

Exchange Traded Commodities ("ETCs")

The ETC market is one of the fastest growing investment segments in the Exchange Traded Product market.

Jersey remains a popular jurisdiction for the creation of ETC issuance vehicles and this briefing outlines some of the benefits of using Jersey and Ogier to establish ETC structures.

What are Exchange Traded Commodities?

ETCs are simple and efficient and provide exposure to an ever-increasing range of precious metals, commodities and commodity indices, including energy, metals, softs and agriculture.

ETCs are debt securities designed to track a specified commodity such as precious metals and futures. The first ETCs were issued by banks but now ETCs are increasingly structured as asset-backed securities issued as senior secured limited recourse securities issued by a special purpose entity.

Among the first commodity ETFs were gold exchange-traded funds, which have been offered in a number of countries. The earliest ETFs actually owned the physical commodity (e.g. gold and silver bars). However, most ETCs now utilise derivatives to gain exposure to the relevant underlying commodity.

Similar to exchange traded funds, ETCs have market maker support with guaranteed liquidity, enabling investors to gain exposure to commodities, on-Exchange, during market hours. ETCs can be tax efficient and provide investors with a liquid product with access to new markets and strategies.

Advantages of Jersey as a Jurisdiction Generally

Jersey has proven to be popular as a jurisdiction for the incorporation of issuing entities for many structured product transactions, including ETC structures. It is in the same time zone as London and there are close links between the major financial centres of Europe and Jersey. Such features and those set out below enable Jersey entities to be structured to meet a wide variety of business purposes.

Advantages of Jersey include the following:

- **Tax neutrality.** An SPV will be established as a 0% rated company for income tax purposes and it will, therefore, not be liable to pay any Jersey income tax and any notes and/or any equity issued by it will not be subject to withholding tax. In addition, there is no Capital Gains Tax (or equivalent) in Jersey.
- **No restrictions on holding physical commodities.** Unlike certain other jurisdictions, there are no restrictions in Jersey in relation to an ETC issuing vehicle holding physical assets.
- **Speed of the regulatory authorities** in issuing the relevant consents to securities issuing vehicles. The Jersey Financial Services Commission's (the "JFSC") published response time in dealing with applications for consents under the Control of Borrowing (Jersey) Order 1958 and the Companies (General Provisions) (Jersey) Order 2002 is five business days. The approach taken is that of a "gatekeeper", where the entry requirements are checked carefully but there is no annual review process; the JFSC will be concerned to ensure that complex debt instruments are not being offered to ineligible investors, that the promoters are recognised in the marketplace and that the proposed activities of the SPV are not likely to detract from Jersey's reputation.
- **Suitability of Jersey for derivative transactions common to ETC structures.** Jersey is a 'netting friendly' jurisdiction and Ogier currently are ISDA appointed counsel in Jersey. The Bankruptcy (Netting, Contractual Subordination and Non-Petition Provisions) (Jersey) Law 2005 (the "Netting Law") enshrines the enforceability of contractual netting and set-off arrangements as part of Jersey's statutory laws.
- **No stamp duty on transaction documents or securities.** Unlike a number of other jurisdictions, Jersey has no stamp duty (except in respect of Jersey real property). This removes a complication that can otherwise impact on the closing of a transaction and the execution of relevant documents.
- **Established commercial legal framework.** Jersey's legal framework is based in the main upon established English law principles. The Companies (Jersey) Law 1991 (the "Companies Law") has been

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updated in recent years and draws on many of the provisions of the equivalent UK and other common law jurisdictions’ statutes. As a consequence, the principles that apply in Jersey will be familiar to many practitioners and arrangers based in London. The Companies Law imposes no requirements relating to thin capitalisation or moratorium on insolvency.

- **Corporate advantages.** The benefits of using a Jersey company in terms of company law provisions are extremely wide, and generally include separate legal identity, limited liability for shareholders and ease of transfer of ownership. The Companies Law enables capital to be denominated in any currency and share capital of either par value or no par value shares to be issued in various classes, including redeemable shares. It also allows for the incorporation of guarantee companies, unlimited companies and cell companies (the latter providing particular flexibility).
- **Jersey is a member of the OECD and on its White List of Offshore Finance Centres.** Some investors will be subject to investment restrictions requiring that the SPV is located in an OECD member country.
- **Political and economic stability.**
- **Speed of incorporation.** A Jersey SPV can usually be established within 24 hours.
- **Quality of financial services providers.** Jersey has had a thriving financial services sector for over thirty years, and there is a strong body of law firms, administrative services providers and accountants on the Island.
- **Competitive position.** Jersey is the only offshore jurisdiction in the top 20 Financial Centres ranked by the 2010 Global Financial Centres index published by the City of London
- **Flexible and transparent costs** of legal and administrative services.

How are ETC Issuers Treated in Jersey for Regulatory Purposes?

Regulatory treatment in Jersey will primarily turn on whether the issuer is regarded as a collective investment fund or not.

English law analysis usually points to an ETC as being outside UK “collective investment scheme” scope and is generally be possible for a similar conclusion to be reached in Jersey.

The Collective Investment Funds (Restriction of Scope) Jersey Order 2000 carves out from the funds regime any scheme established for the principal purpose of ‘securitisations’ or ‘repackaging assets’ and involving the issuance of securities. If this exemption can be relied on the issuer will essentially be treated as a debt issuing

SPV and benefit from a “light-touch” regulatory regime which is highly developed as a result of Jersey’s track record in securitisation and structured finance over many years.

If the conclusion is that the issuer would be characterised as a fund for Jersey purposes, Jersey now offers a number of choices of regulatory regime for investment funds which make the path to the launch of an exchange traded fund a simple one. An Eligible Investor Fund can be set up on a fast track basis and offers a fully flexible structure for professional and institutional members.

Existing ETC issuers formed in Jersey have been established both as securities issuing vehicles and as investment funds.

Would ETCs Fall Foul of any Anti-Gambling Legislation in Jersey?

No, unlike many jurisdictions, Jersey’s gambling legislation does not restrict the use of ETCs. Article 12(2) of the Gambling (Amendment No. 3) (Jersey) Law 1995 provides for a carve out for ‘dealings in investments’ from the general prohibition against all forms of gambling. As ETCs fall within the definition of ‘investment’ as set out in the gambling law, they have the benefit of this carve out.

Why Ogier?

- Ogier has worked on a number of exchange traded commodity structures established in Jersey, including one of the market leaders. We have also been active in structured product issues (debt form) and have worked on index-linked and similar securities for many years. Details of our track record in this area are available on request.
- One stop shop - Ogier can provide legal and administrative services seamlessly and its SPV administrative team has significant experience in running multi-issue programmes.
- Ogier has international recognition.
- Ogier is ISDA Counsel for Jersey. The Ogier Derivatives Team is recognised internationally as a leading practice.
- We can form ETC SPVs within 24 hours, administer them and provide legal services in relation to the most complex transactions. (If required, we can usually obtain regulatory consents within 4-5 working days.)
- Legal Services - Ogier was named “International Law firm of the Year, 2009” at the annual City Wealth Magic Circle Awards and is consistently rated a top offshore law firm by the leading legal directories.



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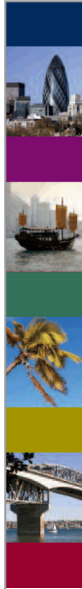
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This briefing provides a general summary only of this area based on the current law and practice in Jersey at the date of writing and is subject to changes therein. It does not purport to be comprehensive and does not constitute legal or tax advice that may be relied on. Specific, professional advice should be sought on each occasion.

About Ogier

Ogier is an award winning offshore legal and fiduciary services provider. We provide advice on all aspects of BVI, Cayman, Guernsey and Jersey law together with trust and administration services through a global network of offices covering all time zones and key financial markets.

Ogier continues to be recognised as a leading law firm by the principal legal directories, including Legal 500 and Chambers.



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