



Jersey Financial
Services Commission

Decision-making process

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Glossary of Terms

For the purposes of this document, the following terms should be understood to have the meaning shown by this table.

AIF Regulations	The Alternative Investment Funds (Jersey) Regulations 2012, as amended.
authorized auditor	An individual or a firm authorized by the <i>JFSC</i> pursuant to Article 113D(6) of the <i>Companies Law</i> to carry out an audit of the accounts of a company that is not a market traded company ⁱ .
BB(J)L	Banking Business (Jersey) Law 1991, as amended.
Board	The Board of Commissioners of the <i>JFSC</i> . ⁱⁱ
Board decision	One of the decisions set out in paragraph 3.4.
case officer(s)	The officer(s) of the <i>JFSC</i> referred to in paragraphs 6.2 and 11.2.
CIF(J)L	Collective Investment Funds (Jersey) Law 1988, as amended.
COBO	Control of Borrowing (Jersey) Order 1958, as amended.
Code of Practice	One or more of the Codes of Practice referred to in Article 21A(2) of the <i>Commission Law</i> . ⁱⁱⁱ
Commission Law	Financial Services Commission (Jersey) Law 1998, as amended.
Companies Law	Companies (Jersey) Law 1991, as amended.
Executive	One or more officers of the <i>JFSC</i> , including the Director General, acting individually or together (whether as the <i>Review Committee</i> or otherwise), as appropriate.
Executive decision	One of the decisions set out in paragraph 3.3.
FS(J)L	Financial Services (Jersey) Law 1998, as amended.
IB(J)L	Insurance Business (Jersey) Law 1996, as amended.
heightened supervision	<p>The application to a particular <i>Subject</i> (or potential <i>Subject</i>)^{iv} of one or more regulatory measures, such as restrictions, controls and additional reporting requirements, whether on a consensual basis or by the use of enforcement powers.</p> <p>Circumstances in which such temporary measures may be employed include where concerns of a regulatory nature arise and the <i>JFSC</i> needs to act in the discharge of its functions whilst remedial action is taken by the <i>Subject</i>/potential <i>Subject</i>.</p>
JFSC	The Jersey Financial Services Commission.
key person	Has the meaning assigned in Article 1 of each of the <i>Regulatory Laws</i> and the <i>Supervisory Bodies Law</i> .
licence	Includes: <ul style="list-style-type: none"> › A certificate granted in accordance with Regulation 9 of the <i>AIF</i>

	<p><i>Regulations</i></p> <ul style="list-style-type: none"> › A registration granted in accordance with Article 9 of the <i>BB(J)L</i> › A permit granted in accordance with Article 7 of the <i>CIF(J)L</i> › A certificate granted in accordance with Article 8B of the <i>CIF(J)L</i> › A consent granted in accordance with any of Articles 1 to 5 and 7 to 11 of the <i>COBO</i> › A registration granted in accordance with Article 9 of the <i>FS(J)L</i> › A permit granted in accordance with Article 7 of the <i>IB(J)L</i> › A registration under Article 14 or Article 15 of the <i>Supervisory Bodies Law</i>.
NPO	A non-profit organization as defined in the Non-Profit Organizations (Jersey) Law 2008, as amended.
principal person	<ul style="list-style-type: none"> › With respect to the <i>AIF Regulations</i> has the meaning assigned to it in Regulation 2 of the <i>AIF Regulations</i> › With respect to the <i>BB(J)L</i> means a director, controller and manager as defined in Article 1 of the <i>BB(J)L</i> › With respect to the <i>CIF(J)L</i>, <i>FS(J)L</i> and <i>Supervisory Bodies Law</i> has the meaning assigned to it in Article 1 of the respective law › With respect to the <i>IB(J)L</i> means a chief executive and shareholder controller as defined in Article 1 of the <i>IB(J)L</i> and any individual intending to act, or acting, as a director. <p>Save that ‘principal person’ shall have the meaning given in Article 1 of the <i>Commission Law</i> where the decision relates to the imposition of a financial penalty.</p>
recognized auditor	An individual or a firm who may carry out an audit of the accounts of a market traded company by virtue of their name having been entered on the Register of Recognized Auditors by the <i>JFSC</i> pursuant to Article 111 of the <i>Companies Law</i> .
registered person	<p>Includes:</p> <ul style="list-style-type: none"> › The holder of any <i>licence</i> › An applicant for a <i>licence</i> › A former holder of a <i>licence</i> › An <i>authorized auditor</i> or <i>recognized auditor</i>. <p>Save that ‘registered person’ shall have the meaning given in Article 1 of the <i>Commission Law</i> where the decision relates to the imposition of a financial penalty.</p>
Regulatory Laws	The collective name for the <i>AIF Regulations</i> ; the <i>BB(J)L</i> ; the <i>CIF(J)L</i> ; the <i>FS(J)L</i> ; and the <i>IB(J)L</i> .
regulatory sanction	One of the decisions referred to in paragraph 3.4.
Review Committee	The committee of the <i>Executive</i> constituted as set out in paragraphs 8.2 and 13.2.

Subject	The subject of any decision that may be taken in accordance with the decision-making processes described in this document. The Subject may be a natural person or a legal person. The Subject may be singular or plural.
Supervisory Bodies Law	Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, as amended.

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Section 1 – General Information

Important Note:

Terms in *italics* are defined in the Glossary of Terms.

The principal purpose of this document is to explain the process that the *JFSC* follows when exercising its statutory powers to take significant administrative decisions.

1 Introduction

- 1.1 The *JFSC* is not a judicial body. Court rules and procedures do not apply to the decisions that it takes. The *JFSC* takes administrative decisions in accordance with powers vested in it that are set out in the legislation that it administers. In so doing, the *JFSC* will act as supervisor, investigator and decision-maker.
- 1.2 The point at which an administrative decision is taken is reached via a series of stages that are described in Section Two (*Executive decisions*) and Section Three (*Board decisions*) of this document. Each stage includes a number of distinct steps that collectively are designed to ensure that the final decision taken:
 - 1.2.1 Is one that the *JFSC* is empowered to take
 - 1.2.2 Is one that is made in accordance with statutory obligations imposed on the *JFSC*
 - 1.2.3 Has been arrived at in accordance with principles of natural justice
 - 1.2.4 Is proportionate and reasonable based on all relevant information before the *JFSC* at the time.
- 1.3 In taking a decision, the *JFSC* is continually mindful of the primary regulatory test that persons^v carrying on the business of financial services in or from within Jersey are “fit and proper”: in this, the *JFSC* is “performing an administrative role conferred by statute which involves acting in the public interest whilst having regard to the need to be fair to individual applicants”^{vi}, or *registered persons*, as the case may be.
- 1.4 This document incorporates the information that must be included in a statement published by the *JFSC* pursuant to Article 21B(4) of the *Commission Law* setting out the principles it will apply in determining the imposition and amount of a financial penalty and the processes it will follow when exercising the power to impose a financial penalty.

2 Delegation of *JFSC* powers

- 2.1 Under Article 11 of the *Commission Law*, the *JFSC* is able to delegate any of its functions or powers wholly or partly, to the Chairman, one or more Commissioners, or an officer of the *JFSC*. Pursuant to that Article, the *Board* has published its Policy on how it determines which powers are routinely delegated to the *Executive* and which are not^{vii}. In accordance with that

Policy, some of the decisions to which this document refers will be taken by the *Board*, whilst others will be taken by the *Executive*, or by one or more Commissioners, under delegated authority from the *Board*.

- 2.2 Notwithstanding the general policy, any decision involving the use of delegated powers may be referred to the *Board* if those who may act under delegated authority consider it appropriate to do so. Furthermore, the general policy does not preclude the *Board* deciding that a particular matter may be determined by one or more Commissioners or by the *Executive* and delegating the necessary authority in that case.
- 2.3 However, no decision to impose a financial penalty under Article 21A of the *Commission Law* will be delegated by the *Board* to the *Executive*. (Note: where a *registered person* or *principal person* has agreed to the imposition of a financial penalty under the terms of a settlement agreement, approval of the agreement on behalf of the *JFSC* will be by two Commissioners^{viii} – see paragraph 4.9.)

3 Scope of this document

Decisions to which this document applies

- 3.1 The particular type of administrative decision that is covered by this document is one that allows the *Subject* a statutory right of appeal to the Royal Court of Jersey in the event that the *Subject* considers that the decision is unreasonable having regard to all the circumstances.
- 3.2 Except when the circumstances require that urgent action is essential (see paragraph 3.6), the decision-making processes described in this document will apply.
- 3.3 Section Two of this document sets out the decision-making process that will apply in respect of an *Executive decision*, namely one of the following administrative decisions that the *Board* has delegated to the *Executive*:
- 3.3.1 Refusing an application for a *licence*
 - 3.3.2 Refusing to register an applicant as an *NPO*
 - 3.3.3 Objecting to the appointment of a *principal person*, *key person*, or an actuary.
- 3.4 Section Three of this document sets out the decision-making process that will apply in respect of a *Board decision*, namely one of the following administrative decisions that the *Board* has retained to itself:
- 3.4.1 Revoking^{ix} a *licence*, or a *recognized auditor's* registration or an *authorized auditor's* permission to audit, except where:
 - 3.4.1.1 The revocation is at the request of the holder of the *licence* or registration
 - 3.4.1.2 The holder of the *licence* or registration has not commenced the relevant activity within one year of being granted the *licence* or registration
 - 3.4.1.3 The holder of the *licence* or registration has ceased to perform the relevant activity

- 3.4.2 Objecting to the continuing appointment of a *principal person, key person, or an actuary*
- 3.4.3 Publishing a public statement censuring the *Subject* and/or publicising the imposition of a *regulatory sanction*^x
- 3.4.4 Issuing a direction to require a person, who has not already taken that decision voluntarily, to cease operations and to wind up its affairs
- 3.4.5 Issuing a direction to prevent or restrict the employment of an individual by a *registered person*
- 3.4.6 Refusing an application to withdraw or vary, in whole or in part, a direction that has been issued pursuant to this document^{xi}
- 3.4.7 Withdrawing approval under the Companies (Audit) (Jersey) Order 2010 of the rules of a recognized professional body that govern the conduct of the audit of market traded companies^{xii}
- 3.4.8 Imposing a financial penalty on a *registered person or principal person*.^{xiii}

When this document will not apply

- 3.5 Administrative decisions taken as part of normal or *heightened supervision* will not follow the staged approach set out in this document.
- 3.6 The process described by this document will also not apply where the circumstances require urgent action to be taken.^{xiv} In addition, without limitation, this document will not apply to any decisions where:
- 3.6.1 Legislation provides that a decision will have immediate effect (as is the case for most types of direction)
 - 3.6.2 The *JFSC* intends to exercise a power to reduce the period of notice of a decision (such as for some public statements warning the public of bogus websites; and public statements in respect of certain types of directions)
 - 3.6.3 An application is to be made by the *JFSC* to the Royal Court.
- 3.7 At any stage, the decision-making process will be terminated if it is determined that no further action is required, or that the matter should be addressed through normal or *heightened supervision*.
- 3.8 In addition, the decision-making process may be temporarily suspended where the *Executive* takes a decision to do something that is not covered by this document, such as enter into discussions with the *Subject* with a view to settlement (see part 4); or refer the case to the Attorney General to review, investigate and potentially prosecute any criminal conduct; or refer a case to the Royal Court.
- 3.9 For the avoidance of doubt, the decision-making process in this document does not include any decision that may be taken under the *Companies Law* (other than those relating to *recognized or authorized auditors*).

4 Settlement in cases of breaches of regulatory requirements

- 4.1 **Early acknowledgement by a *Subject* of breaches of regulatory requirements - which effectively saves time and investigative resources - will always be considered favourably by the *JFSC*.**
- 4.2 In such cases, and where the *JFSC* is reasonably satisfied that it is both consistent with discharging its statutory functions in accordance with its guiding principles, and it is expedient to do so, the *JFSC* may enter into discussions (**settlement discussions**) with the *Subject*, with a view to entering into a written agreement (the **settlement agreement**), concerning the nature of non-compliance by the *Subject* and the action to be taken by the *JFSC*.
- 4.3 In this context, settlements are not the same as ‘out of court’ settlements in the litigation context. All settlement discussions will be conducted on a “without prejudice” basis. All without prejudice correspondence and other material shall not be relied upon at a later stage should the negotiations fail and settlement is not achieved.
- 4.4 In cases where the *Subject* acknowledges a significant and material contravention of a *Code of*

Practice and is thus potentially liable to the imposition of a financial penalty under Article 21A of the *Commission Law*, the amount of the financial penalty to be imposed by the *JFSC* will incorporate a discount reflecting: (a) how early in the decision-making process the settlement agreement is signed; and (b) whether the contravention of the *Code of Practice* is remediated to the satisfaction of the *JFSC* before the settlement agreement is signed. The discount will be applied against the amount of the financial penalty that the *JFSC* would otherwise have expected to impose on the *Subject* had the decision-making process been taken through to its conclusion. The following discounts will apply:

- 4.4.1 Settlement before Stage One - a maximum discount of 50%
- 4.4.2 Settlement before Stage Two – a maximum discount of 25%
- 4.4.3 Settlement before Stage Three – a maximum discount of 5%.
- 4.5 If a *Subject* chooses not to accept the opportunity to commence settlement discussions when first it is offered by the *JFSC*, the *JFSC* may decline to enter into settlement discussions at a later stage. If the *JFSC* does agree to negotiate the terms of a settlement agreement later, the terms offered may be adjusted to reflect the delay.
- 4.6 Until the settlement agreement has been executed by both the *JFSC* and the *Subject* the settlement agreement (including any attachments such as a direction or public statement) shall remain a working draft document that is without prejudice to the rights of any party concerned. Once the settlement agreement has been executed by each of the parties, the without prejudice nature of the settlement agreement will fall away and will no longer apply to the settlement agreement or any attachment but will continue to apply to the discussions and correspondence that led to it.
- 4.7 The *Subject* will be encouraged to be accompanied at each meeting by a legal adviser. Further, the *Subject* will be recommended to take legal advice before entering into a settlement agreement.
- 4.8 The *JFSC* will set a clear and reasonable time frame for the completion of settlement discussions to ensure that they result in a prompt and clear outcome and do not delay the discharge of the *JFSC*'s statutory functions.

- 4.9 Approval on behalf of the *JFSC* of the draft agreement and any attachments will be by either:
- 4.9.1 *A Review Committee*
 - 4.9.2 Two Commissioners^{xv} (this option will always apply in cases where a financial penalty is proposed).

Unsuccessful settlement discussions

- 4.10 In the event that discussions cannot be concluded with an agreement executed by all parties, the regulatory issue will be dealt with in accordance with the process described in Section Two of this document.^{xvi} The Stage at which the decision-making process will be applied will depend upon the nature of the breach of regulatory requirements, and the point at which settlement discussions commenced.

Section 2 – The decision-making process for *Executive Decisions*

5 Overview

- 5.1 The decision-making process for *Executive decisions* falls into three stages preceded by a preliminary review stage^{xvii}:
 - 5.1.1 The Preliminary Review
 - 5.1.2 Stage One – Disclosure and Verification of Information
 - 5.1.3 Stage Two – First meeting of the *Review Committee*
 - 5.1.4 Stage Three – Second meeting of the *Review Committee*.

6 The Preliminary Review

- 6.1 The Preliminary Review is not part of the decision-making process but is the point at which a determination is made, from a range of possible options, as to what appears from the information presented to be the most appropriate way of dealing with the matter.
- 6.2 The Review involves consideration of information presented by the officer(s) considering the matter, with particular attention given to:
 - 6.2.1 **In the case of an application for a licence** - the fitness and propriety of the applicant and the consistency (or otherwise) of the application with the relevant licensing policy of the *JFSC*
 - 6.2.2 **In the case of an application to register an NPO** – whether there are grounds for the *JFSC* to conclude that registration must be refused on the basis that the *NPO* is likely to assist, or be used to assist, terrorism
 - 6.2.3 **In the case of the proposed appointment of a person as a principal person, key person, or an actuary** – the fitness and propriety of the person for the relevant role
 - 6.2.4 In each case, the degree of confidence that the *JFSC* may have in the reliability of the information that would be used to support a decision.
- 6.3 Wherever possible, the Preliminary Review will be conducted by the Director responsible for the relevant Supervision Unit, the Head of the relevant Supervision Unit and the Director, Enforcement. In the event that one of these persons cannot act for any reason, alternative arrangements will be made, providing that there are at least two persons, one of whom is a Director.
- 6.4 If it appears, to those conducting the Review, that the information presented indicates that there are reasonable grounds for an *Executive decision* to be taken, they will initiate the decision-making process by directing that arrangements be made for disclosure and

verification of the information under Stage One (see part 7).

6.5 If those conducting the Preliminary Review conclude that an *Executive decision* would not be appropriate at that time, or at all, they may direct any other action deemed to be appropriate and that is within their delegated powers. Without limiting the scope of such action, it may be one, or a combination of the following:

6.5.1 That further information is necessary

6.5.2 That the relevant application for a *licence* be approved or registration as an *NPO* be granted

6.5.3 That no objection is raised to the *Subject's* appointment as a *principal person, key person*, or an actuary, as appropriate.

7 Stage One – Disclosure and Verification of Information

7.1 This Stage involves the disclosure to the *Subject* of the information which will be the basis of the decision to be taken by the *JFSC*.^{xviii} The objectives of this Stage are:

7.1.1 To ensure that the *Subject* is provided with all the information on which the *JFSC* will rely in making its decision

7.1.2 For that information to be examined as reliable and complete in all material respects before any decision is taken.

7.2 The *Subject* will be requested to consider the information that has been provided and respond to the *case officers(s)*, in writing:

7.2.1 Confirming that the facts as presented are correct or, if not, suggesting what changes might be made so that they are correct

7.2.2 Providing any additional information considered material or relevant in any way to the matter.

7.3 In determining the date by which the response should be provided (which will be not less than one month hence^{xix}, unless the *Subject* agrees to a shorter period), the *JFSC* will take account of the nature and volume of information and the extent to which individual items have been previously available to the *Subject* for review and comment.

7.4 The collation of all comments and a summary of all factors relevant to the proposed decision is an important part of the process, so all comments received will be carefully considered and evaluated.

7.5 Following collation, the document package, amended as necessary in the light of the comments received, will be presented to a *Review Committee* (Stage Two). At the same time, the *Subject* will be provided with a copy of any new and revised information from that previously provided. The *case officer(s)* may, at this point, recommend a specific course of action (such as recommending that an application for a *licence* be refused). Any recommendation of the *case officer(s)*, together with the reasons for the recommendation, will be sent to the *Subject* who will be invited to comment on it.

8 Stage Two – First meeting of the *Review Committee*

- 8.1 The *Review Committee* is not a standing committee of the *JFSC*. It is convened on a “case by case” basis, with membership dependent upon the matter under consideration.
- 8.2 The *Review Committee* will normally include the following officers:
- 8.2.1 The Director General (who will chair the *Review Committee*); if the Director General is not available, the meeting will be chaired by one of the following:
- 8.2.1.1 The Deputy Director General
- 8.2.1.2 The Chief Operating Officer
- 8.2.1.3 The Director, Policy.
- In the event that none of these is available, the meeting will be chaired by a suitably senior member of the *Executive* who is sufficiently independent of the issue being considered
- 8.2.2 The Director, Enforcement (or, in his/her absence, the Head of the Enforcement Unit)
- 8.2.3 The relevant^{xx} Supervision Director, or, in his/her absence, the corresponding Head of Unit or Senior Manager
- 8.2.4 At least one other Director or Head of Unit not directly connected with the case.
- 8.3 The *case officer(s)* will attend the meeting to present their findings and to answer any questions or clarify issues raised.
- 8.4 The Commission Secretary, or alternate that is acceptable to the chair of the meeting, will also attend to minute the decision of the meeting.
- 8.5 The *Review Committee* will review the document package provided, taking account of the responses of the *Subject* at Stage One and the related comments of the *case officer(s)*; consider any proposed recommendation (such as a recommendation that an application for a *licence* be refused) and, without limitation, may take any, or a combination, of the following decisions:
- 8.5.1 To request further information
- 8.5.2 To approve the *Subject's* application for a *licence* or registration as an *NPO*
- 8.5.3 To approve the *Subject's* appointment as a *principal person, key person*, or an actuary
- 8.5.4 To advise the *Subject* that the *Review Committee* is minded to refuse its application for a *licence*
- 8.5.5 To advise the *Subject* that the *Review Committee* is minded to refuse its application to register an *NPO*
- 8.5.6 To advise the *Subject* that the *Review Committee* is minded to object to the *Subject's* appointment as a *principal person, key person*, or an actuary.

- 8.6 Whilst the *Review Committee* will ordinarily only meet twice (see part 9) there may be additional meetings of the *Review Committee* for example:
- 8.6.1 If the decision taken is that further information is needed
 - 8.6.2 if the *Review Committee* is minded to take an *Executive decision* that would result in an outcome that is more severe to the *Subject* than that recommended by the *case officer(s)*, as advised to the *Subject* at the previous Stage: in such cases the *Review Committee* will delay taking a decision and provide an opportunity for the *Subject* to make written representations to the *Review Committee* regarding the action contemplated.
- 8.7 A minute of the decision of the *Review Committee* shall be made and a copy provided to the *Subject*. If the *Review Committee* is minded to take an *Executive Decision*, the *Subject* will be notified in writing of that fact (and be given, in writing, the *Review Committee's* reasons for the proposed *Executive Decision*) and be provided with a copy of the document package that the *Review Committee* had before it at its meeting. The *Subject* will, therefore, have sight of the same information that the *Review Committee* did.^{xxi}
- 8.8 The notification referred to in paragraph 8.7 will:
- 8.8.1 State the date on which the second meeting of the *Review Committee* will meet to consider whether or not to confirm its 'minded to' decision
 - 8.8.2 Offer the *Subject* an opportunity to make a written submission to the *Review Committee* within a specified time frame
 - 8.8.3 Request that the *Subject* advises the *Review Committee* within a specified time frame whether the *Subject* intend(s) to make an oral submission and, if the *Subject* will be accompanied (e.g. by a legal adviser), the name of that person
 - 8.8.4 Set out the consequences of failing to respond within the time frame set.
- 8.9 Where a written submission is made by, or on behalf of, the *Subject* within the specified time frame, the *case officer(s)* may prepare comments on the submission. If considered appropriate, the *case officer(s)* will give reasons for any recommendation to reject points made in the submission. The comments of the *case officer(s)* and reasons for recommending the rejection of any points will be submitted to the *Review Committee* and disclosed to the *Subject* prior to the second meeting of the *Review Committee*.

9 Stage Three – Second meeting of the *Review Committee*

- 9.1 Prior to the second meeting, the *Review Committee* and the *Subject* will be provided with:
- 9.1.1 Any information or documents that have been added to the package since the first *Review Committee* meeting;
 - 9.1.2 Any written submissions made by, or on behalf of, the *Subject*
 - 9.1.3 Comments of the *case officer(s)* on any written submission, including the reasons for any recommendation that any of the submissions be rejected or disregarded.

- 9.2 The *Review Committee* will meet on the date advised to the *Subject* in the notification referred to in paragraph 8.8.1^{xxii}. The *Review Committee* may request that the *JFSC*'s legal adviser be in attendance.

Oral submissions to the *Review Committee*

- 9.3 If the *Subject* elects to make an oral submission to the *Review Committee*:
- 9.3.1 The oral submission by, or on behalf of, the *Subject* should explain why the proposed decision is inappropriate or not justified.
 - 9.3.2 Following the oral submission, the *Subject* may be required to answer questions from the *Review Committee* and clarify issues that may arise.
 - 9.3.3 The *case officer(s)* may be invited to comment on any matter raised by the *Subject*; to answer questions from the *Review Committee* or clarify issues.
 - 9.3.4 In exceptional circumstances, if information is introduced by the *Subject* during the oral submission that has not previously been made available to the *JFSC*, the *Review Committee* may decide to defer taking a decision to allow more time for the *case officer(s)* to comment on the information and to disclose any such comments to the *Subject*.
 - 9.3.5 The process is intended to be interactive rather than adversarial in nature. For the avoidance of doubt, court rules, process and procedures do not apply.
 - 9.3.6 The oral submissions to the meeting will be formally recorded through the use of audio equipment: one of the audio copies made at the meeting will be provided to the *Subject* on their (or their representative's) written request.

Deliberations of the *Review Committee*

- 9.4 When the *Review Committee* has received all submissions, the *Subject*, the *case officer(s)* and any legal advisers^{xxiii} will leave the meeting.
- 9.5 If any new information or matters emerge during the *Review Committee's* deliberations, the *Subject* and the *case officer(s)* will be given an opportunity to comment thereon. In such a case, the *Review Committee* will delay taking its final decision for a reasonable period to allow the person(s) concerned to make comments.
- 9.6 In reaching its decision, the *Review Committee* will have regard to the written and oral submissions received and all other information in the documents before it. It is for the *Review Committee* to decide which, of the matters before it, it accepts and which it does not.
- 9.7 As soon as reasonably practicable, the *Subject* will be given written notice of the *Review Committee's* decision. If the decision is to take an *Executive decision*, the notice will be that required by the relevant law and will include the reasons for the decision and particulars of the right of appeal to the Royal Court.

Section 3 – The decision-making process for *Board Decisions*

10 Overview

10.1 The decision-making process for *Board decisions* falls into four stages, preceded by a preliminary review stage^{xxiv}:

10.1.1 The Preliminary Review

10.1.2 Stage One – Disclosure and Verification of Information

10.1.3 Stage Two – *Review Committee*

10.1.4 Stage Three – First Meeting of the *Board*

10.1.5 Stage Four – Second Meeting of the *Board*.

11 The Preliminary Review

11.1 The Preliminary Review is not part of the decision-making process but is the point at which a determination is made, from a range of possible options, as to what appears from the information presented to be the most appropriate way of dealing with the matter.

11.2 The Review involves consideration of information presented by the officer(s) investigating the matter, with particular attention given to:

11.2.1 Matters indicating non-compliance

11.2.2 Any known mitigating factors

11.2.3 Any known aggravating factors

11.2.4 The degree of confidence that the *JFSC* may have in the reliability of the information.

11.3 Wherever possible, the Preliminary Review will be conducted by the Director responsible for the relevant Supervision Unit, and the Director, Enforcement. In the event that either cannot act for any reason, alternative arrangements will be made, providing that there are at least two persons, one of whom is a Director.

11.4 If it appears, to those conducting the Review, that the information presented indicates a reasonable probability that non-compliance has occurred in relation to which the *JFSC* may wish to impose a *regulatory sanction*, the Preliminary Review may:

11.4.1 Authorise the start of settlement discussions – see part 4

11.4.2 Initiate the decision-making process by directing that arrangements be made for disclosure and verification of the information under Stage One (see part 12).

- 11.5 If those conducting the Preliminary Review conclude that neither of the options under paragraph 11.4 is appropriate at that time, or at all, they may direct any other action deemed to be appropriate and that is within their delegated powers. Without limiting the scope of such action, it may be one, or a combination of the following:
- 11.5.1 That the matter requires no further action, and the investigation should be discontinued
 - 11.5.2 That further investigation is necessary;
 - 11.5.3 That *heightened supervision* should be introduced/continued, either pending or instead of further investigation.

12 Stage One – Disclosure and Verification of Information

- 12.1 This Stage involves the disclosure to the *Subject* of the information which will be the basis of the decision to be taken by the *JFSC*.^{xxv} The objectives of this Stage are:
- 12.1.1 To ensure that the *Subject* is provided with all the information on which the *JFSC* will rely in making its decision
 - 12.1.2 For that information to be examined as reliable and complete in all material respects before any decision is taken.
- 12.2 The *Subject* will be requested to consider the information that has been provided and respond to the *case officer(s)*, in writing:
- 12.2.1 Confirming that the facts as presented are correct or, if not, suggesting what changes might be made so that they are correct
 - 12.2.2 Providing any additional information considered material or relevant in any way to the matter.
- 12.3 In determining the date by which the response should be provided (which will be not less than one month hence^{xxvi}), the *JFSC* will take account of the nature and volume of information and the extent to which individual items have been previously available to the *Subject* for review and comment.
- 12.4 The collation of all comments and a summary of all factors relevant to the proposed decision is an important part of the process, so all comments received will be carefully considered and evaluated.
- 12.5 Following collation, the document package, amended as necessary in the light of the comments received, will be presented to a *Review Committee* (Stage Two). At the same time, the *Subject* will be provided with a copy of any new and revised information from that previously provided. The *case officer(s)* may, at this point, recommend a specific *regulatory sanction(s)* (where the recommended sanction is the imposition of a financial penalty the *case officer(s)* will specify the proposed amount). Any recommendation of the *case officer(s)*, together with the reasons for the recommendation, will be sent to the *Subject* who will be invited to comment on it.
- 12.6 It is not usually necessary to provide for more than one round of disclosure and verification.

An exception might be a complex investigation involving numerous parties.

13 Stage Two – Review Committee

- 13.1 The *Review Committee* is not a standing committee of the *JFSC*. It is convened on a “case by case” basis, with membership dependent upon the matter under consideration.
- 13.2 The *Review Committee* will normally include the following officers:
- 13.2.1 The Director General (who will chair the *Review Committee*); if the Director General is not available, the meeting will be chaired by one of the following:
- 13.2.1.1 The Deputy Director General
- 13.2.1.2 The Chief Operating Officer
- 13.2.1.3 The Director, Policy.
- In the event that none of these is available, the meeting will be chaired by a suitably senior member of the *Executive* who is sufficiently independent of the issue being considered;
- 13.2.2 The Director, Enforcement (or, in his/her absence, the Head of the Enforcement Unit)
- 13.2.3 The relevant^{xxvii} Supervision Director, or, in his/her absence, the corresponding Head of Unit or Senior Manager
- 13.2.4 At least one other Director or Head of Unit not directly connected with the case.
- 13.3 The *case officer(s)* will attend the meeting to present their findings and to answer any questions or clarify issues raised.
- 13.4 The Commission Secretary, or alternate that is acceptable to the chair of the meeting, will also attend to minute the decision of the meeting.
- 13.5 The *Review Committee* will review the document package provided, taking account of the responses of the *Subject* at Stage One and the related comments of the *case officer(s)*; consider any proposed recommendation for further action or for the imposition of a *regulatory sanction*; and, without limitation, may take any, or a combination, of the following decisions:
- 13.5.1 Whether or not any further investigation is necessary
- 13.5.2 That the investigation may be discontinued and either no further action taken or that some other action be taken that is not subject to the decision-making process (such as *heightened supervision* be introduced/continued; or a formal warning issued)
- 13.5.3 The nature of any further action that may be taken under delegated powers
- 13.5.4 To refer the matter to the *Board*.
- 13.6 Where settlement discussions have been entered into the *Review Committee* may, at this stage, and if within its delegated powers, approve on behalf of the *JFSC* the draft settlement

agreement and any attachments thereto (see part 4).

13.7 There may be more than one meeting of the *Review Committee* for example:

13.7.1 If the decision taken is that further enquiries are needed

13.7.2 If the *Review Committee* is minded to exercise its delegated powers in a way that would result in the imposition of a *regulatory sanction* that is more severe than that recommended by the *case officer(s)* or the *Review Committee* is minded to make a recommendation to the *Board* to impose a *regulatory sanction* that is more severe^{xxviii} than that recommended by the *case officer(s)*, as advised to the *Subject* at the previous Stage: in such cases the *Review Committee* will delay taking a final decision and provide an opportunity for the *Subject* to make representations to it regarding the action contemplated.

13.8 The *Review Committee* will refer the matter to the *Board* where:

13.8.1 The action that the *Review Committee* deems to be appropriate requires the exercise of any powers that the *Board* has not delegated (see paragraph 2.1), for example, where the imposition of a financial penalty is recommended by the *Review Committee*

13.8.2 Any aspect of the case is deemed of significant importance warranting a referral

13.8.3 In making public the action taken (e.g. that a direction has been issued), it may be necessary to include any mention of the reasons for the decision or any other comment or opinion.

13.9 In determining whether a case is of significant importance, the *Review Committee* will have due regard for:

13.9.1 Cases that are considered likely to have a significant effect on the reputation and integrity of Jersey as a financial centre, including, but not limited to, possible conflict between the appropriate level of *regulatory sanction* and the best interests of the public or others;

13.9.2 The seriousness of the case and the issues presented

13.9.3 In the case of a direction of the kind that restricts an individual being employed by a *registered person* the *Review Committee* decides to recommend that an application be made to the Royal Court for the statutory notice period to be varied.

13.10 A minute of the decision of the *Review Committee* shall be made and a copy provided to the *Subject*.

13.11 Where the decision of the *Review Committee* is to recommend to the *Board* that a *regulatory sanction* be imposed the *Review Committee* will arrange for any relevant associated documentation to be drafted (for example, a direction and/or public statement) and provided to the *Subject*.

13.12 The *Subject* will be invited by the *Review Committee* to make written submissions on its decision and on any relevant associated draft documentation (such as a direction and/or public

statement), which, together with the *Review Committee's* comments on the submissions (if any), will be included in the document package submitted to the first meeting of the *Board*.

14 Stage Three - First meeting of the *Board*

- 14.1 Prior to the first meeting, the *Subject* will:
- 14.1.1 Be informed of the date of the meeting
 - 14.1.2 Be provided with a copy of the document package, as sent by the *Review Committee* to the *Board*. The *Subject* will, therefore, have all of the information placed by the *Review Committee* before the *Board*.^{xxix}
- 14.2 After considering the package of documents submitted by the *Review Committee*, the *Board* may:
- 14.2.1 Request further information
 - 14.2.2 Decide that it is minded to take the recommended action, or some other action
 - 14.2.3 Delegate the authority to take the appropriate action (see paragraph 2.1) (except where the imposition of a financial penalty is proposed^{xxx} – see paragraph 2.3).
- 14.3 If the *Board* is minded to exercise one or more of its statutory powers to impose a *regulatory sanction*, the *Subject* will be notified in writing of that fact and given, in writing, the *Board's* reasons for the proposed *regulatory sanction*.
- 14.4 The notification referred to in paragraph 14.2 will:
- 14.4.1 State the date on which the second meeting of the *Board* will meet to consider whether or not to confirm its 'minded to' decision
 - 14.4.2 Offer the *Subject* an opportunity to make a written submission to the *Board* within a specified time frame
 - 14.4.3 Request that the *Subject* advises the *Board* within a specified time frame whether the *Subject* intend(s) to make an oral submission and, if the *Subject* will be accompanied (e.g. by a legal adviser), the name of that person
 - 14.4.4 Set out the consequences of failing to respond within the time frame set.
- 14.5 Where a written submission is made by, or on behalf of, the *Subject* within the *JFSC's* specified time frame, the *Review Committee* may prepare comments on the submission. If considered appropriate, the *Review Committee* will give reasons for any recommendation to reject points made in the submission. The comments of the *Review Committee* and reasons for recommending the rejection of any points will be submitted to the *Board* and disclosed to the *Subject* prior to the second meeting of the *Board*.

15 Stage Four - Second meeting of the Board

15.1 Prior to the second meeting, the *Board* and the *Subject* will be provided with:

15.1.1 Any information or documents that have been added to the package since the first *Board* meeting

15.1.2 Any written submissions made by, or on behalf of, the *Subject*

15.1.3 Comments of the *Review Committee* on any written submission, including the reasons for any recommendation that any of the submissions be rejected or disregarded.

15.2 The *Board* will meet on the date advised to the *Subject* in the notification referred to in paragraph 14.4.1^{xxxi}. Members of the *Executive* may attend the meeting. The *Board* may also invite anyone else that it considers will assist it in its deliberations, such as the *JFSC*'s legal adviser.

Oral submissions to the Board

15.3 If the *Subject* elects to make an oral submission to the *Board*:

15.3.1 The oral submission by, or on behalf of, the *Subject* should explain why the proposed decision is inappropriate or not justified.

15.3.2 Following the oral submission, the *Subject* may be required to answer questions from the *Board* and clarify issues that may arise.

15.3.3 Members of the *Executive* may be invited to comment on any matter raised by the *Subject*; to answer questions from the *Board* or clarify issues.

15.3.4 In exceptional circumstances, if information is introduced by the *Subject* during the oral submission that has not previously been made available to the *JFSC*, the *Board* may decide to defer taking a decision to allow more time for the *Review Committee* to comment on the information and to disclose any such comments to the *Subject*.

15.3.5 The process is intended to be interactive rather than adversarial in nature. For the avoidance of doubt, court rules, process and procedures do not apply.

15.3.6 The oral submissions to the meeting will be formally recorded through the use of audio equipment: one of the audio copies made at the meeting will be provided to the *Subject* on their (or their representative's) written request.

Deliberations of the Board

15.4 When the *Board* has received all submissions, the *Subject*, all officers of the *Executive* (including the Director General), any legal advisers^{xxxii}, and all other persons who are not Commissioners or the Commission Secretary (or any alternate), will leave the meeting.

15.5 If any new information or matters emerge during the *Board*'s deliberations, the *Subject* and the *Review Committee* will be given an opportunity to comment thereon. In such a case, the *Board* will delay taking its final decision for a reasonable period to allow the person(s) concerned to make comments.

- 15.6 In reaching its decision, the *Board* will have regard to the written and oral submissions received and all other information in the documents before it. It is for the *Board* to decide which, of the matters before it, it accepts and which it does not.
- 15.7 As soon as reasonably practicable, the *Subject* will be given written notice of the *Board's* decision. If that decision is to exercise one or more of its statutory powers to impose a *regulatory sanction*, the notice will be that required by the relevant law and will include the reasons for the decision and particulars of the right of appeal to the Royal Court.

Appendix

(see paragraph 1.4)

Financial Penalties on *registered persons*: Statement of Principles

Where the *JFSC* is satisfied that a *registered person* has, to a significant and material extent, contravened a *Code of Practice*, the principles that the *JFSC* will apply in determining the imposition and amount of a financial penalty on the *registered person* are:

- › The seriousness of the contravention of the *Code of Practice*
- › Whether or not the *registered person* knew, or ought to have known, of the contravention
- › Whether or not the *registered person* voluntarily reported the contravention
- › Whether or not the *registered person* has taken steps to rectify the contravention and to prevent its recurrence
- › The potential financial consequences to the *registered person* and to third parties (including customers and creditors of the *registered person*) of imposing the penalty
- › The principle of ensuring that *registered persons* cannot expect to profit from contravention of the *Codes*
- › The penalties imposed by the *JFSC* in other cases
- › Factors that the *JFSC* considers aggravate or mitigate the contravention of the *Code of Practice* (see below).

Factors that the *JFSC* will regard as aggravating a contravention of a *Code of Practice* by a *registered person* include (i.e. this is a non-exhaustive list):

- › A failure to bring promptly and completely the contravention to the attention of the *JFSC*
- › A business model that encourages a disregard for requirements of the *Codes of Practice*
- › A poor compliance record (this will include a failure to follow any direction(s)^{xxxiii} issued)
- › A failure to pay appropriate attention to relevant guidance issued by the *JFSC*
- › A failure to follow its own procedures
- › An absence of relevant procedures
- › A failure to implement recommendations made by the *registered person's* compliance officer or money laundering compliance officer in order to ensure compliance with the relevant *Code of Practice* requirement
- › Clients of the *registered person* experiencing a significant loss as a result of the contravention or not making a profit that would otherwise have accrued absent the contravention.

Factors that the *JFSC* will regard as mitigating a contravention of a *Code of Practice* by a *registered*

person include (i.e. this is a non-exhaustive list):

- › The contravention being brought promptly and completely to the attention of the *JFSC*
- › Co-operating fully with any investigation
- › An evidenced previously strong compliance record
- › The *registered person's* procedures were amended to address the contravention
- › Swift resolution of any client losses arising as a result of the contravention or swift payment of compensation to make good a profit that the client would otherwise have accrued absent the contravention.

Financial Penalties on *principal persons*: Statement of Principles

Where the *JFSC* is satisfied that a *registered person* has, to a significant and material extent, contravened a *Code of Practice*, and that the contravention was –

- (i) Committed with the consent or connivance of, or is attributable to neglect on the part of a *principal person*, or
- (ii) Aided, abetted, counselled or procured by a *principal person*,

The principles that the *JFSC* will apply in determining the imposition and amount of a financial penalty on a *principal person* are:

- › The seriousness of the contravention of the *Code of Practice*
- › The potential financial consequences to the *principal person* and to third parties (including creditors of the *principal person*) of imposing the penalty
- › The principle of ensuring that *principal persons* cannot expect to profit from contravention of the *Codes*
- › The penalties imposed by the *JFSC* on *principal persons* in other cases
- › Factors that the *JFSC* considers aggravate or mitigate the position of the *principal person* (see below).

Factors that the *JFSC* will regard as aggravating the position of the *principal person* include (i.e. this is a non-exhaustive list):

- › A failure by the *principal person* to take action appropriate to his or her position with the *registered person* on becoming aware of the contravention (determination of the level of aggravation under this factor will take into account, amongst other things, the extent to which the *principal person* has executive management responsibility for the part of the *registered person's* business affected by the contravention and/or for the particular matter that was the subject of the contravention)
- › The *principal person* supporting (whether implicitly or explicitly) a business model that

encourages a disregard for requirements of the *Codes of Practice*

- › The *registered person* having a poor compliance record (this will include a failure to follow any direction(s)^{xxxiv} issued) and the *principal person's* past actions or inactions being a contributory factor to that record
- › A failure by the *principal person* to pay appropriate attention to relevant guidance issued by the JFSC
- › A failure by the *principal person* to follow the *registered person's* own procedures
- › A failure by the *principal person*, where it was his or her responsibility, to ensure that the *registered person* had in place relevant procedures.

Factors that the JFSC will regard as mitigating the position of the *principal person* include (i.e. this is a non-exhaustive list):

- › The *principal person* taking action appropriate to his or her position with the *registered person* on becoming aware of the contravention
- › The *principal person* co-operating fully with any investigation
- › Where the *registered person* has an evidenced previously strong compliance record, the *principal person's* contribution to that.

ⁱ 'Market traded company' is defined in Article 102 of the *Companies Law*.

ⁱⁱ For the avoidance of doubt, it should be noted that there will be occasions when, for operational reasons (such as when a number of Commissioners are conflicted), the *Board* will establish a committee of the *Board* to hear, and decide upon, a case where the imposition of a *regulatory sanction* is being considered. In such cases, the decision of the committee (the members of which will all be Commissioners) will be the decision of the *Board*.

ⁱⁱⁱ Note that the definition of 'Codes of Practice' includes the JFSC's "Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Financial Services Business regulated under the Regulatory Laws".

^{iv} Heightened supervision is not applicable to auditors: authorized auditors are not subject to supervision; and for more information on the oversight regime for *recognized auditors*, please see the JFSC's website: http://www.jerseyfsc.org/the_Commission/recognized_auditors/general_information.asp

^v In this context "person" refers to both natural and legal persons.

^{vi} Paragraph 109 of the Royal Court judgment, 2005 JLR 428 - Anchor Trust Company Limited v. Jersey Financial Services Commission.

^{vii} See "Delegation of Powers of the Jersey Financial Services Commission" (available at: <http://www.jerseyfsc.org/the-commission/general-information/policy-statements-guidance-notes/>).

^{viii} One of whom would typically be the Director General.

^{ix} Or suspending a *licence* or registration where the relevant law allows it.

^x See also the "Policy on the Commission's use of Public Statements" (http://www.jerseyfsc.org/pdf/PS_Commission's_use_of_Public_Statements_March_2011.pdf).

^{xi} Ordinarily, applications to withdraw or vary a direction that prevents or restricts the employment of an individual by a *registered person* will be considered, and decided, by a committee of the *Board*. In such cases, the decision of the committee (the members of which will all be Commissioners) will be the decision of the *Board*. The committee will have a quorum of three. The Director General, although a Commissioner, will not sit on the committee. The decision-making process set out in Section Three (*Board decisions*) will apply:

references therein to “the Board” should be taken as references to the committee established to consider the application to withdraw or vary the direction.

^{xii} Except for the power to withdraw approval in the circumstances set out in paragraphs 3.4.1.1 to 3.4.1.3 where a reference to ‘holder of the *licence* or registration’ should be read as though it is a reference to ‘recognized professional body’.

^{xiii} Ordinarily, the imposition of a Band 1 financial penalty will be considered, and decided, by a committee of the *Board*. In such cases, the decision of the committee will be the decision of the *Board*. The decision-making process set out in Section Three (*Board decisions*) will apply: references therein to “the *Board*” should be taken as references to the committee. The maximum penalty that can be imposed under Band 1 is £10,000 (see the Schedule to the Financial Services Commission (Financial Penalties) (Jersey) Order 2015, as amended).

^{xiv} For example: to safeguard the assets of investors; or in the best interests of customers, beneficiaries, investors or the public where the financial resources of the *registered person* do not comply with regulatory requirements; or where statute vests in the *JFSC* the right to apply to Court for relief.

^{xv} One of whom would typically be the Director General.

^{xvi} Where settlement discussions are unsuccessful, any Commissioner that has been involved in the process to that point would be treated as conflicted going forward and would take no part in deciding upon the matter as a “contested” case.

^{xvii} For the avoidance of doubt, where more than one Preliminary Review and/or Review Committee is held on the same matter, it is not necessary for the membership to remain the same so long as the Preliminary Review or Review Committee is validly constituted.

^{xviii} Disclosure beyond the *Subject* (to third parties) may take place in certain circumstances. For example, where a report criticising the actions of the *Subject* is also critical of the actions of third parties.

^{xix} A period longer than one month may be allowed in complex cases.

^{xx} The “relevant” Supervision Director will be the Director responsible for the Supervision Unit in whose remit the case falls.

^{xxi} Save for any legal advice provided to the *JFSC*, which would be privileged and not disclosable to the *Subject*.

^{xxii} Or on such reasonable alternative date that the *Review Committee* may, in its discretion, agree to (for example at the request of the *Subject* or to accommodate operational considerations).

^{xxiii} Whilst the *JFSC’s* legal adviser will not be present during the *Review Committee’s* deliberations, the *Review Committee* will retain the right to call upon the legal adviser for advice should it be needed.

^{xxiv} For the avoidance of doubt, where more than one Preliminary Review, Review Committee, Board and/or Board committee meeting is held on the same matter, it is not necessary for the membership to remain the same so long as the Preliminary Review, Review Committee, Board or Board Committee meeting is validly constituted.

^{xxv} Disclosure beyond the *Subject* (to third parties) may take place in certain circumstances. For example, where a report criticising the actions of the *Subject* is also critical of the actions of third parties.

^{xxvi} A period longer than one month may be allowed in complex cases.

^{xxvii} The “relevant” Supervision Director will be the Director responsible for the Supervision Unit in whose remit the case falls.

^{xxviii} For example, where the *Review Committee* is minded to recommend to the *Board* the imposition of a financial penalty which is of a higher amount than that recommended by the *case officer(s)*.

^{xxix} Save for any legal advice provided to the *JFSC*, which would be privileged and not disclosable to the *Subject*.

^{xxx} But see footnote xiii regarding Band 1 financial penalties,

^{xxxi} Or on such reasonable later date that the *Board* may, in its discretion, agree to (for example at the request of the *Subject* or to accommodate operational considerations). Except where the *Subject* has requested the particular revised date, the *Subject* will be given at least one month’s prior notice of the revised date of the meeting.

^{xxxii} Whilst the *Board’s* legal adviser will not be present during the *Board’s* deliberations, the *Board* will retain the right to call upon its legal adviser for advice should it be needed.

^{xxxiii} A direction issued under Article 23 of the *FS(J)L* or its equivalent in the other *Regulatory Laws*, and the *Supervisory Bodies Law*, administered by the *JFSC*.

^{xxxiv} A direction issued under Article 23 of the *FS(J)L* or its equivalent in the other *Regulatory Laws*, and the *Supervisory Bodies Law*, administered by the *JFSC*.