ALTERNATIVE INVESTMENT FUNDS (JERSEY) REGULATIONS 2012

Official Consolidated Version

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ALTERNATIVE INVESTMENT FUNDS (JERSEY) REGULATIONS 2012

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Jersey

ALTERNATIVE INVESTMENT FUNDS (JERSEY) REGULATIONS 2012

THE STATES, in pursuance of Article 2 of the European Communities Legislation (Implementation) (Jersey) Law 1996, have made the following Regulations –[1]

Commencement [see endnotes]

PART 1

PRELIMINARY

1 Object

The object of these Regulations is to make provision in relation to Jersey for the implementation of Directive 2011/61/EU.

2 Interpretation[2]

In these Regulations, unless the context otherwise requires –

"AIF" (or "alternative investment fund") has a meaning in accordance with Regulation 3;

"AIF entity" means in relation to an AIF any of the following –

(a) a company that is the AIF;

(b) a trustee of a unit trust that is the AIF;

(c) a general partner of an incorporated limited partnership, of a limited partnership, or of a separate limited partnership, that is the AIF;

(ca) a manager or a member of a limited liability company;

(d) a partner of a limited liability partnership that is the AIF; or

(e) in the case of an AIF that is not a company, unit trust or any partnership referred to in paragraph (c) or (d), the person who manages the AIF;

"AIFM" (or "manager of an alternative investment fund") means an AIFM within the meaning of the UK AIFM Regulations or an AIFM within the meaning of Directive 2011/61/EU;

"associate", in relation to a person, means –

(a) the person's husband, wife, civil partner, child or stepchild;

(b) the person's partner;

(c) any company of which the person is a director;

(d) where the person is a company, any director or employee of the company, any company in the same group as the company, and any director or employee of such a company;

(da) any limited liability company of which the person is a manager;

(db) where the person is a limited liability company, any manager, any limited liability company in the same group as the limited liability company, and any manager of such a limited liability company;

(dc) any limited liability company that is the AIF; and

(e) any person with whom the first mentioned person has an agreement, arrangement or other obligation –

(i) to act together in exercising voting power,

(ii) with respect to the acquisition, holding or disposal of shares or other interests in a body corporate, partnership or other association;

"certificate", except in Regulation 16(1)(d), means a certificate granted under Regulation 9;

"certificate holder" means an AIF entity to whom a certificate has been granted in respect of an AIF;

"code of practice" means a code prepared, or revised, pursuant to Regulation 22;

"Commission" means the Jersey Financial Services Commission established by the Financial Services Commission (Jersey) Law 1998;

"company" means a body corporate wherever incorporated (other than a limited liability company registered as a body corporate);

"compliance officer" means a person so designated for the purposes of these Regulations by a certificate holder and having the function of monitoring whether the law of Jersey, and any code of practice under these Regulations, are being complied with in the conduct of the business of the certificate holder;

"Court" means the Royal Court;

"direction" means direction given under Regulation 20;

"Directive 2011/61/EU" means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010 (O.J. No. L174 1.7.2011, p.1), as amended from time to time;

"documents" includes accounts, deeds, writings and information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its provision or production include references to providing or producing a copy of the information in legible form;

"ESAs" means the European Supervisory Authorities comprising –

(a) the European Banking Authority established by Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L331 15.12 2010, p.12);

(b) the European Insurance and Occupational Pensions Authority established by Regulation (EU) No. 1094/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L331 15.12 2010, p.48); and

(c) the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council 24 November 2010 (O.J. No. L331 15.12 2010, p.84);

"ESRB" means the European Systemic Risk Board established by Regulation (EU) No. 1092/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L331 15.12.2010, p.1);

"holding company" has the meaning given to it by –

(a) in relation to a body corporate (other than a limited liability company registered as a body corporate), Article 2 of the Companies (Jersey) Law 1991; and

(b) in relation to a limited liability company, Regulation 2 of the Limited Liability Companies (General Provisions) (Jersey) Regulations 2022;

"incorporated limited partnership" means an incorporated limited partnership established in accordance with the Incorporated Limited Partnerships (Jersey) Law 2011, or any similar partnership constituted under the law of a country or territory outside Jersey;

"key person" means a person employed or otherwise engaged in relation to an AIF as an officer of any one or more of the following classes in relation to the conduct of the AIF –

(a) compliance officer;

(b) money laundering compliance officer;

(c) money laundering reporting officer;

"limited liability company" means a limited liability company registered under the Limited Liability Companies (Jersey) Law 2018;

"LLC controller" means a person who is a principal person by virtue of Regulation 4(ba)(i) (but does not include any person who, by virtue of Regulation 4(f), is not a principal person);

"limited partnership" means a limited partnership established in accordance with the Limited Partnerships (Jersey) Law 1994, or any similar partnership constituted under the law of a country or territory outside Jersey;

"limited liability partnership" means a limited liability partnership registered under the Limited Liability Partnerships (Jersey) Law 2017, or any similar partnership constituted under the law of a country or territory outside Jersey;

"marketing" has the meaning given in the UK AIFM Regulations or in Directive 2011/61/EU, as the case may be;

"Minister" means the Minister for External Relations;

"money laundering compliance officer" means a person appointed as compliance officer under the Money Laundering (Jersey) Order 2008;

"money laundering reporting officer" means a person appointed as reporting officer under the Money Laundering (Jersey) Order 2008;

"Order" means an Order made under these Regulations by the Minister;

"partnership" includes a partnership constituted under the law of a country or territory outside Jersey;

"pension supervisor" means any entity (whether in Jersey or elsewhere) responsible in whole or in part for the supervision of pension funds, plans, schemes or arrangements;

"prescribed" means prescribed by Order;

"principal person" has the meaning given in Regulation 4;

"promotional material" means any of the following in any medium –

(a) an offer or invitation in relation to units for subscription, sale or exchange;

(b) a document, or advertisement, issued by or on behalf of an AIF entity or by or on behalf of a service provider, presenting a description of, or other information about, an AIF;

"public statement" means a statement issued under Regulation 24;

"relevant supervisory authority", in relation to a country or territory outside Jersey, means an authority discharging in that country or territory any function that is the same as, or similar to, a function of the Commission;

"separate limited partnership" means a separate limited partnership established in accordance with the Separate Limited Partnerships (Jersey) Law 2011, or any similar partnership constituted under the law of a country or territory outside Jersey;

"service provider" means, in relation to an AIF, a person who –

(a) carries on AIF services business (within the meaning of the Financial Services (Jersey) Law 1998) in relation to the AIF; or

(b) provides prescribed services in relation to the AIF as one or more of the following –

(i) a manager, administrator, registrar, investment manager or investment adviser,

(ii) a distributor, subscription agent, redemption agent, premium receiving agent, policy proceeds paying agent, purchase agent or repurchase agent,

(iii) a trustee, custodian or depositary, or

(iv) a member (except a limited partner) of a partnership, including a partnership constituted under the law of a country or territory outside Jersey;

"shareholder controller" means a person who is a principal person by virtue of Regulation 4(b)(i) (but does not include any person who, by virtue of Regulation 4(f), is not a principal person);

"subsidiary" has the meaning given to it by –

(a) in relation to a body corporate (other than a limited liability company registered as a body corporate), Article 2 of the Companies (Jersey) Law 1991; and

(b) in relation to a limited liability company, Regulation 2 of the Limited Liability Companies (General Provisions) (Jersey) Regulations 2022;

"UK AIFM Regulations" means the Alternative Investment Fund Managers Regulations 2013 of the United Kingdom (S.I. 2013/1773) as amended from time to time;

"unit" means any material representation of the rights of participants with regard to the assets of an AIF whether such rights are represented –

(a) by securities issued by the AIF;

(b) by the entry of names of participants in a register kept in relation to the AIF; or

(c) by any other means;

"vary" includes add to, amend, replace and revoke.

3 "AIF" defined[3]

(1) For the purposes of these Regulations, a scheme or arrangement is an AIF if –

(a) it is an AIF within the meaning given in the UK AIFM Regulations, or an AIF within the meaning given in Directive 2011/61/EU;

(b) it is marketed in the United Kingdom, in a member State of the European Union, or in any other EEA State to which Directive 2011/61/EU applies;

(c) it is –

(i) registered in Jersey or is a Jersey trust that is a unit trust, or

(ii) a limited partnership that –

(A) is registered in England or Scotland under the Limited Partnerships Act 1907 (c.24) of the United Kingdom,

(B) satisfies the conditions specified in paragraph (2A), and

(C) has elected to be an AIF by application in writing to the Commission and the Commission has approved that election in writing;

(d) it is a scheme or arrangement –

(i) in respect of which the Commission has given consent under the Control of Borrowing (Jersey) Order 1958, or

(ii) that is a recognized fund, an unclassified fund or an unregulated fund for the purposes of the Collective Investment Funds (Jersey) Law 1988 or any Order made under that Law.[4]

(2) For the purposes of paragraph (1)(c) an AIF is registered in Jersey if –

(a) it is a company, within the meaning of Article 1 of the Companies (Jersey) Law 1991;

(b) it is a limited partnership in respect of which a certificate has been issued under Article 4 of the Limited Partnerships (Jersey) Law 1994;

(c) it is a limited liability partnership registered under the Limited Liability Partnerships (Jersey) Law 2017;

(ca) it is a limited liability company registered under the Limited Liability Companies (Jersey) Law 2018; or

(d) it is an incorporated limited partnership in respect of which a certificate has been issued under Article 4 of the Incorporated Limited Partnerships (Jersey) Law 2011; or

(e) it is a separate limited partnership in respect of which a certificate has been issued under Article 4 of the Separate Limited Partnerships (Jersey) Law 2011.[5]

(2A) The conditions referred to in paragraph (1)(c)(ii)(B) are as follows –

(a) the limited partnership has a governing body which is registered in Jersey as a company, a limited partnership, a limited liability partnership, an

incorporated limited partnership, a limited liability company or a separate limited partnership, as described in paragraph (2)(a) to (e);

(b) if the governing body of the limited partnership referred to in sub-paragraph (a) is –

(i) any of the following –

(A) a limited partnership in respect of which a certificate has been issued under Article 4 of the Limited Partnerships (Jersey) Law 1994,

(B) an incorporated limited partnership in respect of which a certificate has been issued under Article 4 of the Incorporated Limited Partnerships (Jersey) Law 2011, or

(C) a separate limited partnership in respect of which a certificate has been issued under Article 4 of the Separate Limited Partnerships (Jersey) Law 2011,

that governing body has a general partner that is a company within the meaning of Article 1 of the Companies (Jersey) Law 1991,

(ii) a limited liability partnership registered under Article 16 of the Limited Liability Partnerships (Jersey) Law 1997, at least one of the partners of the governing body is a company within the meaning of Article 1 of the Companies (Jersey) Law 1991, or

(iii) a limited liability company registered under the Limited Liability Companies (Jersey) Law 2018, at least one of the members or the manager is a company within the meaning of Article 1 of the Companies (Jersey) Law 1991;

(c) the limited partnership's governing body referred to in sub-paragraph (a), or the governing body's general partner referred to in sub-paragraph (b)(i) or partner referred to in sub-paragraph (b)(ii), has its registered office or head office in Jersey;

(d) the limited partnership does not have a registered office, head office or principal place of business outside Jersey; and

(e) the limited partnership's register of limited partners or a duplicate copy of that register is held at the registered office or head office referred to in sub-paragraph (c).[6]

(3) The Minister may by Order –

(a) prescribe other schemes or arrangements that are AIFs for the purposes of these Regulations;

(b) prescribe the extent to which any provisions of these Regulations apply to an AIF; or

(c) prescribe any condition that must be satisfied for the purposes of applying or disapplying any provision of these Regulations to a scheme or arrangement.

(4) In this Article –

(a) "EEA State" means a State which is a member State of the European Union or any other State which is a contracting party to the agreement on the European Economic Area signed at Oporto on the 2nd May 1992 as adjusted by the Protocol signed at Brussels on the 17th March 1993;

(b) "Jersey trust" has the same meaning it has in the Trusts (Jersey) Law 1984.

4 "Principal person" defined[7]

In these Regulations, "principal person" –

(a) in relation to a sole trader, subject to paragraph (f), means the proprietor;

(b) in relation to a company, subject to paragraph (f), means –

(i) a person who, either alone or with any associate or associates other than a person holding shares only as a custodian or its nominee and able to exercise the voting rights attached to the shares only under instructions given in writing (including by electronic means), –

(A) directly or indirectly holds 10% or more of the share capital issued by the company,

(B) is entitled to exercise or control the exercise of not less than 10% of the voting power in general meeting of the company or of any other company of which it is a subsidiary, or

(C) has a holding in the company directly or indirectly which makes it possible to exercise significant influence over the management of the company,

(ii) a director or equivalent, by whatever name called,

(iii) a person in accordance with whose directions, whether given directly or indirectly, any director of the company, or director of any company of which the company is a subsidiary, is accustomed to act (but disregarding advice given in a professional capacity);

(ba) in relation to a limited liability company, means –

(i) a person, other than a person holding LLC interests in the limited liability company only as a custodian or its nominee and able to exercise the voting rights attached to those LLC interests only under instructions given in writing (including by electronic means), who, either alone or with any associate or associates –

(A) directly or indirectly holds 10% or more of the LLC interests in the limited liability company,

(B) is entitled to exercise or control the exercise of not less than 10% of the voting power in meetings of the limited liability company or of any other limited liability company of which it is a subsidiary, or

(C) has an LLC interest in the limited liability company directly or indirectly which makes it possible to exercise significant influence over the management of the limited liability company,

(ii) a manager, or equivalent by whatever name called,

(iii) a person in accordance with whose directions, whether given directly or indirectly –

(A) any manager or, where there is no appointed manager, the members of the limited liability company, or

(B) any manager or where there is no appointed manager, the members of any limited liability company of which the limited liability company is a subsidiary,

is accustomed to act (but disregarding advice given in a professional capacity);

(c) in relation to a partnership, subject to paragraph (f)(ii), means –

(i) a partner,

(ii) where a partner is a company, any person who, in relation to that company, falls within paragraph (b);

(d) in relation to a person whose registered office and principal place of business are outside Jersey, subject to paragraph (f), includes a person who, either alone or jointly with one or more other persons, is responsible for the conduct of the person's business in Jersey;

(e) subject to paragraph (f), a liquidator of a person's affairs (whether or not appointed under a bankruptcy) or an administrator of a bankrupt person;

(f) does not include any person (person A) who –

(i) would be a principal person in relation to a company where –

(A) that company is described in paragraph (a) of the definition of "AIF entity" in Regulation 2, and

(B) person A would be principal person in relation to that company under paragraph (b)(i),

(ii) would be a principal person, under any of paragraphs (a) to (e), in relation to a trustee, general partner, partner, or person who manages an AIF, referred to in paragraph (b), (c), (ca), (d) or (e) of the definition of "AIF entity" in Regulation 2, or

(iii) would be a principal person in relation to a limited liability company where –

(A) that limited liability company is described in paragraph (ca) of the definition "AIF entity" in Regulation 2, and

(B) person A would be principal person in relation to that company under paragraph (ba)(i).

5 Amendments by Order

Regulations 1 to 4 may be amended by Order.

6 Order may prescribe exceptions

Subject to such conditions or restrictions as may be prescribed, these Regulations shall not apply to –

(a) the doing of anything by or on behalf of any prescribed person or institution; or

(b) any prescribed transaction.

PART 2

CERTIFICATES

7 Requirement for AIF to hold certificate

(1) A person shall not carry on any business of an AIF in relation to which the person is an AIF entity unless a certificate has been granted under Regulation 9 in relation to the AIF and the certificate is in force.

(2) A person shall not market an AIF in relation to which the person is an AIF entity unless a certificate has been granted under Regulation 9 in relation to the AIF and the certificate is in force.

(3) A person who contravenes paragraph (1) or (2) shall be guilty of an offence and liable to imprisonment for a term of 7 years and to a fine.

(4) If paragraph (1) or (2) is contravened, the rights of any person concerned in any transaction with or in relation to the AIF shall not be affected by the contravention.

8 Application for certificate

(1) A person who is, or is to be, an AIF entity may apply to the Commission for the grant of a certificate in relation to the AIF.

(2) An application for a certificate shall –

(a) be in the form required from time to time by the Commission;

(b) specify the AIF and the class of AIF (if any) to which the applicant's functions as an AIF entity relate;

(c) contain or be accompanied by any other particulars that the Commission may require;

(d) be verified in the manner, and to the extent, that the Commission may require; and

(e) be accompanied by such fee as may be published by the Commission in accordance with Article 15 of the Financial Services Commission (Jersey) Law 1998.

(3) Without limiting paragraph (2)(c) the Commission may –

(a) require an applicant to provide such information and documents relating to the AIF to which the applicant's function relates, verified in such manner as the Commission may require, for the purposes of considering whether to grant or refuse a certificate under Regulation 9;

(b) by written notice require the applicant, or any person who is to be a principal person in relation to the applicant, to provide a report by an auditor or accountant, or other qualified person approved by the Commission, on such aspects of the particulars required by paragraph (2)(c), or the information and documents required by paragraph (3)(a), as the Commission may specify.[8]

(4) An applicant who, while the application is awaiting consideration by the Commission –

(a) wishes to alter the application; or

(b) becomes aware of any event which may affect in any material respect any information provided by the applicant to the Commission in connection with the application,

shall as soon as practicable give written notice of that matter to the Commission.

9 Grant or refusal of certificate, imposition of conditions and cancellation of certificate

(1) The Commission may grant, or refuse to grant, to an applicant a certificate in relation to an AIF.

(2) A certificate may be granted either unconditionally or subject to the conditions that the Commission considers appropriate.

(3) Every certificate shall specify the AIF and the class of AIF (if any) to which the certificate relates.

(4) The Commission may from time to time vary any condition attached to the grant of a certificate under paragraph (2) or attach a new condition.

(5) Orders may prescribe conditions applicable to –

(a) all certificates;

(b) certain classes of certificates; or

(c) all certificates granted in relation to AIFs of a certain kind.

(6) Conditions attached, varied or prescribed under paragraph (2), (4) or (5) may indicate that a code of practice is to be wholly or partly disregarded for the purposes of Regulation 22(4).

(7) The Commission may refuse to grant a certificate on one or more of the following grounds, namely that –

(a) having regard to the information before the Commission as to –

(i) the integrity, competence, financial standing, structure and organization of the applicant,

(ii) the persons employed by or associated with the applicant for the purposes of the applicant's business or who are principal persons in relation to the applicant,

(iii) the nature of the AIF to which the applicant's role relates,

(iv) the role to be performed by the applicant in relation to the AIF,

(v) the reputation of the applicant, and

(vi) any service providers or AIF entities there are or may be in relation to the AIF to which the application relates,

the Commission is not satisfied that the applicant is a fit and proper person to be granted a certificate;

(b) the applicant has at any time and whether or not in relation to the application, in any case where information was required under these Regulations in any connection –

(i) failed to provide any such information, or

(ii) provided to the Commission information which was untrue or misleading in any material particular;

(c) the applicant has at any time failed to comply in any material respect with –

(i) any condition attached to the grant of a certificate, including any varied condition, or

(ii) any condition prescribed as applicable to a certificate (whether generally or not);

(d) the applicant or any person employed by or associated with the applicant for the purposes of the applicant's business has been convicted of –

(i) an offence (whether under the law of Jersey or of a country or territory outside Jersey) involving fraud or other dishonesty,

(ii) an offence under –

(A) these Regulations,

(B) the Collective Investment Funds (Jersey) Law 1988,

(C) the Banking Business (Jersey) Law 1991,

(D) the Financial Services (Jersey) Law 1998,

(E) the Insurance Business (Jersey) Law 1996, or

(F) any Regulation or Order made under any of those Laws,

(iii) any offence, similar to any of those referred to in clause (ii), under the laws of any country or territory outside Jersey,

(iv) where clause (ii) or (iii) does not apply, an offence under any enactment (whether of Jersey or of a country or territory outside Jersey) relating to building societies, companies, consumer credit, consumer protection, credit unions, friendly societies, industrial and provident societies, insider dealing, insolvency, insurance, money laundering or terrorist financing, or

(v) an offence (whether under the law of Jersey or of a country or territory outside Jersey) of perjury or conspiracy to pervert the course of justice;

(e) it appears to the Commission, as a result of information provided in pursuance of requirements of or under Regulation 8, or information otherwise obtained, that –

(i) for the protection of the public or of existing or potential participants in the AIF, the applicant should not be granted a certificate,

(ii) in order to protect the reputation and integrity of Jersey in financial and commercial matters, the applicant should not be granted a certificate, or

(iii) in the best economic interests of Jersey, the applicant should not be granted a certificate;

(f) the Commission has reason to believe that at any time the applicant has contravened a code of practice; or

(g) the applicant has failed at any time to comply with a direction by the Commission.[9]

(8) In exercising its or his or her powers under paragraph (2), (4) or (5), the Commission or Minister, as the case may be, shall have regard to such of the matters referred to in paragraph (7) as it, he or she thinks appropriate.

(9) For the purposes of paragraph (8), when the Commission is exercising its powers under paragraph (4), paragraph (7) shall apply with the substitution for references to the applicant of references to the certificate holder.

(10) The Commission may cancel a certificate in relation to an AIF –

(a) if the AIF has ceased to operate;

(b) at the request of a person that is an AIF entity in relation to the AIF;

(c) if it appears to the Commission that any requirements of the Commission in respect of the AIF, or the class of AIF of which the AIF is a member, are no longer satisfied;

(d) if it appears to the Commission that any provision of these Regulations or of any Order, or a condition of any certificate granted under these Regulations, has been contravened by a person who is employed on behalf of the AIF or

provides services to the AIF or if a person has, in purported compliance with any such provision, provided the Commission with false, inaccurate or misleading information;

(e) on one or more of the grounds set out in paragraph (7), which shall apply in such a case with the substitution for references to the applicant of references to the certificate holder; or

(f) if the certificate holder fails to pay any fee published in accordance with paragraph (13).

(11) Any person who is required to comply with any condition attached to a certificate under paragraph (2) or (4) or any condition applicable to a certificate under paragraph (5) and fails to comply with the condition shall be guilty of an offence.

(12) The record of the conviction of any person for an offence under paragraph (11) shall be admissible in civil proceedings as evidence of the fact of the breach of a condition attached or applicable under this Regulation.

(13) The Commission may, in accordance with Article 15 of the Financial Services Commission (Jersey) Law 1998, publish fees that shall be payable by the holders of certificates at such intervals and upon the occurrence of such events as the Commission may determine.

10 Display of certificate and conditions

(1) When the Commission grants a certificate to a person under Regulation 9, it may give that person notice in writing of the manner in which that person shall display or otherwise make available to members of the public –

(a) that certificate, or the information it contains, or both; and

(b) a record of such conditions as the Commission may specify, being conditions –

(i) to which that certificate is subject under Regulation 9(2), or

(ii) to which that certificate is subject by virtue of an Order under Regulation 9(5).

(2) Where the Commission varies a condition of, or attaches any new condition to, a certificate under Regulation 9(4), it may give the relevant certificate holder notice in writing of the manner in which the holder shall display or otherwise make available to members of the public a record of that condition as varied, or the new condition, as the case may be.

(3) The Commission may at any time vary any requirement in any notice it has given to a person under paragraph (1) or (2) by further notice to that person.

(4) Without prejudice to the generality of paragraphs (1), (2) and (3), a notice under any of those paragraphs may require the certificate, information or record of conditions, as the case may be, to be displayed at any address at which the certificate holder carries on business relating to an AIF or to be published on the internet, or both.

(5) A notice under paragraph (1) shall take effect on such date as is specified in the notice.

(6) A notice under paragraph (2) or (3) shall take effect in accordance with Regulation 12.

(7) A certificate holder who carries on business relating to an AIF in breach of any requirements in a notice given under this Regulation which have effect in relation to that business shall be guilty of an offence and liable to a fine of level 2 on the standard scale.

PART 3

DECISION-MAKING AND REVIEW

11 Notice of decisions and reasons

(1) The Commission shall give notice as follows –

(a) if under Regulation 9 it refuses to grant a certificate, it shall give notice to the applicant for the certificate;

(b) if under Regulation 9 it cancels a certificate, it shall give notice to the person named in the certificate as certificate holder;

(c) if under Regulation 9 it attaches a condition to the grant of a certificate, attaches a condition to a certificate already granted or varies a condition attached to a certificate, it shall give notice to the person named in the certificate as certificate holder;

(d) if under any Order it refuses consent, refuses approval, or imposes a requirement, it shall give notice to the relevant certificate holder (if any) and any other person in respect of whom the refusal or imposition is made.

(2) A notice required under paragraph (1) shall –

(a) set out the terms of the refusal, cancellation, attachment of conditions, variation of conditions, or imposition, of which it is notice;

(b) in the case of the attachment of conditions, set out also the terms of the conditions;

(c) in the case of the variation of conditions, set out also the terms of the conditions as so varied;

(d) give the reasons for the refusal, cancellation, attachment, variation or imposition (except to the extent that the refusal, cancellation, attachment, variation or imposition is made on the application of the relevant certificate holder or applicant); and

(e) give particulars of the rights of appeal conferred by Regulation 13.

(3) A notice imposing a requirement under Regulation 10 shall –

(a) give the reasons for the imposition of the requirement; and

(b) give particulars of the rights of appeal conferred by Regulation 13.

(4) A notice by which an objection and direction are made under Regulation 17 shall –

(a) give the reasons for making the objection and direction; and

(b) give particulars of the rights of appeal conferred by Regulation 13.

(5) A notice of a direction under Regulation 20 shall –

(a) give the reasons for the giving of the direction;

(b) specify when the direction is to have effect;

(c) give particulars of the provisions of Regulation 20(5) and (6); and

(d) give particulars of the rights of appeal conferred by Regulation 13.

(6) If under this Regulation the Commission is required to give reasons in a notice, that requirement shall not require the Commission –

(a) to specify any reason that would in the Commission's opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party; or

(b) to specify the same reasons, or reasons in the same manner, in the case of notices to different persons about the same matter.

12 Delay in taking effect

(1) Any of the following acts of the Commission shall not take effect until one month after notice of them is given under these Regulations, such date as is specified in the notice, or, if an appeal is lodged under these Regulations against the act or the decision relating to the act, the appeal is determined by the Court or withdrawn, whichever is the latest time –

(a) the cancellation of a certificate under Regulation 9;

(b) the attachment under Regulation 9 of an additional condition to a certificate, or variation under that Regulation of the conditions attached to a certificate, at any time after the grant of the certificate;

(c) the imposition of a requirement under Regulation 10(2) or (3) or 20(2)(d) or (f);

(d) an objection under Regulation 17(2) or (3).

(2) Paragraph (1) shall not however have effect if –

(a) the persons entitled to notice of the act agree with the Commission that the act take effect at a time earlier than the time that would apply under paragraph (1); or

(b) the Court orders otherwise under paragraph (3).

(3) If, on the application of the Commission, the Court is satisfied that it is in the best interests of existing or potential participants in an AIF to which a certificate relates, or of the public, that paragraph (1) should not have effect, or should cease to have effect in a particular case, or that the period specified in paragraph (1) should be reduced, the Court may so order.[10]

(4) An order under paragraph (3) may be made without prior notice to, and without hearing, the relevant certificate holder, the relevant AIF or any person who is a service provider or AIF entity in relation to the AIF.

(5) The order shall have immediate effect, but any person aggrieved by the order may apply to the Court to vary or set aside the order.

(6) In respect of an application under paragraph (3), the Court may make such order as it thinks fit, and in respect of an application under paragraph (5), the Court may make such order in respect of the relevant order under paragraph (3) as it thinks fit.

13 Appeals

(1) A person aggrieved by an act of the Commission, being –

(a) the refusal, or cancellation, under Regulation 9 of a certificate;

(b) the attachment under Regulation 9 of a condition to the grant of a certificate, the attachment under that Regulation of an additional condition to a certificate, or the variation under that Regulation of the conditions attached to a certificate;

(c) the imposition of a requirement under Regulation 10;

(d) an objection and a direction under Regulation 17;

(e) the giving of a direction under Regulation 20;

(f) the refusal of an application under Regulation 20(5) or granting of such an application only in part; or

(g) a refusal of consent, refusal of approval, or imposition of a requirement, under any Order,

may appeal to the Court, in accordance with this Regulation, against that act.

(2) An appeal under paragraph (1) may be made only on the ground that the act appealed against was unreasonable having regard to all the circumstances of the case.

(3) A person's appeal under this Regulation shall be lodged with the Court no later than the day that is one month after the day on which notice was served on the person of the relevant act.

(4) On an appeal under this Regulation, the Court may make such interim or final order as it thinks fit.

(5) If an appeal is made under paragraph (1)(e) against the giving of a direction that makes a requirement referred to in Regulation 20(2)(d) or (f), the direction shall have no effect until the appeal is determined by the Court or withdrawn.

(6) In other cases, an appeal made under paragraph (1)(e) against the giving of a direction shall not suspend the operation of the direction.

(7) An appeal made under paragraph (1)(f) in relation to an application under Regulation 20(5) shall not suspend the operation of the direction in connection with which the application was made.

PART 4

MISCELLANEOUS

14 General power to require information and documents[11]

(1) The Commission, an officer or an agent may by notice in writing served on a defined person require the person to do either or both of the following –

(a) to provide the Commission, an officer or an agent, at such times and places as are specified in the notice, with such information or documents as are specified in the notice and as the Commission, an officer or an agent reasonably requires the person to provide for the purposes of the performance of the Commission's functions under these Regulations;

(b) to attend at such times and places as may be specified in the notice and answer such questions as the Commission, an officer or agent reasonably requires the person to answer for the purposes of the performance of the Commission's functions under these Regulations.

(2) If the Commission has reasonable grounds to suspect that a person has contravened Regulation 7 or 15, the Commission, an officer or an agent may, by notice in writing served on that person, require the person to do either or both of the following –

(a) to provide the Commission, an officer or an agent, at such times and places as are specified in the notice, with such information or documents as are specified in the notice and as the Commission, an officer or an agent reasonably requires for the purposes of investigating the suspected contravention;

(b) to attend at such times and places as are specified in the notice and answer such questions as the Commission, an officer or an agent reasonably requires the person to answer for the purpose of investigating the suspected contravention.

(3) In a case where the Commission, an officer or an agent may, by notice in writing served on a person under paragraph (1) or (2), require the person to provide information or documents, the Commission, an officer or an agent may in addition or instead require any other person (by notice in writing served on the latter person) who appears to be in possession of some or all of the information or documents to do something that the Commission, an officer or an agent could have required the first-mentioned person to do under sub-paragraph (a) or (b) of that paragraph.

(4) An officer or an agent may, on producing if required evidence of his or her authority, enter, at a reasonable time, any premises occupied by a person on whom a notice has been served under paragraph (1), (2) or (3), or any other premises where information or documents are kept by such person, for the purpose of obtaining there the information or documents required by that notice, putting the questions referred to in paragraph (1)(b) or (2)(b) or of exercising the power conferred by paragraph (8), as the case may be.

(5) If the Commission, an officer or an agent serves notice on a person under paragraph (1) or (2), the Commission, officer or agent may, by the same or another notice served on the person, require the person to provide verification, in accordance with the latter notice, of any information, or documents, required from the person under paragraph (1) or (2), as the case may be.

(6) The Commission, an officer or an agent may by notice in writing served on a person specified in paragraph (15) require the person to provide a report, by an accountant, or other person with relevant professional skill, nominated or approved by the Commission and appointed by the person served with the notice under this paragraph, being a report –

(a) on, or on any aspect of, any information, documents, or questions, that the Commission, an officer or an agent could require the person, by notice under paragraph (1) or (2), to provide or answer (whether or not notice has in fact been served on the person under paragraph (1) or (2)); and

(b) in such form (if any) as the notice under this paragraph may specify.

(7) If, under this Regulation, a person provides documents in the person's possession but claims a lien on the documents so provided, the provision of the documents shall be without prejudice to the lien.

(8) The power under this Regulation to require documents to be provided includes power –

(a) if the documents are provided, to retain them, to take copies of them or to take extracts from them, and to require the person providing the documents,

or any person who appears to possess information relating to the documents, to provide an explanation of them; or

(b) if the documents are not provided, to require the person to whom the requirement was directed to state, to the best of the person's knowledge and belief, where they are.

(9) If documents provided under this Regulation are retained under paragraph (8)(a) the documents may be so retained –

(a) for a period of one year; or

(b) if within that period proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings,

whichever is the later.

(10) If the person providing a document that is retained under paragraph (8)(a) requires the document for the purpose of the person's business and requests the document (or a copy of it) from the Commission, the Commission shall supply the person with a copy of the document as soon as practicable.

(11) If a person fails without reasonable excuse to comply with a requirement imposed on the person under this Regulation or obstructs an officer, or agent, exercising powers under paragraph (4), the person shall be guilty of an offence and liable to imprisonment for a term of 6 months and a fine.

(12) Nothing in this Regulation shall require the disclosure or provision by a person to the Commission, an officer or an agent of information, or documents, that the person would, in proceedings in the Court, be entitled to refuse to disclose or to provide on the grounds of legal professional privilege, except, if the person is a lawyer, the name and address of his or her client.

(13) A statement made by a person in compliance with a requirement imposed under this Regulation shall not be used by the prosecution in evidence against the person in any criminal proceedings except proceedings under paragraph (11) or proceedings under any provision of Regulation 23 other than paragraph (6) of Regulation 23.

(14) In this Regulation –

"agent" means an agent of the Commission, being an agent who has been authorized by the Commission to perform the functions set out or referred to in that provision;

"defined person" means any of the following persons –

(a) a fund person;

(b) a person who was a fund person at any time;

(c) a person who is a principal person, or key person, in relation to another person who is a fund person or was a fund person at any time;

(d) a person who was at any time a principal person, or key person, in relation to another person who is a fund person or was a fund person at, before or after that time;

(e) a person who is, or was at any time, an associate in relation to a defined person within the meaning of sub-paragraph (c) or (d);

(f) a person who is an employee of, or party to a contract for services with, another person who is a fund person or was a fund person at any time;

(g) a person who was at any time an employee of, or party to a contract for services with, another person who is a fund person or was a fund person at, before or after that time;

(h) a person who is an employee of a person who is a party to a contract for services with another person who is a fund person;

(i) a person who was at any time an employee of a person who was at that time a party to a contract for services with another person who was a fund person at that time;

"fund person" means a service provider or an AIF entity;

"officer" means an officer of the Commission, being an officer who has been authorized by the Commission to perform the functions set out or referred to in that provision.

(15) For the purposes of paragraph (6), the following persons are specified –

(a) a person within sub-paragraph (a) or (b) of the definition of "defined person" in paragraph (14) or a person within sub-paragraph (c) or (d) of that definition (other than as a key person);

(b) a person who the Commission has reasonable grounds to suspect has contravened Regulation 7.

(16) In sub-paragraph (d), (g) or (i) of the definition of "defined person" in paragraph (14), the reference to a person who was a fund person includes such a person who is no longer in existence at the time when the relevant function is exercised under this Regulation.

(17) For the purposes of this Regulation –

(a) a time that is specified may be, but is not required to be, expressed in terms of times, dates, intervals, periods or time limits; and

(b) a document or information may be, but is not required to be, specified in terms of one or more classes or descriptions.

15 Misleading statements and practices

(1) Any person who –

(a) makes a statement, promise or forecast which that person knows to be misleading, false or deceptive or dishonestly conceals any material facts; or

(b) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive,

is guilty of an offence if that person makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made or from whom the facts are concealed) to enter or offer to enter into, or refrain from entering or offering to enter into, an investment agreement or to exercise, or refrain from exercising, any rights conferred by units.

(2) Any person who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any units is guilty of an offence if that person does so for the purpose of creating that impression and of thereby inducing another person to acquire, dispose of, subscribe for or underwrite those units or to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by those units.

(3) In proceedings brought against any person for an offence under paragraph (2) it shall be a defence for the person to prove that he or she reasonably believed that the act or conduct would not create an impression that was false or misleading as to the matters mentioned in paragraph (2).

(4) In paragraph (1) "an investment agreement" means –

(a) any agreement or arrangement for or with a view to acquiring, disposing of, subscribing for or underwriting units; or

(b) any agreement or arrangement under which a person is to receive advice as to the acquisition of, disposal of, subscription for or underwriting of units or as to the exercise of the rights conferred by units.

(5) A person guilty of any offence under this Regulation shall be liable to imprisonment for a term of 10 years and to a fine.

16 Orders classifying or regulating AIFs

(1) Orders may –

(a) classify AIFs;

(b) specify requirements which must be satisfied by an AIF for inclusion in a particular class or for remaining in such a class;

(c) impose requirements in respect of AIFs of a class; or

(d) make provision for the grant by the Commission of a certificate to the effect that an AIF satisfies the requirements for inclusion in the class named in the certificate and is so included at the date of issue of the certificate.

(2) Without prejudice to paragraph (1), Orders may provide for the constitution, management, control and winding up of an AIF, or any class of an AIF, and prescribe the powers and duties of, and impose requirements on, a service provider, or an AIF entity, in relation to any AIF and the rights and obligations of the participants in any AIF.

(3) A requirement imposed under paragraph (2) may include a requirement that any service provider (or a service provider of any class) in relation to any AIF have the approval of the Commission.

(4) Without prejudice to the generality of paragraph (2), Orders made under that paragraph may make provision –

(a) as to the issue and redemption of units;

(b) as to the expenses of an AIF and the means of meeting them;

(c) for the appointment, removal, powers and duties of an auditor for an AIF;

(d) for restricting or regulating the investment and borrowing powers exercisable in relation to an AIF;

(e) requiring the keeping of records with respect to the transactions and financial position of an AIF and for the inspection of those records;

(f) requiring the preparation of periodical reports with respect to an AIF and the furnishing of those reports to the participants in the AIF and to the Commission; and

(g) with respect to the amendment of an AIF.

(5) Orders made under paragraph (2) may make provision as to the contents of the documents constituting an AIF (and as to contents which if included shall be of no

effect) including provision requiring any of the matters mentioned in paragraph (4) to be dealt with in the documents; but Orders under paragraph (2) shall be binding on a service provider and an AIF entity in relation to, and the participants in, an AIF independently of the contents of the documents and, in the case of the participants, shall have the effect as if contained in them.

(6) For the purposes of paragraph (5) "documents constituting an AIF" includes any agreements entered into between service providers in relation to the AIF, between AIF entities in relation to the AIF, between a service provider, and an AIF entity, in relation to the AIF, and between a service provider or AIF entity and the AIF.

17 Objection to principal person or key person and to changes in holdings

(1) This paragraph applies where it appears to the Commission at any time that on the information before it, and having regard to the matters set out in Regulation 9(7), a person who is a principal person, or key person of any class, in relation to a certificate holder or in respect of whom notice has been given that the person will become (respectively) a principal person, or key person of any class, is not a fit and proper person to be (respectively) a principal person, or key person of the relevant class or any class, in relation to the certificate holder.

(2) Where paragraph (1) applies, the Commission shall serve on the person described in that paragraph who is or will become a principal person or key person, and on the certificate holder, a written notice of objection, directing that the person shall not continue to be, or shall not become, (respectively) a principal person, or key person, of the relevant class or any class.

(3) Following receipt of a notice under Regulation 18(2) that a person has increased his or her holding, or is about to do so, or that the person is about to reduce or dispose of his or her holding, the Commission may serve on that person a written notice of objection, directing that that person shall not continue to have such increased holding, or shall not increase, reduce or dispose of the person's holding, as the case may be.

18 Notification of principal person or key person or change in shareholding

(1) No person shall become a principal person, or key person of any class, in relation to a certificate holder unless that person has notified the Commission in writing of that person's intention to become such a principal person, or key person of that class, and the Commission has notified that person in writing that there is no objection to that person becoming such a principal person, or key person of that class.

(2) No person who is a shareholder controller shall increase, reduce or dispose of that person's holding in the company in respect of which that person is a shareholder controller so that the proportion of the share capital or voting rights held by the person in the company reaches, exceeds or falls below 20%, 33% or 50%, or so that the company becomes the subsidiary of such person or ceases to be such subsidiary, as the case may be, unless –

(a) the person has notified the Commission in writing of that person's intention to increase, reduce or dispose of such holding, as the case may be; and

(b) the Commission has notified the person in writing that there is no objection to the person's so doing.

(2A) A person who is an LLC controller must not increase, reduce or dispose of that person's holding in the limited liability company in respect of which that person is an LLC controller so that the proportion of the LLC interests or voting rights held by the person in the limited liability company reaches, exceeds or falls below 20%, 33% or 50%, or so that the limited liability company becomes the subsidiary of such person or ceases to be such subsidiary unless –

(a) the person has notified the Commission in writing of that person's intention to increase, reduce or dispose of such holding; and

(b) the Commission has notified the person in writing that there is no objection to the person's so doing.[12]

(3) Subject to paragraph (5), a certificate holder shall, before the end of one month beginning with the day on which that holder becomes aware that any person has become, is about to become or has ceased to be a principal person, or key person, in relation to that certificate holder, or has increased, reduced or disposed of that person's holding, as the case may be, or is about to do so for the purposes of paragraph (2), give written notice to the Commission of that fact.

(4) For the purposes of paragraphs (1) and (3) a person shall be treated as –

(a) becoming a principal person, or key person, in relation to a certificate holder if, being a principal person in one or more capacities, or a key person of any class, he or she becomes respectively a principal person in any other capacity or a key person of any other class; or

(b) ceasing to be a principal person, or key person, in relation to a certificate holder if, being a principal person in one or more capacities, or a key person of any class, he or she ceases to be respectively a principal person in one or more such capacities or a key person of that class.

(5) The obligation imposed by paragraph (3) shall not apply in any case where a certificate holder has complied with an equivalent obligation under another enactment under which the Commission exercises a supervisory function or where the Commission by notice in writing waives the obligation, wholly or in part.

(6) A notice under paragraph (1), (2), (2A) or (3) that a person has become or is about to become a principal person or key person, or has increased, reduced or disposed of that person's holding or is about to do so, as the case may be, shall include such information regarding the person in question as may be required by the Commission.[13]

(7) A notice under paragraph (2), (2A) or (3) that a person has ceased to be a principal person or key person or has reduced or disposed of that person's holding or is about to do so, as the case may be, shall include a statement of the reasons for the change.[14]

(8) Following receipt of a notice under paragraph (1), (2), (2A) or (3), the Commission may, by giving written notice, require the person concerned or the certificate holder, as the case may be, to provide such additional information or documents as the Commission may require in order to decide whether to serve a notice of objection under Regulation 17.[15]

(8A) Notice under paragraph (8) may include a requirement that the person concerned or the certificate holder (as the case may be) provides verification, in accordance with the notice, of any information or documents referred to in that paragraph.[16]

(9) A notice given by the Commission under paragraph (1), (2) or (2A) that there is no objection shall lapse if –

(a) the person concerned does not become a principal person, or key person of the relevant class, as the case requires; or

(b) the increase, reduction or disposal, does not take place,

within one year following the giving of the notice by the Commission.[17]

19 Failure to notify change of principal person or key person or changes in holdings

(1) A certificate holder who fails to give the notice required by Regulation 18(3) shall be guilty of an offence and liable to imprisonment for a term of 6 months and to a fine.

(2) Any person who –

(a) fails to give a notice required by Regulation 18(1) or (2) or becomes a principal person, or key person of any class, or increases, reduces or disposes of that person's holding before having been served with a notice by the Commission under Regulation 18(1) or (2), as the case requires; or

(b) becomes or continues to be a principal person, or key person of any class, or continues to have an increased holding, or increases, reduces or disposes of, his or her holding, as the case may be, following service on that person of a notice of objection under Regulation 17 in that connection,

shall be guilty of an offence.

(3) Subject to paragraph (4), a person shall not be guilty of an offence under paragraph (2) if that person shows that he or she did not know of the acts or circumstances by which that person became a principal person, by which that person became a key person of any class, or whereby that person's holding was increased, reduced or disposed of, as the case may be.

(4) Where a person subsequently becomes aware of the relevant acts or circumstances by which that person became a principal person, by which that person became a key person of any class, or whereby that person's holding was increased, reduced or disposed of, as the case may be, that person shall be guilty of an offence unless that person gives the Commission written notice of the fact that that person has become such a principal person, has become a key person of the relevant class, or has increased, reduced or disposed of the person's holding, as the case may be, within 14 days of becoming aware of that fact.

(5) A person guilty of an offence under paragraph (2) or (4) shall be liable to imprisonment for a term of 2 years and to a fine.

20 Directions

(1) If it appears to the Commission that –

(a) any requirements in relation to an AIF or AIFs of any class are no longer satisfied;

(b) it is in the best interests of existing or potential participants in an AIF or AIFs of any class or in the best interests of the creditors of an AIF or AIFs of any class;

(c) it is in the best interests of an AIF or AIFs of any class or of one or more service providers or AIF entities;

(d) it is desirable in order to protect the reputation and integrity of Jersey in financial and commercial matters; or

(e) it is in the best economic interests of Jersey,

the Commission may, whenever it considers it necessary, give, by notice in writing, such directions as it may consider appropriate in the circumstances.

(2) Without prejudice to the generality of paragraph (1), a direction under this Regulation may –

(a) require anything to be done or be omitted to be done, or impose any prohibition, restriction or limitation, or any other requirement, and confer powers, with respect to any transaction or other act, or to any assets, or to any other thing whatsoever;

(b) require that any principal person, or key person, in relation to –

(i) an AIF or AIFs of any class, or

(ii) an AIF entity,

be removed (or removed and replaced by another person who is a person acceptable to the Commission);

(c) require that any person having functions in relation to –

(i) an AIF or AIFs of any class,

(ii) an AIF entity, or

(iii) a service provider in relation to an AIF or AIFs of any class,

be removed (or removed and replaced by another person who is a person acceptable to the Commission);

(d) require that any individual –

(i) not perform a specified function (or any function at all) for,

(ii) not engage in specified employment (or any employment at all) by, or

(iii) not hold a specified position (or any position at all) in the business of,

any of the following –

(A) a service provider in relation to an AIF or AIFs of any class (or any service provider at all),

(B) an AIF entity (or any AIF entity at all);

(e) require –

(i) a service provider in relation to an AIF or AIFs of any class, or

(iii) an AIF entity,

to cease the issue or redemption, or both the issue and redemption, of units on a date specified in the direction, either until such further date as is specified in that or another direction or indefinitely;

(f) require –

(i) a service provider in relation to an AIF, or AIFs of any class, to wind up the affairs of the AIF or AIFs or of the service provider, or

(ii) an AIF entity in relation to an AIF to wind up the affairs of the AIF or of the AIF entity,

in accordance with such procedures and directions as may be specified in the direction, which may provide for the appointment of a person to take possession and control of documents, records, assets and property belonging

to or in the possession or control of the service provider, AIF or AIF entity, as the case requires;

(g) prohibit the publication or making available of particular promotional material or any other form of promotion of an AIF or AIFs of any class; or

(h) require that any particular promotional material or other form of promotion of an AIF or AIFs of any class be modified in a specified manner.

(3) A direction under this Regulation may be of unlimited duration or of a duration specified in the notice of the direction.

(4) The power to give directions under this Regulation shall include the power by direction to vary or withdraw any direction, as well as the power to issue further directions.[18]

(5) Any person to whom a direction is given under this Regulation may apply to the Commission to have it withdrawn or varied and the Commission shall withdraw or vary the direction in whole or in part if it considers that there are no longer any grounds under paragraph (1)(a) to (e) that justify the direction or part of the direction concerned.

(6) If the Commission refuses an application under paragraph (5), or grants such an application only in part, it shall give notice in writing of that fact to the applicant.

(7) A person who fails to comply with a direction in respect of which notice is given under paragraph (1) to the person shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

(8) A person who allows an individual to perform a function, engage in employment or hold a position where the person knows that such performance, engagement or holding is in contravention of a direction that makes a requirement referred to in paragraph (2)(d) shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

(9) The record of the conviction of a person for an offence under paragraph (7) or (8) is admissible in civil proceedings as evidence of the facts constituting the offence.

21 Promotional material

(1) Orders may prohibit, restrict or control the promotion, by or on behalf of any person, of an AIF or AIFs of any class.

(2) Without prejudice to the generality of paragraph (1), or otherwise, such an Order may –

(a) require a service provider, or AIF entity, in relation to an AIF –

(i) to publish or make available on request promotional material containing such information about the AIF and complying with such requirements as are prescribed,

(ii) to provide for such promotional material to contain such further information as is necessary to give investors an informed assessment of any investment proposed in the promotional material,

(iii) to publish or make available revised or further promotional material if –

(A) there is a significant change affecting any matter contained in promotional material previously published or made available, or

(B) a significant new matter arises, the inclusion of information in respect of which would have been required if it had arisen when the previous promotional material was prepared;

(b) prohibit the issue of promotional material unless it has been filed with, or filed and approved by, the Commission;

(c) provide for the payment, by the person who is treated by the Order as being responsible for promotional material, of compensation to any person who has become or agreed to become a participant in the AIF and suffered loss as a result of any untrue or misleading statement in the promotional material or the omission from it of any matter required under the Order to be included;

(d) provide for exemptions of any persons or class of persons from compliance with such an Order, or a particular provision of such an Order; and

(e) provide generally for carrying such an Order into effect.

(3) An Order made under this Regulation shall not affect any liability which any person may incur apart from such an Order.

22 Codes of practice

(1) The Commission may, after consultation with such persons as appear to be representative of the interests concerned –

(a) prepare a code setting out the principles and detailed requirements that must be complied with in respect of –

(i) any function of a person in relation to an AIF,

(ii) any AIF, or

(iii) any provision of these Regulations or of any Order; and

(b) vary any such code.[19]

(2) The Commission shall ensure that a code of practice is printed and available to the public in Jersey, and such a code may be made available by being put on sale at such price as the Commission considers reasonable.

(3) The contravention of a code of practice –

(a) may lead the Commission to exercise its powers under this Law or any other enactment applicable to such contravention; but

(b) otherwise does not of itself render a person liable to proceedings of any kind or invalidate any transaction.[20]

(4) Subject to Regulation 9(6), in any proceedings under these Regulations or otherwise, a code of practice shall be admissible in evidence if it appears to the court conducting the proceedings to be relevant to any question arising in the proceedings, and shall be taken into account in determining any such question.

(5) A copy certified in writing on behalf of the Commission to be an accurate copy of a code of practice or any part of such a code shall be admissible in all legal proceedings as of equal validity with the original and as evidence of any fact stated in it of which direct oral evidence would be admissible.

(6) Where a document purports on its face to be a copy of a code of practice or part of such a code, certified in accordance with paragraph (5), it shall be unnecessary for the purposes of paragraph (5) to prove the official position or handwriting of the person signing on behalf of the Commission.

(7) In paragraph (1), references to the Commission's preparing a code include references to the Commission's adopting, with or without modifications, a code prepared by any other person, whether within or outside Jersey.

23 False or misleading information; offences against Regulations or Orders

(1) Any person who knowingly or recklessly provides the Commission or any other person entitled to information under these Regulations with information that is false or misleading in a material particular shall be guilty of an offence if the information is provided –

(a) in purported compliance with a requirement imposed under these Regulations or under any Order; or

(b) otherwise than as mentioned in sub-paragraph (a) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that the information would be used by the Commission for the purpose of carrying out its functions under these Regulations.

(2) Any person who knowingly or recklessly provides the Commission or any other person with information that is false or misleading in a material particular shall be guilty of an offence if the information is provided in connection with an application for a certificate under these Regulations.

(3) Any person who, with intent to avoid detection by the Commission of an offence under these Regulations, removes out of the jurisdiction, destroys, conceals or fraudulently alters any documents, or causes or permits the removal, destruction, concealment or fraudulent alteration of any documents, shall be guilty of an offence.[21]

(4) A person, being a service provider, or AIF entity, in relation to an AIF shall be guilty of an offence if the person fails to provide the Commission with any information in the person's possession knowing or having reasonable cause to believe that –

(a) the information is relevant to the exercise by the Commission of its functions under these Regulations in relation to that person; and

(b) the withholding of the information is likely to result in the Commission's being misled as to any matter which is relevant to and of material significance for the exercise of those functions in relation to that person.

(5) The reference in paragraph (4) to a service provider in relation to an AIF includes a reference to any person who appears to the Commission to be acting or to have acted in contravention of Regulation 7.

(6) Any person who contravenes any provision of an Order, other than an Order made under Regulation 41(4), shall be guilty of an offence.

(7) Any person guilty of an offence under these Regulations for which no special penalty is provided shall be liable to imprisonment for a term of 5 years and to a fine.

24 Public statement

(1) The Commission may issue a public statement concerning a person if the person appears to the Commission to have contravened any of the following –

(a) Regulation 7;

(b) Regulation 9;

(c) Regulation 15;

(d) Regulation 19;

(e) Regulation 20;

(f) Regulation 23;

(g) a provision of an Order;

(h) a code of practice.[22]

(2) The Commission may issue –

(a) a public statement with respect to, or setting out, any direction that the Commission has given under Regulation 20;

(b) a public statement with respect to the serving of a final notice on a service provider, or a person who is or was a principal person of a service provider, under Article 21C(3) of the Financial Services Commission (Jersey) Law 1998 imposing a penalty following the contravention of a Code of Practice by that service provider;

(c) a public statement concerning –

(i) an AIF entity, or

(ii) a person in respect of whom it appears to the Commission that he or she is holding, or has held, himself or herself out, whether in Jersey or in a country or territory outside Jersey, as being a certificate holder, an AIF entity, or a service provider, in relation to an AIF,

if it appears to the Commission to be desirable to issue the statement –

(A) in the best interests of existing or potential participants in a relevant AIF or in relevant AIFs of any class, or

(B) in the best interests of the public; or

(d) a public statement indicating that an AIF that is being held out to be certified is not certified.[23]

25 Notice of public statement

(1) If a public statement identifies any person who is a certificate holder, the Commission shall serve notice on the person.

(2) If a public statement identifies any person who is not a certificate holder, and at any time before the Commission issues the public statement it is reasonably practicable for the Commission to serve notice on the person, the Commission shall do so.

(3) A notice under paragraph (1) or (2) shall –

(a) give the reasons for issuing the statement;

(b) give the proposed or actual date of issue of the statement;

(c) contain a copy of the statement;

(d) give particulars of the right of appeal under Regulation 27 in respect of the statement; and

(e) if the statement is issued, in accordance with a decision under Regulation 26(3), before the day specified in Regulation 26(1) in relation to the statement, give the reasons for issuing it before that day.

(4) Paragraph (3) shall not require the Commission –

(a) to specify any reason that would in the Commission's opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party; or

(b) to specify the same reasons, or reasons in the same manner, in the case of notices to different persons about the same matter.

(5) In this Regulation and Regulations 26 and 27, a reference to the identification of a person in a public statement does not include the identification, in the statement, of the Commission or of any other person in his or her capacity of exercising functions under these Regulations.

26 Notice period

(1) If service of a notice is required under Regulation 25(1) or (2) in relation to a public statement, the Commission shall not issue the public statement earlier than the day that falls one month after the date of the last such service in relation to the public statement.

(2) Paragraph (1) shall not apply if –

(a) each of the persons identified in the relevant public statement agrees with the Commission that the statement may be issued on a day earlier than the day that would apply under that paragraph; and

(b) the statement is in fact issued on or after the earlier day.

(3) Paragraph (1) shall not apply if –

(a) the Commission decides on reasonable grounds that the interests of –

(i) existing or potential participants in an AIF,

(ii) existing or potential participants in AIFs of any class, or

(iii) the public,

in the issue of the relevant public statement on a date earlier than the day that would apply under that paragraph outweighs the detriment to the persons identified in the statement, being the detriment attributable to that earliness; and

(b) the statement is in fact issued on or after the earlier day.

(4) In making a decision under paragraph (3), the Commission is not prevented from choosing as the day of issue of a public statement the date of service (if any) of notice of the statement.

(5) Despite this Regulation, if an appeal is made to the Court under Regulation 27(1), and the Court orders that the statement not be issued before any specified date or event, the Commission shall not issue the statement before the date or event so specified.

(6) In a case to which paragraph (1) applies, if an appeal is made under Regulation 27(2) to the Court against a decision to issue a public statement, the Commission shall not issue the statement before the day on which that appeal is determined by the Court or withdrawn.

27 Appeals and orders about public statements

(1) A person aggrieved by a decision of the Commission under Regulation 26(3) may appeal to the Court, in accordance with this Regulation, against the decision.

(2) A person aggrieved by a decision of the Commission to issue a public statement that identifies the person may appeal to the Court, in accordance with this Regulation, against the decision.

(3) An appeal under paragraph (2) may be made only on the ground that the decision of the Commission was unreasonable having regard to all the circumstances of the case.

(4) A person's appeal under this Regulation shall be lodged with the Court no later than –

(a) if notice is served on the person under Regulation 25 in relation to the public statement, the day that falls one month after the date of the last such service on the person in relation to the public statement; or

(b) if no such notice is served on the person, the day that falls one month after the issue of the public statement.

(5) Nothing in paragraph (4) prevents the lodging of an appeal before a notice is served or a public statement is issued.

(6) On an appeal under this Regulation, the Court may make such interim or final order as it thinks fit, including an order that the Commission not issue the relevant public statement or, if the public statement has been issued, that the Commission issue a further public statement to the effect set out in the order or stop making the statement available to the public.

28 Criminal responsibility of officers of fund; Attorney General's consent to proceedings

(1) Where an offence under these Regulations committed by –

(a) a service provider or a former service provider;

(b) an AIF entity; or

(c) a person acting in contravention of Regulation 7,

is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a person who is or was a principal person in relation to that offender, that principal person shall be guilty of the offence and liable in the same manner as the offender to the penalty provided for that offence.

(2) Where an offence under these Regulations committed by any form of partnership that is a legal person or by a company is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

(a) a person who is a general partner of the partnership or other partner participating in the management of the partnership, or director, manager, secretary or other similar officer of the company; or

(b) any person purporting to act in any such capacity,

the person shall also be guilty of the offence and liable in the same manner as the partnership or company to the penalty provided for that offence.

(3) Where the affairs of a company are managed by its members, paragraph (2) shall apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the company.

(4) For the purposes of this Regulation, a person shall be taken to be a director of a company if the person occupies in relation thereto the position of a director, by whatever name called, or is a person in accordance with whose directions or instructions the directors of the company or any of them act.

(5) However, a person shall not, by reason only that the directors of a company act on advice given by the person in a professional capacity, be taken to be a person in accordance with whose directions or instructions those directors act.

(6) No proceedings for an offence under these Regulations shall be instituted except by or with the consent of the Attorney General.

29 Orders in general

(1) The Minister may, on the recommendation of the Commission, by Order make provision for the purpose of carrying these Regulations into effect and in particular, but without prejudice to the generality of the foregoing, for prescribing any matter that may be prescribed under these Regulations.

(2) An Order may contain such transitional, consequential, incidental or supplementary provisions as appear to the Minister to be necessary or expedient for the purposes of the Order.

30 Service of notices

(1) No notice or other document required by these Regulations to be given to the Commission shall be regarded as so given until it is received.

(2) Subject to paragraph (1), any notice or other document required or authorized by or under these Regulations to be given to the Commission may be given by facsimile, electronic transmission or by any similar means that produces a document containing the text of the communication in legible form or is capable of doing so.

(3) Any notice, direction or other document required or authorized by or under these Regulations to be given to or served on any person other than the Commission may be given or served on the person in question –

(a) by delivering it to the person;

(b) by leaving it at the person's proper address;

(c) by sending it by post to the person at that address; or

(d) by sending it to the person at that address by facsimile, electronic transmission or other similar means that produce a document containing the text of the communication in legible form or are capable of doing so.

(4) Any such notice, direction or other document may –

(a) in the case of a company incorporated in Jersey, be served by being delivered to its registered or principal office;

(b) in the case of a partnership, company incorporated outside Jersey or unincorporated association, be given to or served on a person who is a principal person in relation to it, or on the secretary or other similar officer of the partnership, company or association or any person who purports to act in any such capacity, by whatever name called, or on the person having the

control or management of the partnership business, as the case may be, or by being served on the latter person or delivered to the latter person's registered or administrative office; or

(c) in the case of a limited liability company, be served by being delivered to its registered office or secretary.[24]

(5) For the purposes of this Regulation and of Article 7 of the Interpretation (Jersey) Law 1954 in its application to this Regulation, the proper address of any person to or on whom a notice, direction or other document is to be given or served by post shall be the person's last known address, except that –

(a) in the case of a company incorporated in Jersey, or its secretary, clerk or other similar officer or person, it shall be the address of the registered or principal office of the company in Jersey;

(b) in the case of a partnership, or a person who is a principal person in relation to a partnership, it shall be that of its principal office in Jersey; or

(c) in the case of a limited liability company, it shall be the registered office of the limited liability company in Jersey.[25]

(6) If the person to or on whom any notice, direction or other document referred to in paragraph (3) is to be given or served has notified the Commission of an address within Jersey, other than the person's proper address within the meaning of paragraph (5), as the one at which the person or someone on the person's behalf will accept documents of the same description as that notice, direction or other document, that address shall also be treated for the purposes of this Regulation and Article 7 of the Interpretation (Jersey) Law 1954 as the person's proper address.

31 Investigation by Commission

(1) Where, in the opinion of the Commission such action is advisable for the protection of the public, or of participants or potential participants in an AIF, the Commission may appoint an inspector to investigate the affairs of the AIF, of any service provider in relation to that or any other AIF or of any AIF entity and to make such further enquiries as the inspector may consider necessary.

(2) An inspector appointed under this Regulation may examine under oath –

(a) a service provider;

(b) an AIF entity;

(c) a principal person in relation to, or employee, banker, auditor or legal adviser of –

(i) an AIF,

(ii) an AIF entity, or

(ii) a service provider;

(d) any person nominated or approved to make a report in respect of an AIF entity or in respect of a service provider; or

(e) any other person who appears to be in possession of relevant information,

for the purpose of obtaining any information that the inspector considers necessary for the purpose of the inspector's investigation.

(3) References in paragraphs (1), (2) and (6) to a service provider include references –

(a) to a former service provider; and

(b) to any person who appears to the Commission to be acting or to have acted in contravention of Regulation 7.

(4) Subject to paragraph (5), when an inspector is appointed under this Regulation, it is the duty of all persons who are liable to be examined under oath under paragraph (2) to give the inspector all assistance in connection with the investigation which they are reasonably able to give.

(5) A person liable to be examined under oath under paragraph (2) is not required to disclose any information which the person is entitled to refuse to disclose on grounds of legal professional privilege except that a lawyer may be required to disclose the name and address of the lawyer's client.

(6) An inspector appointed under this Regulation may, at a reasonable time, having given prior written notice of intention to do so, and on producing if required evidence of the inspector's authority, enter any premises occupied by any of the persons who may be examined under paragraph (2), or any other premises where information is kept by such a person, for the purpose of carrying out the inspector's duties under this Regulation.

(7) Any person who obstructs a person exercising powers under paragraph (6) shall be guilty of an offence.

(8) If any person –

(a) refuses to produce any document which it is that person's duty under Regulation 14 to produce;

(b) refuses to attend before an inspector when required to do so; or

(c) refuses to answer any question put to that person by an inspector under this Regulation,

the inspector may certify the refusal to the Court.[26]

(9) The Court may thereupon enquire into the case; and, after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, the Court may punish the offender in like manner as if the offender had been guilty of contempt of court.

(10) A person convicted on a prosecution instituted as a result of an investigation under this Regulation may in the same proceedings be ordered to pay the expenses of the investigation to such extent as may be specified by the Court.

(11) For the purposes of paragraph (10), the expenses of the investigation shall include such sums as the Commission may determine in respect of the cost of staff and overheads.

(12) A statement made by a person in compliance with a requirement imposed by virtue of this Regulation may not be used by the prosecution in evidence against that person in any criminal proceedings except proceedings under paragraph (7) or Regulation 23(1) or (4).

(13) Nothing in paragraph (12) shall be construed as preventing the use of a statement in any enquiry under paragraph (9).

(14) This Regulation is in addition to and does not derogate from Regulation 14.

32 Obstruction of investigations

(1) It shall be an offence for a person who knows or suspects –

(a) that any information or document is, or is likely to be, required under Regulation 14; or

(b) that an investigation is being or is likely to be carried out under Regulation 31,

to falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of any information, or document, which that person knows or suspects would be required under Regulation 14 or relevant to an investigation under Regulation 31.[27]

(2) It shall be a defence for a person to prove that he or she had no intention of concealing facts disclosed by the information or documents from a person requiring or likely to require such information or documents under Regulation 14 or carrying out or likely to be carrying out an investigation under Regulation 31.[28]

33 Entry and search of premises

(1) If the Bailiff is satisfied by information on oath that there is reasonable cause to suspect that –

(a) if a notice were given under Regulation 14 it would not be complied with;

(b) if any person were required to produce documents under Regulation 14, those documents would be likely to be removed, tampered with or destroyed;

(c) a specified person has failed in any respect to comply with a notice or requirement referred to in sub-paragraph (a) or (b);

(d) a specified person has not provided complete information or documents in response to a notice or requirement referred to in sub-paragraph (a) or (b);

(e) an officer, or agent, within the meaning of Regulation 14 has been or may be obstructed in exercising a power under Regulation 14(4); or

(f) an inspector appointed under Regulation 31 has been or may be obstructed in exercising a power under Regulation 31(6),

the Bailiff may grant a warrant under this paragraph.[29]

(2) A warrant under paragraph (1) may authorize any police officer, together with any other person named in the warrant –

(a) to enter any premises specified in the warrant, using such force as is reasonably necessary for the purpose;

(b) to search the premises and obtain information or take possession of any documents appearing to be documents of a type referred to in any of the provisions mentioned in paragraph (1) or information relating to matters referred to therein or which otherwise appear to be relevant to the investigation of any offence under these Regulations, or to take, in relation to any such documents, any other steps which may appear to be necessary to preserve them or to prevent interference with them;

(c) to take copies of or extracts from such documents and to require the person who had possession of them or any person who appears to be in possession of relevant information to provide an explanation of them;

(d) to require any person named in the warrant to answer questions relevant for determining any matter in connection with these Regulations; and

(e) if the documents are not provided, to require any person appearing to be in possession of relevant information to state, to the best of his or her knowledge and belief, where they are.[30]

(3) A warrant under paragraph (1) shall continue in force until the end of the period of one month beginning with the date on which it was issued.

(4) Any documents taken under paragraph (2) may be retained –

(a) for a period of one year; or

(b) if, within that period, proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings.[31]

(5) A person who requires for the purposes of his or her business any documents taken under paragraph (2) may request the person in whose custody they are retained to furnish copies of them and the person in whose custody they are retained shall furnish such copies as soon as possible.[32]

(6) Any person who obstructs the exercise of any power conferred by a warrant under this Regulation or fails to comply with a requirement imposed on him or her by virtue of paragraph (2)(c), (d) or (e) shall be guilty of an offence.

(7) Where any person from whose premises documents are taken under paragraph (2) claims a lien on any such documents, the possession of such documents by the officer or person concerned and by anyone to whom he or she passes them shall be without prejudice to the lien.[33]

(8) Nothing in this Regulation shall require the disclosure or production by a person of information or documents, which that person would in an action in the Court be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in the Court except, if he or she is a lawyer, the name and address of his or her client.[34]

(9) A statement made by a person in compliance with a requirement imposed by virtue of this Regulation may not be used by the prosecution in evidence against him or her in any criminal proceedings except proceedings under paragraph (6) or Regulation 23(1) or (4).

34 Co-operation with relevant supervisory authority

(1) The following powers may be exercised (by the officer or person specified in the relevant provision) in order to assist a relevant supervisory authority –

(a) the power to refuse to grant a certificate under Regulation 9(1) or to cancel a certificate under Regulation 9(10);

(b) the power to impose conditions on the grant of a certificate under Regulation 9(2) or to vary such conditions or attach a new condition under Regulation 9(4);

(c) the powers relating to information and documents under Regulation 14;

(ca) the power to give a direction under Regulation 20;

(d) the powers under Regulation 31;

(e) the powers under Regulation 33;

(f) on the application of the Commission, the powers under Regulation 44;

(g) subject to Regulation 39, communication by the Commission to the relevant supervisory authority of information that is in the possession of the

Commission, whether or not as a result of the exercise of any of the above powers.[35]

(2) The Commission shall not exercise the power referred to in paragraph (1)(g) unless satisfied that the relevant supervisory authority will treat the information communicated with appropriate confidentiality and that –

(a) the power is exercised in order to assist the authority in the exercise of its supervisory functions; or

(b) the exercise of the power has been requested by the authority and requested only for the purposes of obtaining assistance for the authority in the exercise of one or more of its supervisory functions.

(3) The other powers referred to in paragraph (1) shall not be exercised by virtue of this Regulation unless the Commission is satisfied that the exercise has been requested by the relevant supervisory authority and requested only for the purposes of obtaining assistance for the authority in the exercise of one or more of its supervisory functions.

(4) In deciding whether to exercise a power by virtue of this Regulation, the following factors (among others) may be taken into account –

(a) whether corresponding assistance would be given to the Commission in the country or territory in which the relevant supervisory authority discharges its functions that are the same as, or similar to, those of the Commission;

(b) whether the case concerns the possible breach of a law, or other requirement, which has no close parallel in Jersey or involves the assertion of a jurisdiction not recognized by Jersey;

(c) the seriousness of the case and its importance in Jersey and whether the assistance could be obtained by other means;

(d) whether it is otherwise appropriate in the public interest to give the assistance.

(5) The exercise of powers by virtue of this Regulation may be refused unless the relevant supervisory authority undertakes to make such contribution towards the costs of its exercise as the Commission considers appropriate.

(6) For the purposes of this Regulation –

(a) a reference –

(i) in Regulation 14 to a contravention of Regulation 7 or of Regulation 15, or

(ii) in Regulation 31(3) to a contravention of Regulation 7,

shall include a reference to a contravention (committed at any time, including a time before the enactment of these Regulations) of a provision of a law of a country or territory outside Jersey, which provision the Commission reasonably considers to be similar to Regulation 15 or Regulation 7, as the case requires; and

(b) a reference in Regulation 33(4) to proceedings shall include a reference to proceedings outside Jersey.[36]

(7) For the purposes of this Regulation, a reference (however expressed or implied) in Regulation 7 or 15 (or in any provision necessary for the interpretation of Regulation 7 or 15) to Jersey, or to any class of person, any qualification or any provision, shall be construed, in the application of that Regulation to a contravention of a law of a country or territory outside Jersey, as a reference to that

country or territory, or to an equivalent class of person, qualification or provision, in terms of the law of that country or territory.

(8) The exercise of a power under any provision shall be no less an exercise of that power under that provision because it is exercised by virtue of this Regulation, and these Regulations (and any other law that applies when a power is exercised directly under that provision) apply also when that power is exercised by virtue of this Regulation.

35 Restriction on disclosure of information

(1) Except as provided in paragraphs (2) and (3) and in Regulations 36 to 38 –

(a) no person who, under or for the purposes of these Regulations, receives information relating to the business or other affairs of any person; and

(b) no person who obtains any such information directly or indirectly from a person who has received it as aforesaid,

shall disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was received as aforesaid.

(2) This Regulation does not apply to information which –

(a) at the time of the disclosure is, or has already been made, available to the public from other sources; or

(b) is in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(3) This Regulation does not apply to information that is communicated to a relevant supervisory authority under Regulation 34(1)(g).

(4) Any person who discloses information in contravention of this Regulation shall be guilty of an offence.

36 Disclosure facilitating discharge of functions by Commission

(1) Regulation 35 does not preclude the disclosure of information by or to any person in any case in which disclosure is for the purpose of enabling or assisting any of the following –

(a) the Commission or any person acting on its behalf;

(b) a person appointed under an enactment by any of the following –

(i) the Commission,

(ii) the Court, on the application of the Commission,

(iii) a Minister, where that Minister and the Commission are each specified in that enactment as having power to appoint that person,

to discharge the Commission's functions or that person's functions under these Regulations or under any other enactment.

(2) Regulation 35 does not preclude the disclosure of information by the Commission to the auditor of an AIF entity or of a former AIF entity if it appears to the Commission that disclosing the information would be in the interests of participants or potential participants in any AIF or in AIFs of any class.

37 Disclosure to public persons and bodies

(1) Regulation 35 does not preclude the disclosure of information by the Commission to –

(a) the Viscount;

(b) the Comptroller and Auditor General for the purpose of enabling or assisting the carrying out of any of the Comptroller and Auditor General's functions in relation to the Commission;

(c) any person for the purpose of enabling or assisting that person to exercise that person's statutory functions in relation to any person or class of person in respect of whom the Commission has or had statutory functions; or

(d) any person for the purpose of enabling or assisting that person to exercise that person's statutory functions in relation to any person or class of person who is required under an enactment to –

(i) hold a licence;

(ii) be registered; or

(iii) have consent or any other form of authorization or permission,

for such purpose as may be prescribed or specified (as the case may be) under that enactment.

(2) Regulation 35 does not preclude the disclosure of information for the purpose of enabling or assisting a relevant supervisory authority to exercise any of its supervisory functions.

(3) Without prejudice to the generality of paragraph (1)(c), Regulation 35 does not preclude the disclosure of information by the Commission to the Office of the Financial Services Ombudsman or to an Ombudsman, within the meaning of the Financial Services Ombudsman (Jersey) Law 2014 –

(a) to comply with a duty of the Commission under Article 20 of that Law; or

(b) for the purpose of enabling or assisting that Office or Ombudsman to exercise any function under that Law (including the raising of a levy).[37]

38 Other permitted disclosures

(1) Regulation 35 does not preclude the disclosure of information –

(a) with a view to the investigation of a suspected offence or the institution of, or otherwise for the purposes of, any criminal proceedings, whether under these Regulations or not;

(b) in connection with any other proceedings arising out of these Regulations; or

(c) to a person by the Commission showing whether or not any person holds a certificate under these Regulations, including any conditions to which that certificate is subject under Regulation 9.

(2) Regulation 35 does not preclude the disclosure by the Commission to the Attorney General or to a police officer of –

(a) information obtained by virtue of Regulation 14, 31 or 33; or

(b) information in the possession of the Commission as to any matter in relation to which the powers conferred by any of those Regulations are exercisable.

(3) Information disclosed under paragraph (2) may only be disclosed by the Attorney General or a police officer for the purposes of an investigation into a suspected

offence in Jersey or a prosecution in Jersey or, at the discretion of the Attorney General, a suspected offence or prosecution in a country or territory outside Jersey.

(4) Regulation 35 does not preclude the disclosure of information by the Commission to any person or body responsible for a compensation scheme in relation to one or more AIFs (whether in Jersey or in a country or territory outside Jersey) if –

(a) it appears to the Commission that disclosing the information would enable or assist the recipient of the information or the Commission to discharge its functions; and

(b) the recipient of the information gives to the Commission prior to disclosure a written undertaking that the information will not be further disclosed without the prior consent of the Commission.

(5) Regulation 35 does not preclude the disclosure of information by the Commission to any person acting on behalf of an international body or organization where that body's or organization's functions include the assessment of Jersey's compliance with international standards relating to regulation of the financial sector and the disclosure is for the purpose of enabling or assisting that body or organization to discharge those functions.

(6) Regulation 35 does not preclude disclosure of information by –

(a) the Commission; or

(b) a person appointed under an enactment by any of the following –

(i) the Commission,

(ii) the Court, on the application of the Commission, or

(iii) a Minister, where that Minister and the Commission are each specified in that enactment as having power to appoint that person,

to any person or body (whether in Jersey or elsewhere) responsible for setting standards of conduct for any profession and having powers to discipline persons who fail to meet those standards for the purpose of enabling or assisting that person or body to exercise any of its supervisory functions.[38]

(7) Subject to paragraphs (8) to (10), Regulation 35 does not preclude the disclosure of information by the Commission to any of the following organizations or persons –

(a) the ESAs;

(b) the ESRB.

(7A) Regulation 35 does not preclude the disclosure of information by the Commission for the purpose of enabling or assisting a pension supervisor to exercise any of its supervisory functions.[39]

(7B) Regulation 35 does not preclude the disclosure of information by the Commission to the Society of Lloyd's (being organs constituted by or under the Lloyd's Act 1982 of the United Kingdom) for the purpose of enabling or assisting that Society to exercise any of its supervisory functions.[40]

(8) The Commission shall not disclose information under paragraph (7) unless satisfied that –

(a) the purpose of the disclosure is to assist one or more of the organizations or persons referred to in paragraph (7)(a) and (b) in the exercise of any of its functions; and

(b) that organization or person will treat the disclosed information with appropriate confidentiality.

(9) In deciding whether to disclose information under paragraph (7), the Commission may take the following factors (among others) into account –

(a) whether corresponding disclosure of information would be given by the relevant organization or person to the Commission;

(b) whether the case concerns the possible breach of a law, or other requirement, which has no close parallel in Jersey;

(c) the seriousness of the case and its importance in Jersey and whether the information could be obtained by other means;

(d) whether it is otherwise appropriate in the public interest to disclose the information.

(10) The Commission may refuse to disclose information under paragraph (7) unless the relevant organization or person undertakes to make such contribution towards the costs of the disclosure as the Commission considers appropriate.

39 Attachment of conditions to disclosure[41]

No information shall be disclosed under or by virtue of Regulation 36(1) (in the case where it is for the purpose of enabling or assisting the parties referred to in Regulation 36(1)(a)), or under or by virtue of Regulation 34(1)(g), 37(1)(b) or (c) or (2) or 38(5), (6), (7), (7A) or (7B), unless the Commission or person, as the case requires, making the disclosure ("the disclosing party") is satisfied that the person or body to whom or which disclosure is made complies with or will comply with, any conditions to which the disclosing party may, in its discretion, subject such disclosure.

40 Information supplied to Commission by relevant supervisory authority

Regulations 35 to 39 apply also to information supplied to the Commission for the purposes of its functions under these Regulations by a relevant supervisory authority, any of the ESAs, the ESRB or a supervisor of a securities market.

41 Communication with Commission by auditors and approved professionals[42]

(1) No duty to which an auditor or an approved professional may be subject is contravened by reason of his or her communicating in good faith to the Commission, whether or not in response to a request made by it, any information or opinion on a matter to which this Regulation applies and which is relevant to any function of the Commission under these Regulations.

(2) In relation to an auditor, this Regulation applies to any matter of which the auditor becomes aware in his or her capacity as auditor and which relates to the business or affairs of –

(a) an AIF or former AIF;

(b) a certificate holder or former certificate holder;

(c) a service provider or former service provider in relation to an AIF;

(d) an AIF entity or former AIF entity;

(e) a principal person, or former principal person, of a person mentioned in sub-paragraphs (a) to (d); or

(f) a company that is a holding company or subsidiary in relation to a person mentioned in sub-paragraphs (a) to (d).

(3) In relation to an approved professional, this Regulation applies to any matter of which that person becomes aware in his or her capacity as the person making the report and which relates to the business or affairs of –

(a) an applicant for a certificate;

(b) an AIF;

(c) a certificate holder;

(d) a service provider in relation to an AIF;

(e) an AIF entity;

(f) a former AIF;

(g) a former certificate holder;

(h) a former service provider in relation to an AIF;

(i) a former AIF entity;

(j) a principal person or proposed principal person of a person mentioned in sub-paragraphs (a) to (e);

(k) a former principal person of a person mentioned in sub-paragraphs (b) to (i); or

(l) a company that is a holding company or subsidiary of a person mentioned in sub-paragraphs (a) to (i),

in relation to whom the report is made.

(4) The Minister may by Order specify circumstances in which an auditor or approved professional is required to communicate any information or opinion to the Commission on a matter to which this Regulation applies, and which is relevant to any function of the Commission under these Regulations.

(5) Orders under this Regulation may be made only –

(a) on the recommendation of the Commission; and

(b) after consultation with such persons as appear to the Commission to represent the interests of auditors, approved professionals, certificate holders and service providers in relation to AIFs.

(6) A person who contravenes an Order made under this Regulation is guilty of an offence and liable to imprisonment for a term of 6 months and a fine.

(7) In this Regulation –

"approved professional" means a person appointed to make a report as referred to in Regulation 8(3) or 14(6);

"auditor" means an auditor of –

(a) an AIF or a former AIF;

(b) a service provider or a former service provider in relation to an AIF; or

(c) an AIF entity or former AIF entity,

and includes –

(d) a person who was the auditor of a certificate holder or former certificate holder, a service provider or former service provider in relation to an AIF at any time during the period in which the certificate in relation to the AIF was in force.[43]

42 Register of AIFs

(1) The Commission shall keep a register of AIFs in relation to which certificates have been granted under these Regulations.

(2) The register shall be in such form and contain such particulars as the Commission may from time to time determine.

(3) The register shall be kept in such place as the Commission may determine, and any person shall be permitted to inspect the register during ordinary office hours, and to take copies of any entry in it.

43 Applications to Court

(1) If it appears to the Commission –

(a) that it is desirable in the interest of the participants or potential participants in an AIF; or

(b) that an AIF entity in relation to an AIF or a service provider in relation to an AIF has failed to comply with any provision of these Regulations or of any Order or with any direction given under these Regulations, or in purported compliance with any such provision or direction has furnished to the Commission false, inaccurate or misleading information,

the Commission may apply to the Court for an order to any one or more of the following effects –

(i) removing the service provider in relation to the AIF,

(ii) replacing the service provider with a person nominated by the Commission,

(iii) that the person nominated by the Commission procure the winding-up of the AIF or of the AIF entity.

(2) On such an application, the Court may make such order as it thinks fit, which may include provisions to facilitate the removal or replacement of a service provider in relation to the AIF or the winding-up of the AIF or of the AIF entity.

(3) The Commission shall give written notice of the making of an application under paragraph (1) to the relevant AIF entity and the relevant service provider, and take such steps as it considers appropriate for bringing the making of the application to the attention of participants in the relevant AIF.

(4) If on the application of the Commission the Court is satisfied –

(a) that there is a reasonable likelihood that a person will fail to comply with a provision of these Regulations, or of any Order or certificate, or conditions prescribed under these Regulations or attached to a certificate, or with any direction given under these Regulations;

(b) that a person has failed to comply with any such provision, condition or direction and that there is a reasonable likelihood that the failure will continue or be repeated; or

(c) that any person has failed to comply with any such provision, condition or direction and that there are steps that could be taken for remedying the failure,

the Court may make an order preventing the failure or requiring that person, and any other person who appears to the Court to have been knowingly concerned in the failure, to take such steps as the Court may direct to remedy it.

(5) If on the application of the Commission the Court is satisfied –

(a) that profits have accrued to a person as a result of that person's failure to comply with a provision of these Regulations, or of any Order or certificate, or conditions prescribed under these Regulations or attached to a certificate, or with any direction given under these Regulations; or

(b) that one or more investors have suffered loss or been otherwise adversely affected as a result of that failure,

the Court may make an order requiring the person concerned to pay into court for distribution as the Court may direct such sum as appears to the Court to be just having regard to the profits appearing to the Court to have accrued and to the extent of the loss or other adverse effect.

(6) On an application under paragraph (5) the Court may require the person concerned to furnish it with such accounts or other information as it may require for establishing whether any and, if so, what profits have accrued to that person as mentioned in paragraph (5)(a) and for determining how any amounts are to be paid or distributed under that paragraph; and the Court may require any such accounts or other information to be verified in such manner as it may direct.

(7) Where, on the application of the Commission, the Court is satisfied that –

(a) a certificate holder (referred to in this Regulation as "holder") –

(i) is not, in terms of Regulation 9(7)(a), a fit and proper person to carry on business in relation to an AIF, being business that the holder is purporting to carry on,

(ii) is not fit to carry on business in relation to an AIF to the extent to which the holder is purporting to do, or

(iii) has, in relation to an AIF, failed, or is likely to fail, to comply with a provision or direction as described in paragraph (4)(a); and

(b) it is desirable for the Court to act under this paragraph for the protection of participants or potential participants in that or any other AIF in relation to which the holder carries on or purports to carry on business,

the Court may, as it thinks just, make an order making the holder's business subject to such supervision, restraint or conditions from such time and for such periods as the Court may specify, and may also make such ancillary orders as the Court thinks desirable. [44]

(8) If, on an application made under paragraph (7), the Court is satisfied that a holder has –

(a) by entering into any transaction with another person, contravened Regulation 7;

(b) contravened Regulation 15 with the result that another person has been induced to enter into a transaction with the holder or with a third person;

(c) entered into any transaction with another person who was induced to enter into the transaction as a result of the contravention of Regulation 15 by a third person; or

(d) by entering into any transaction with another person, contravened any condition applicable to the holder (whether attached to a certificate or prescribed by Order) or any direction given to the holder under Regulation 20,

the Court may order any one or more of those persons (and any other person who appears to the Court to have been knowingly concerned in the contravention) to

take such steps as the Court may direct for restoring one or more of the persons to the position in which they were before the transaction was entered into. [45]

(9) Without prejudice to the generality of paragraph (7) or (8), an order made under either of those paragraphs may include a requirement that all assets, or all assets of a specified description, that, at any time while the requirement is in force when the certificate holder carries on business relating to an AIF –

(a) belong to the certificate holder concerned; or

(b) belong to persons with whom the certificate holder is transacting business relating to an AIF and are held by or to the certificate holder's order,

shall be transferred to and held by a person whose appointment is approved by the Court (in this Regulation referred to as an "appointed person").

(10) Where a requirement of a type referred to in paragraph (9) is imposed under this Regulation, it shall be the duty of the certificate holder concerned to transfer the assets to the appointed person and to give the appointed person all such other assistance as may be required to enable the appointed person to discharge his or her functions in accordance with the requirement.

(11) Assets held by an appointed person in accordance with a requirement of a type referred to in paragraph (9) shall not be released or dealt with except in accordance with directions given by the Court or in such circumstances as may be specified by it.

(12) An order including a requirement of a type referred to in paragraph (9) may relate to assets in a country or territory outside Jersey.

(13) The provisions of this Regulation shall be without prejudice to any right of any aggrieved person to bring proceedings directly in respect of any right such person may otherwise have independently of the Commission.

44 Commission may apply to Court for appointment of manager in prescribed circumstances

(1) Orders may prescribe circumstances in which the Commission may apply to the Court for the appointment by the Court of a person to manage the affairs, or any part of the affairs, of any person mentioned in paragraph (2) in so far as those affairs relate to an AIF.

(2) Those persons are –

(a) any person granted a certificate; and

(b) any person whom the Commission reasonably believes to be in breach of Regulation 7.

(3) The Court may, on an application made to it by the Commission, in circumstances prescribed under paragraph (1), appoint, on such terms as it considers to be appropriate, a person to manage the affairs, or any part of the affairs, of any person mentioned in paragraph (2) in so far as those affairs relate to an AIF.

(4) Subject to the terms of his or her appointment, a person so appointed shall have all the powers necessary to manage the affairs, or the part of the affairs, of the person in respect of whom the appointment was made in so far as they relate to an AIF.

45 Actions for damages

A failure to comply with such provisions of these Regulations as an Order may specify shall be actionable at the suit of a person who suffers loss as a result of the failure, subject to the defences and other incidents applying to actions for breach of statutory duty; but no such failure shall invalidate any transaction.

46 Limitation of liability

(1) No person or body to whom this Regulation applies shall be liable in damages for anything done or omitted in the discharge or purported discharge of any functions under these Regulations or any enactment made, or purportedly made, under these Regulations unless it is shown that the act or omission was in bad faith.

(1A) Paragraph (1) does not apply so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000.[46]

(2) This Regulation applies to the following –

(a) the States;

(b) the Minister or any person who is, or is acting as, an officer, servant or agent in an administration of the States for which the Minister is assigned responsibility or who is performing any duty or exercising any power on behalf of the Minister;

(c) the Commission, any Commissioner or any person who is, or is acting as, an officer, servant or agent of the Commission or who is an inspector appointed by the Commission under Regulation 31 or who is performing any duty or exercising any power on behalf of the Commission.

47 Citation

These Regulations may be cited as the Alternative Investment Funds (Jersey) Regulations 2012.

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement	◦Projet No (where applicable)
Alternative Investment Funds (Jersey) Regulations 2012	R&O.142/2012	2 April 2013	P.142/2012
Alternative Investment Funds (Amendment of Regulations) (Jersey) Order 2013	R&O.95/2013	22 July 2013	
States of Jersey (Transfer of Functions No. 6) (Economic Development and Treasury and Resources to Chief Minister) (Jersey) Regulations 2013	R&O.107/2013	19 July 2013	P.75/2013
Financial Services Ombudsman (Jersey) Law 2014	L.14/2014	25 July 2014	P.9/2014
Financial Services Commission (Amendment No. 6) (Jersey) Law 2015	L.1/2015	20 March 2015	P.151/2014
Alternative Investment Funds (Amendment of Regulations No. 2) (Jersey) Order 2015	R&O.77/2015	14 July 2015	
Financial Regulation (Miscellaneous Provisions No. 3) (Jersey) Law 2016	L.8/2016	22 April 2016	P.162/2015
Limited Liability Partnerships (Jersey) Law 2017	L.2/2017	1 August 2018 (R&O.74/2018)	P.95/2016
Financial Services Commission (Amendment No. 7) (Jersey) Law 2018	L.28/2018	26 October 2018	P.74/2018
Alternative Investment Funds (Amendment) (Jersey) Regulations 2019	R&O.4/2019	22 January 2019	P.140/2018
States of Jersey (Transfer of Responsibilities and Functions) (Chief Minister to External Relations) Order 2019	R&O.40/2019	31 May 2019	
European Union (United Kingdom Exit – Alternative Investment Funds) (Jersey) Regulations 2019	R&O.26/2019	11 p.m. on 31 December 2020 (R&O.189/2020)	P.15/2019

Legislation	Year and No	Commencement	◦Projet No (where applicable)
States of Jersey (Minister for Children and Education, Minister for Housing and Communities and Minister for External Relations and Financial Services) (Jersey) Order 2021	R&O.29/2021	2 March 2021	
Limited Liability Companies (Consequential Amendments) (Jersey) Regulations 2022	R&O.38/2022	1 September 2022	P.33/2022
Limited Liability Companies (Amendment) (Jersey) Regulations 2023	R&O.12/2023	14 February 2023	P.118/2022
States of Jersey (Transfer of Financial Services Functions – External Relations to Chief Minister) Order 2023	R&O.28/2023	12 April 2023	
Changes to Ministerial Offices (Jersey) Amendment Order 2024	R&O.10/2024	9.30 a.m. on 27 February 2024	

◦Projets available at statesassembly.gov.je

Table of Renumbered Provisions

Original	Current
47	Spent, omitted
48(1)	47
48(2)	Spent, omitted
Schedule	Spent, omitted

Table of Endnote References

[1] *Despite the repeal of the European Communities Legislation (Implementation) (Jersey) Law 1996, these Regulations are to be treated as if made under the European Union Legislation (Implementation) (Jersey) Law 2014. See Article 6(3) of that Law as enacted.*

[2] *Regulation 2* — *amended by R&O.107/2013, L.2/2017, R&O.4/2019, R&O.40/2019, R&O.26/2019, R&O.29/2021, R&O.38/2022, R&O.12/2023, R&O.28/2023, R&O.10/2024*

[3] *Regulation 3* — *substituted by R&O.95/2013*

[4] *Regulation 3(1)* — *amended by R&O.77/2015, R&O.26/2019*

[5] *Regulation 3(2)* — *amended by L.2/2017, R&O.38/2022*

[6] *Regulation 3(2A)* — *inserted by R&O.77/2015, amended by R&O.38/2022*

[7] *Regulation 4* — *amended by L.8/2016, R&O.4/2019, R&O.38/2022*

[8] *Regulation 8(3)* — *substituted by L.8/2016*

[9] *Regulation 9(7)* — *amended by L.1/2015*

[10] *Regulation 12(3)* — *substituted by R&O.4/2019*

[11] *Regulation 14* — *substituted by R&O.4/2019*

[12] *Regulation 18(2A)* — *inserted by R&O.38/2022*

[13] *Regulation 18(6)* *amended by R&O.38/2022*
[14] *Regulation 18(7)* *amended by R&O.38/2022*
[15] *Regulation 18(8)* *amended by R&O.38/2022*
[16] *Regulation 18(8A)* *inserted by R&O.4/2019*
[17] *Regulation 18(9)* *amended by R&O.38/2022*
[18] *Regulation 20(4)* *amended by L.8/2016*
[19] *Regulation 22(1)* *amended by L.1/2015*
[20] *Regulation 22(3)* *substituted by L.1/2015*
[21] *Regulation 23(3)* *amended by R&O.4/2019*
[22] *Regulation 24(1)* *amended by L.1/2015*
[23] *Regulation 24(2)* *amended by L.1/2015, L.28/2018*
[24] *Regulation 30(4)* *amended by R&O.38/2022*
[25] *Regulation 30(5)* *amended by R&O.38/2022*
[26] *Regulation 31(8)* *amended by R&O.4/2019*
[27] *Regulation 32(1)* *amended by R&O.4/2019*
[28] *Regulation 32(2)* *amended by R&O.4/2019*
[29] *Regulation 33(1)* *substituted by R&O.4/2019*
[30] *Regulation 33(2)* *amended by R&O.4/2019*
[31] *Regulation 33(4)* *amended by R&O.4/2019*
[32] *Regulation 33(5)* *amended by R&O.4/2019*
[33] *Regulation 33(7)* *amended by R&O.4/2019*
[34] *Regulation 33(8)* *amended by R&O.4/2019*
[35] *Regulation 34(1)* *amended by R&O.4/2019*
[36] *Regulation 34(6)* *amended by R&O.4/2019*
[37] *Regulation 37(3)* *inserted by L.14/2014*
[38] *Regulation 38(6)* *amended by R&O.4/2019*
[39] *Regulation 38(7A)* *inserted by R&O.4/2019*
[40] *Regulation 38(7B)* *inserted by R&O.4/2019*
[41] *Regulation 39* *amended by R&O.4/2019*
[42] *Regulation 41* *substituted by L.8/2016*
[43] *Regulation 41(7)* *amended by R&O.4/2019*
[44] *Regulation 43(7)* *substituted by R&O.4/2019*
[45] *Regulation 43(8)* *substituted by R&O.4/2019*
[46] *Regulation 46(1A)* *inserted by R&O.4/2019*