



Jersey

COLLECTIVE INVESTMENT FUNDS (CERTIFIED FUNDS – PROSPECTUSES) (AMENDMENT) (JERSEY) ORDER 2013

Made

Coming into force

THE MINISTER FOR ECONOMIC DEVELOPMENT, in pursuance of Articles 14 and 20 of Collective Investment Funds (Jersey) Law 1988, and on the recommendation of the Jersey Financial Services Commission, orders as follows –

1 Collective Investment Funds (Certified Funds – Prospectuses) (Jersey) Order 2012 amended

In the Collective Investment Funds (Certified Funds – Prospectuses) (Jersey) Order 2012 –

(a) after Article 1 there shall be inserted the following Article –

“1A Certificate holders exempt from complying with Order in relation to marketing certain funds

A certificate holder shall not be required to prepare a prospectus in compliance with this Order if the certified fund being marketed is of the type described in Schedule 2.”;

(b) after Schedule 1 there shall be added the following Schedule –

“SCHEDULE 2

(Article 1A)

PROSPECTUS NOT REQUIRED FOR JERSEY ELIGIBLE INVESTOR FUND

1 Interpretation

In this Schedule –

‘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, separate limited partnership, incorporated limited partnership, 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, separate limited partnership, incorporated limited partnership, limited liability partnership, trust, or unincorporated association; and
- (b) in relation to an individual, partnership, limited partnership, separate limited partnership, incorporated limited partnership, limited liability partnership, trust, or unincorporated association, a company directly or indirectly controlled by the individual, partnership, limited partnership, separate limited partnership, incorporate limited partnership, limited liability partnership, trust, or unincorporated association;

‘holding body’ has the same meaning as in the Companies (Jersey) Law 1991;

‘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.

2 Jersey eligible investor fund

The type of fund to which Article 1A applies is a Jersey eligible investor fund, being a fund where units are available for subscription, purchase, or exchange, otherwise than by trade on a stock exchange or stock market and which may be acquired by subscription, purchase, or exchange only if –

- (a) the acquisition is by an eligible investor, within the meaning given in paragraph 3;
- (b) the eligible investor signs a declaration that he or she has received the warning set out in paragraph 5 and understands and accepts its terms in relation to the subscription, purchase or exchange; and
- (c) the declaration referred to in clause (b) is given to the certificate holder before the subscription, purchase or exchange is completed.

3 Meaning of ‘eligible investor’

- (1) For the purposes of paragraph 2, an eligible investor in relation to a fund is a person who, at the time of making a subscription, purchase, exchange or acquisition in relation to the fund, is any of the following persons –
 - (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) an employee, director or shareholder of, or consultant to, a person specified in clause (b);
 - (d) a fund service provider in relation to the fund or an associate of such a fund service provider;
 - (e) a person who –
 - (i) is an employee, director or shareholder of, or consultant to, such a fund service provider 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, 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, separate limited partnership, incorporated limited partnership, 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, separate limited partnership, incorporated 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, exchange or acquisition referred to in paragraph 2;
- (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.
- (2) For the purposes of sub-paragraph (1)(c), a reference to a shareholder of a person specified in sub-paragraph (1)(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.
 - (3) For the purposes of sub-paragraph (1)(e), a reference to a shareholder of a fund service provider or associate specified in sub-paragraph (1)(d) is a reference to a shareholder in respect of whom the fund service provider 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 Calculation of market value

- (1) The total market value of an individual's property for the purposes of paragraph 3(1)(f) is calculated as follows –
 - (a) there shall be added the market value of the movable and immovable property anywhere in the world 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 anywhere in the world of the individual's spouse or civil partner (determined as if there were no liability in respect of any of that property);
 - (b) there shall then be deducted –
 - (i) any liability that is secured over the property of the individual by mortgage, charge or other security or encumbrance,
 - (ii) any liability that is secured over the property of the individual's spouse or civil partner by mortgage, charge or other security or encumbrance,
 - (iii) any liability of the individual that is not secured as referred to in sub-clause (i), and
 - (iv) any liability of the individual's spouse or civil partner that is not secured as referred to in sub-clause (ii).
- (2) If the sum of the deductions that would be made under sub-paragraph (1)(b)(ii) and (iv) exceeds the total market value of the movable and immovable property (anywhere in the world) of the spouse or civil partner, then –
 - (a) the total market value of the spouse's or civil partner's property shall be treated as zero; and
 - (b) the deductions referred to in sub-paragraph (1)(b)(ii) and (iv) shall not be made.
- (3) A reference to property in sub-paragraph (1) or (2) shall not include the individual's principal residence, or the spouse's or civil partner's principal residence.
- (4) The total market value of the property of a company, partnership, limited partnership or limited liability partnership, trust, or unincorporated association for the purposes of paragraph 3(1)(g)(i), except in the case to which sub-paragraph (5) applies, shall be calculated by –
 - (a) finding the market value of its movable and immovable property, anywhere in the world, as if there were no liability in respect of that property; then
 - (b) deducting –

- (i) any liability that is secured over that property by mortgage, charge or other security or encumbrance, and
 - (ii) any liability of the company, partnership, limited partnership or limited liability partnership, trust, or unincorporated association, being a liability that is not so secured.
- (5) 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, the value shall be calculated by –
 - (a) finding the market value of its and their movable and immovable property (anywhere in the world) as if there were no liability in respect of that property; then –
 - (b) deducting –
 - (i) any liability that is secured over that property by mortgage, charge or other security or encumbrance, and
 - (ii) 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.

5 Investment warning to be given

The investment warning referred to in paragraph 2(b), must be in, or substantially in, the following terms –

This fund has been established in Jersey as a Jersey eligible investor fund. It is only open to eligible investors who fall within the definition of ‘eligible investor’ within the meaning of paragraph 3 of Schedule 2 to the Collective Investment Funds (Certified Funds – Prospectuses) (Jersey) Order 2012.

This fund is only suitable for professional or experienced investors, or those who have taken professional advice. Regulatory requirements, which may be seen as necessary for the protection of retail investors or those who are not eligible investors, do not apply to Jersey eligible investor 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 paragraph 3 of Schedule 2 to the Collective Investment Funds (Certified Funds – Prospectuses) (Jersey) Order 2012. You are also expressly agreeing that you accept the risks in the investment accordingly.

If you are an investment manager acquiring an interest 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 paragraph 3 of Schedule 2 to the Collective Investment Funds (Certified Funds – Prospectuses) (Jersey) Order 2012, 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 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 a Jersey eligible investor 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.”.

2 Citation and commencement

This Order may be cited as the Collective Investment Funds (Certified Funds – Prospectuses) (Amendment) (Jersey) Order 2013 and shall come into force immediately upon the coming into force of the Alternative Investment Funds (Amendment of Regulations) (Jersey) Order 2013.

Signed.....

Date.....

Minister for Economic Development

