracking of funds' approval first introduced in 2005 has been extended over the years. Qualifying Investor Funds and Registered Funds are processed by the Guernsey Financial Services Commission within a 3 working-day timeframe. A new fast track licensing procedure will now allow managers and general partners who need to be licensed under Guernsey law to service these funds to take advantage of a reduced application period of 10 working days. As always, conditions apply.

The new Registered Fund and more

The starting point for these changes was the culling of the principal piece of legislation which previously governed the establishment of closed-ended funds, the Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959, affectionately known as "COBO".

The more fundamental changes lie in the re-classification of all funds into authorised funds and registered funds for the purpose of regulatory treatment.

■ Authorised Funds

These are regulated and subject to continuing supervision by the GFSC. They fall into the category of open and closed-ended funds and are subject to the rules governing their respective class in the case of open-ended funds.

Closed ended authorised funds are now subject to the Authorised Closed-Ended Investment Schemes Rules, 2008.

■ Registered Funds

Open and closed-ended funds can now choose to be registered only. These funds are not authorised by the GFSC but are subject to supervision under the Registered Collective Investment Scheme Rules, 2008 and the Prospectus Rules, 2008.

Both authorised and registered funds are required to adopt a more structured approach to disclosures of material matters in their offer documents.

What's really changed?

From 15 December 2008, promoters have a choice as to whether a fund should be an authorised or a registered fund.

Fast tracking of fund applications will still be possible using either the Qualifying Investor Funds or Registered Funds route.

The more observant amongst you will have noticed that although the terminology remains largely unchanged, the concepts have slightly changed. "Registered fund" now refers to both a process and an unauthorised fund.

Choosing between an authorised and a registered fund - does it really matter?

To adopt a hackneyed expression, it depends! Investors may be looking for the extra comfort that a fund is subject to a higher degree of regulation. Distribution of an unregulated fund may not be permitted in certain jurisdictions. These are generally issues which arise outside of Guernsey. The GFSC has stated that the continuing supervision by the GFSC should enhance the ability of promoters to market authorised funds. It would be prudent to seek advice at an early stage in the place where the fund will be sold, on any restrictions which may apply or benefits that may be obtained.

If you have an existing fund, what should you do?

Election Day: 30 April 2009

As the legislation underpinning the approval of closed-ended funds has largely been swept away, grandfathering provisions apply so that existing closed-ended funds are deemed to be authorised funds unless an election is made to the GFSC to be registered.

Likewise open-ended funds seeking reclassification as registered funds should do so before election day.

So, if you do nothing prior to election day, your fund will be deemed to be an authorised fund.

Will it really make a difference?

Leaving aside transitional issues, this should simplify the funds process whilst increasing the options for promoters in choosing the level of regulation best suited to their market. Costs savings are also an immediate benefit.

We expect to see a shift to more registered funds in the high end market in line with the traditional approach of the industry to seek light-touch regulation for sophisticated investors. This could be seen as a bold move for Guernsey in continuing to move towards “grown-up” regulation, rather than the knee-jerk reaction of many regulators worldwide planning to introduce greater and more wide-ranging regulation. As experience has shown (most recently in the *Madoff* affair) regulation is often a poor substitute for proper due diligence.

And finally, UCITS III is (re)born in Guernsey after a lengthy gestation period

On 28 February 2008 the UK Financial Services Authority made certain changes to the UK Collective Investment Schemes sourcebook as a result of the liberalisation of rules under UCITS III. On 24 November 2008 the GFSC issued new rules for Class A funds in the form of the *Authorised Collective Investment Schemes (Class A) Rules, 2008*, consistent with changes made in the UK. The new rules are currently awaiting confirmation from the FSA and Treasury that they will be designated in the UK and therefore available for passporting of funds into the EU.

A summary of the principal changes brought about by the new rules and Guernsey’s UCITS III will follow in forthcoming e-bulletins.

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