



ISLE OF MAN GOVERNMENT

FINANCIAL SUPERVISION COMMISSION

GUIDANCE NOTES ON ELIGIBLE MARKETS

AUTHORISED COLLECTIVE INVESTMENT SCHEMES
FINANCIAL SUPERVISION ACT 1988, SECTION 3

DECEMBER 1996

Guidance Notes on Eligible Markets

GUIDANCE NOTES ON ELIGIBLE MARKETS

The following Guidance is indicative of the matters a manager will need to take into account, using such information as is available to him and taking advice as appropriate, in order to be satisfied that, in broad terms, the market/exchange is fair, clear, liquid and orderly. However, the items listed below are not necessarily exhaustive, nor are they in any particular order of relative importance. An overall view will need to be taken on each market/exchange.

Introduction

1. These Guidance Notes are published by the Financial Supervision Commission ("the Commission") in order to assist managers of authorised schemes in their duty of assessing whether a particular securities or derivatives market qualifies as an eligible market under regulation 10.05A of the Financial Supervision (Authorised Collective Investment Schemes) Regulations 1988 as amended ("the Regulations"). Interpretation of the Regulations is ultimately a matter for the courts to determine and legal advice may therefore need to be obtained where appropriate.
2. The duty of the manager under regulation 10.05A has to be discharged after consultation with the trustee/custodian. The duty of the trustee/custodian is twofold. Firstly, to ensure, as previously, that adequate custody arrangements can be provided for the market in question. Secondly, that the manager is exercising his duty in a manner which does not exceed the powers conferred on him by the Regulations. In the context of eligible markets this means that the trustee/custodian must be satisfied that the manager has taken all reasonable steps in arriving at his decision that the market in question is eligible.
3. It should be noted that under this eligible markets regime, transferable securities which are admitted to official listing in a Member State of the European Union remain "approved securities". It should also be noted that a Securities Fund is still permitted to invest up to 10% of the property of the fund in transferable securities which are not approved securities.
4. The new eligible markets regime replaces the list of approved markets and approved options and futures markets, with a duty on the manager to only invest or deal (for approved securities and derivative purposes) in those other markets (on which transferable securities are not admitted to official listing) in Member States of the European Union and markets in non-Member States, which the manager considers meet the criteria required for securities markets. Those criteria are that the market must be regulated, operate regularly, be recognised and be open to the public. Furthermore, in exercising that duty the manager is required to have regard in particular to the need for adequate liquidity in the market and the ability to repatriate funds.
5. In exercise of this duty the manager must use his integrity and competence in making a judgement as to what constitutes an "eligible market". This Guidance is intended to assist managers in that task.

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Market Criteria

6. A market established in a Member State of the European Union on which transferable securities admitted to official listing are dealt in or traded will be a matter of fact. But in assessing whether any other securities market in a Member State and a securities market in non-Member States, or any derivatives market/exchange is liquid and meets the four criteria described in paragraph 4, the manager will need to consider in respect of each criterion a number of features of the securities or derivatives market/exchange in question, as appropriate. The particular characteristics of each market/exchange must be considered individually by the manager.

Liquidity and Repatriation of Funds

7. The manager is required to have regard in particular to the overall liquidity of the market/exchange; whether securities and/or derivatives can be bought and sold in a reasonable time, at best execution and in adequate amounts; the procedures and restrictions (if they exist) on the repatriation of funds; all bearing in mind in particular the open-ended nature of a collective investment fund and the requirement of the Regulations that the manager must be willing to redeem units, including large redemptions, at a price arrived at under the Regulations.

Regulated

8. The market/exchange must be subject to supervision by an authority which should be a statutory body, an agency of national or state Government, a department of such Government, or another body designated for the purpose of one of these. Additionally, a manager will need to take into account:
 - the degree to which members are subject to formal supervision by the market/exchange or another body, and in particular whether that supervision includes levels of capital;
 - the powers of the market/exchange and the supervising body to intervene in members' business in the event of misconduct, financial difficulties or otherwise, including the power to reject applicants, terminate membership and delist a security;
 - the initial "listing" standards and ongoing supervision of securities traded on the market/exchange including the publication of prospectuses and audited annual financial statements;
 - the everyday availability of current information about securities, derivatives, quotation, transactions, prices and spreads;
 - requirements for the issue of contract notes (or their equivalents);
 - whether there is a requirement for trade reporting to the market/exchange or other supervisory body of the securities/derivatives the manager is intending to buy;
 - whether the clearance and settlement arrangements normally used for transactions on the market/exchange are prompt and secure;

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- the risk of loss in the event of insolvency of a member of the market/exchange; and
- how the market/exchange investigates and deals with complaints.

Operating Regularly

9. The market/exchange must have regular trading hours during which the investments listed or admitted to dealing on that market may be dealt in. Additionally, the manager will need to take into account:
- the availability and timing of price and volume information and the way it is distributed; and
 - in respect of securities the degree and speed with which companies listed on the market/exchange must release price sensitive information and the medium through which that information is distributed.

Open to the Public

10. Investments listed or admitted to dealing on the market/exchange must be freely available for trading by the public directly, or through members of the market/exchange, during normal trading hours. Additionally, the manager will need to take into account the extent to which overseas investors are permitted to hold securities listed on the market/exchange.

General

11. In respect of any particular market/exchange it is the duty of the manager, after consultation with the trustee/custodian with regard to safe custody, to consider all the above characteristics of that market/exchange and to decide whether it should be an "eligible market" for approved securities and derivative investment purposes.
12. It is also the manager's duty, after consultation with the trustee/custodian with regard to safe custody, to continue to be satisfied that a market/exchange considered to be eligible continues to exhibit the characteristics which led to that decision and to ensure that there are no new events or characteristics which undermine that eligibility. If a market/exchange ceases to be eligible then investments on that market/exchange will need to be at such a level that the 10% limit of the fund allowed to be invested in unapproved securities overall is not exceeded, and/or no new derivative exposures created. Such an event will generally be treated as an inadvertent breach of the Regulations.

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Provision for Eligible Markets in the Prospectus and Trust Deed/Memorandum and Articles of Association

13. The Regulations provide, in the interests of investor information and protection, that the Scheme Particulars must contain a list or lists of the securities and derivatives exchanges/markets, falling within paragraph (2) of regulation 10.05A, that the manager has decided, after consultation with the Trustee/custodian are eligible, and which the Fund intends to invest through or deal on. The Scheme Particulars may include in the list, or refer to in general terms any markets in Member States of the European Union which are eligible by virtue of paragraph (1) of regulation 10.05A.
14. The Regulations also now provide that the Trust Deed/Memorandum and Articles of Association must contain a statement that the fund has, for "eligible market" purposes, the power to invest in any of the securities and derivatives exchanges/markets which are eligible in relation to that fund.

Transitionals

15 (a) **Trust Deeds**

In the case of a unit trust the amendment to the Regulations requires the provisions, referred to in paragraph 14 above, to be included in the trust deed when the trust deed is next amended for any other reason. From the date of first amending of the Scheme Particulars to comply with the eligible markets regime until the time of next amending of the trust deed, the Regulations provide that the deed will be taken to contain this provision.

15 (b) **Memorandum and Articles of Association**

In the case of an open-ended investment company the amendment to the Regulations requires the provisions, referred to in paragraph 14, to be included in the Memorandum and Articles of Association when the Memorandum and Articles of Association are next amended for any other reason. From the date of first amending of the Scheme Particulars to comply with the eligible markets regime until the time of next amending of the Memorandum and Articles of Association, the Regulations provide that the Memorandum and Articles of Association will be taken to contain this provision.

Scheme Particulars

16. Funds launched after the Regulations have been amended will of course be required to provide in the Scheme Particulars the list or lists of those markets the manager has designated as "eligible".
17. For existing funds for the period of time between the coming into force of the amended Regulations (ie. 1 January 1997) and updating the Scheme Particulars (a maximum of twelve months), the old approved markets and approved options and futures market regime will continue in force for such a fund. Once a manager updates the Scheme Particulars, the trust deed, Memorandum and Articles of Association will be taken to include the provision set out in paragraph 14 above and the old approved markets and approved futures and options markets regime will cease to exist for that fund.

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Meetings

18. Amending the trust deed/Memorandum and Articles of Association by introducing the statement, as referred to in paragraph 14 above, will not require a meeting of unitholders/shareholders, unless, in the case of a unit trust, the terms of the trust deed are such that a meeting is required. Similarly, amending the Scheme Particulars to introduce the lists of "eligible markets" and which do not result in additions to the previous "approved markets" regime, does not require a meeting of unitholders/shareholders.
19. However, the introduction of a list of "eligible markets" which, whilst remaining within the fund's investment objectives, results in a widening of the previous "approved markets" or approved options and futures market regime, will require the approval of an extraordinary resolution at a meeting of unitholders/shareholders unless:
 - the trustee/custodian and manager have agreed in writing that the amendment is of minimal significance; or
 - the trustee/custodian and unitholders/shareholders have been informed in writing of the intended amendment, and at least 90 days have elapsed since the revised Scheme Particulars becomes available, before the amendment is relied upon.
20. Similarly, once a list of "eligible markets" has been introduced, the addition of other markets/exchanges to that list will require the same procedure as set out in paragraph 19 above to be carried out, regardless of whether those markets were included in the previous "approved markets" or approved options and futures market regime.
21. The introduction of a list of "eligible markets" or an addition of a market/exchange to an existing list which will result in a departure from the fund's stated investment objectives will not be permitted until that departure has been approved by an extraordinary resolution at a meeting of holders called for that purpose.
22. Markets may be removed from the list without a meeting or 90 days notice provided the decision is properly taken and notified to the trustee.

Other Regulatory Requirements

23. The initial introduction of a list or lists of "eligible markets" in the Scheme Particulars is considered by the Commission to be an alteration to the Scheme Particulars unless that list does not result in additions to the previous "approved markets" or approved options and futures markets regime. Thereafter any additions to the list or lists will be regarded as an alteration to the fund for the purposes of section 7 of the Financial Supervision Act 1988, regardless of whether the subsequent markets/exchanges were included in the previous "approved markets" or approved options and futures market regime, and would therefore require prior notification to the Commission and a revision of the Scheme Particulars.

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24. The new "eligible markets" regime represents a change in regulatory approach by replacing prescriptive regulation with a duty on managers. To underpin the new arrangements the Commission, on visits to managers, and when inspecting reports and accounts, will pay particular attention to any new markets designated by the manager as eligible and will wish to see documented evidence of due deliberation by the manager in consultation with the trustee in coming to and continuing with his decision.
25. In the case of some markets, managers will in particular have to demonstrate that they have considered that some sectors might satisfy the criteria for eligibility (eg. liquidity) and others might not. In case of doubt, managers should seek guidance from the Commission, and investment in such a market or market sector would not be permitted unless the specific agreement of the Commission has been given. Managers need not seek the Commission's views or demonstrate compliance in the case of any markets appearing on the list attached to this Guidance, which may be amended from time to time.
26. In accordance with the written undertaking given by the Commission to HM Treasury, the Commission will endeavour to ensure that the managers of Isle of Man authorised funds will only invest in markets in which any UK authorised fund is permitted to invest.
27. The Commission considers that the above Guidance and procedures should enable managers to exercise their professionalism in a proper manner and that the additional flexibility should not lead to any lessening in the standards of investor protection.
28. Nevertheless the Commission will keep the new system under close review and will modify the Regulations and this Guidance as necessary in the light of experience.

ELIGIBLE MARKETS FOR AUTHORISED SCHEMES

The following are those markets of which the FSC does not, for the time being, intend in the course of its monitoring and supervision work to question the due diligence undertaken by a manager or trustee in respect of their eligibility under regulation 10.05A.

Markets in EU Member States

SECURITIES MARKETS	DERIVATIVES MARKETS
AUSTRIA Wiener Börsekamer (Vienna Stock Exchange)	ÖTOB (Austrian Futures and Options Exchange)
BELGIUM Bourse de Bruxelles (Brussels Stock Exchange)	Belfox (Belgian Futures Market)
DENMARK Københavns Fondbørs (Copenhagen Stock Exchange)	Københavns Fondbørs (including FUTOP) (Copenhagen Stock Exchange)

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FINLAND Helsingin Arvopaperipörssi (Helsinki Stock Exchange)	Finnish Options Market
FRANCE SBF-Paris Bourse (Paris Stock Exchange) Second Marché of any Stock Exchange on which transferable securities are admitted to official listing	SBF-Paris Bourse (Paris Stock Exchange) Marché à Terme International de France (MATIF) Marché des Options Négociable de Paris (MONEP)
GERMANY Deutsche Börse AG (German Stock Exchange)	Deutsche Terminbörse (DTE) (German Stock Exchange)
GREECE The Athens Stock Exchange	
IRELAND The Irish Stock Exchange	FINEX Irish Futures and Options Exchange (IFOX)
ITALY Italian Stock Exchange	Italian Futures Market
LUXEMBOURG Société de la Bourse de Luxembourg (Luxembourg Stock Exchange)	
NETHERLANDS Amsterdam Effectenbeurs (Amsterdam Stock Exchange)	Financiele Termijnmarkt Amsterdam
NORWAY Oslo Bors (Oslo Stock Exchange)	
PORTUGAL Bolsa de Valores de Lisboa (Lisbon Stock Exchange)	
SPAIN Bolsa de Madrid (Madrid Stock Exchange) Bolsa de Barcelona (Barcelona Stock Exchange) Bolsa de Bilbao (Bilbao Stock Exchange) Bolsa de Valencia (Stock Exchange of Valencia)	MEFF Renta Variable (Madrid Futures and Options Market) MEFF Renta Fija (Barcelona Futures and Options Market)
SWEDEN Stockholms Fondbörs AB (Stockholm Stock Exchange Limited)	The Swedish Options Market
UNITED KINGDOM London Stock Exchange Alternative Investment Market (AIM) Tradepoint Limited Grey Book Market	London International Financial Futures Exchange (LIFFE) OMLX
OTHERS	European Options Market

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Markets in Non EU Member States

SECURITIES MARKETS ("OLD SCHEDULE 5")	DERIVATIVES MARKETS
AUSTRALIA Australian Stock Exchange Limited	Sydney Futures Exchange
CANADA The Toronto Stock Exchange The Montreal Stock Exchange The Vancouver Stock Exchange The Alberta Stock Exchange The Calgary Stock Exchange Winnipeg Stock Exchange	The Montreal Exchange Toronto Futures Exchange
HONG KONG Stock Exchange of Hong Kong Limited	Hong Kong Futures Exchange
JAPAN Tokyo Stock Exchange Fukuoka Stock Exchange Hiroshima Stock Exchange Kyoto Stock Exchange Nagoya Stock Exchange Niigata Stock Exchange Osaka Securities Exchange Sapporo Stock Exchange The Japan "Over-the-Counter" Trading Co Ltd (Tokyo OTC Market)	Tokyo Stock Exchange Tokyo International Futures Exchange Osaka Securities Exchange
KOREA Korea Stock Exchange	
MALAYSIA The Kuala Lumpur Stock Exchange	
MEXICO Bolsa Mexicana de Valores (Mexican Stock Exchange)	
NEW ZEALAND New Zealand Stock Exchange	New Zealand Futures Exchange
SINGAPORE Stock Exchange of Singapore Limited	Singapore International Monetary Exchange (SIMEX)
SOUTH AFRICA The Johannesburg Stock Exchange	The Johannesburg Stock Exchange The South African Futures Exchange (SAFEX)
SWITZERLAND Zurich Stock Exchange Basle Stock Exchange Geneva Stock Exchange	Swiss Options & Financial Futures Exchange (SOFFEX)

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THAILAND Stock Exchange of Thailand	
UNITED STATES New York Stock Exchange American Stock Exchange The NASDAQ Stock Exchange Association of Securities Dealers Inc) Boston Stock Exchange Cincinnati Stock Exchange Midwest Stock Exchange Pacific Stock Exchange Philadelphia Stock Exchange The market in transferable securities issued by or on behalf of the Government of the United States of America conducted through those persons for the time being recognised and supervised by the Federal Reserve Bank of New York and known as primary dealers	Chicago Board of Trade (GLOBEX) Chicago Board Options Exchange (CBOE) (National Chicago Mercantile Exchange New York Futures Exchange New York Mercantile Exchange (NYMEX) New York Stock Exchange Kansas City Board of Trade Pacific Stock Exchange Philadelphia Stock Exchange Philadelphia Board of Trade
OTHERS The International Securities Market Association	