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Investor Protection: Recent Developments In Guernsey

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Changing market conditions are having an obvious effect on the risk appetite of investors in selecting the right investments. Increasingly, investors are mindful of the level of regulation in place in the jurisdictions that investment vehicles are established. As a response to this, Guernsey finalised the detail on a number of measures that had been in the pipeline and, in late 2008, the following 3 new laws were enacted:

1. The Insider Dealing (Securities and Regulated Markets (Amendment) Order, 2008 (Insider Dealing Order);

2. The Protection of Investors (Market Abuse) (Bailiwick of Guernsey) Regulations, 2008 (Market Abuse Regulation); and

3. The Protection of Investors (Administration and Intervention) (Bailiwick of Guernsey) Ordinance, 2008 (Administration Ordinance).

Insider dealing

Insider dealing (or trading as it is also commonly known) is already an offence in Guernsey under The Companies Securities (Insider Dealing) (Bailiwick of Guernsey) Law, 1996 (Insider Dealing Law). The offence prohibits a person who has information as an insider (i.e. inside information) from dealing in securities to which that information relates. The offence is similar to the insider dealing prohibitions found in other common law jurisdictions.

The Insider Dealing Order revises the regulated markets to which the Insider Dealing Law applies. The changes essentially have the following effect:

- updating the UK securities and derivative markets to which the Insider Dealing Law applies;
- including the Channel Islands Stock Exchange (CISX) as a regulated market on which the offence of insider dealing can be committed. The CISX commenced operations in 1998 and as a result was not in existence at the time of the Insider Dealing Law; and
- updating the list of markets whose securities are subject to the insider dealing provisions of the Insider Dealing Law.

Market abuse

The Market Abuse Regulation operates to give effect to the provisions of the offence of market abuse under the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended (POI Law). Prior to

the enactment of the Market Abuse Regulation the Guernsey Courts did not recognise the offence of market abuse as the “regulated markets” and “qualifying investments” to which the offence were to apply had not been designated.

The Market Abuse Regulation now designates the following as “regulated markets” and “qualifying investments” for the purposes of the POI Law:

- “regulated markets” are those markets that are regulated markets for the purposes of the Insider Dealing Law (generally speaking all major stock exchanges); and
- “qualifying investments” are “controlled investments” as set out in the POI Law, (i.e. units in a collective investment scheme and most other forms of general securities and derivatives).

Administration Orders

The Administration Ordinance empowers the Guernsey Financial Services Commission (the “GFSC”) to apply to the Court for an administration order to be made in respect of regulated entities or applications to become regulated entities under the POI Law. The Ordinance provides that the GFSC has the right to apply to the Royal Court of Guernsey (Court) for an order that the relevant person’s affairs, business and property be managed for a specific period by a person appointed by the Court (administration order). Further key aspects of the Administration Ordinance are outlined below.

The Administration Ordinance provides that the Court will be able to grant an administration order where it is satisfied that the order would be for the protection of investors:

- in relation to an act or omission by a regulated entity; or
- where a regulated entity will or is likely to perform an act or omission that would cause undue risk to investors.

Alternatively, the Court has the power to issue an injunction restraining an act or omission if there is a reasonable likelihood that a regulated entity will perform an act or omission or continue an act or omission that would cause undue risk to investors.

Where a regulated entity is the subject of an administration order, all correspondence by it, including notice on their website, must disclose the name of the administration manager and that the relevant person’s affairs, business and property are being managed by the administration manager.

The administration manager has a wide scope of powers and may do all such things as may be necessary or expedient for the management of the affairs, business and property of the regulated entity. A non-exhaustive list of powers is provided in the Schedule of the Administration Ordinance. Of particular note is the administration manager's ability to appoint and remove a director from the regulated entity and to call a meeting of members or creditors.

Importantly, the GFSC is the only party that can apply for an administration order.

Improving from a good base

These developments add to Guernsey's already well-earned reputation as a jurisdiction with a modern, transparent and flexible regulatory regime while maintaining appropriate levels of investor protection.

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