Jersey Financial
Services Commission

MANAGED ACCOUNTS: A HEDGE FUND INITIATIVE

Welcome to the JFSC Managed Accounts Consultation hosted by Jersey Finance Limited. This survey should take approximately 45 minutes. Please ensure you have sufficient time to complete the Consultation as there is no ability to save a partial response for later completion. You can, however, freely navigate backwards and forwards through the consultation to assess the extent of the material remaining.

The survey is open for responses until midday on **Friday 3 October 2014**.

Whilst this electronic survey can be read on mobile devices, we strongly recommend for technical and security reasons completing your final submission on a desktop device. Should you require any technical support, please use our live chat facility located at the bottom right of this survey or email digital@jerseyfinance.je.

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Introduction: Why is a change in direction proposed?

*Respondees may recall that the previous approach in connection with the managed accounts initiative had centred on the creation of a new class of Fund Services Business ("**FSB**") called 'manager of a managed account' under Article 2(10) of the Financial Services (Jersey) Law 1998, as amended ("**FS(J)L**"), such earlier approach the "**Article 2(10) Approach**".*

As work on the implementation of the Article 2(10) Approach progressed it became clear that the Article 2(10) approach faced technical challenges. Although they were not necessarily insurmountable, overcoming them looked increasingly likely to result in a degree of complexity which, in aggregate, appeared undesirable.

*Fundamentally, segregated managed accounts ("**SMAs**") are not funds (even less so public funds). Application of service provider requirements drawn from a collectivised / pooled context might have seemed somewhat incongruous. As a practical matter, how best to apply the CIF Codes to SMAs did not appear immediately straightforward; any supplement or new section addressing SMAs would have likely frustrated what was understood to be one of the key objectives for industry: a single set of Codes/procedures (where possible).*

*The Article 2(10) approach perhaps also did not highlight as clearly as it might have done that the managed account initiative is a hedge-fund orientated initiative, rather than a proposal to liberalise more widely the Investment Business ("**IB**") (Class B), discretionary investment management regime in Jersey. The requirement to transition to a real-presence operation within a period of two years and the requirement in the interim for a managed entity to apply the full Codes of Practice for FSB (the "**FSB Codes**") contrasted sharply to the existing position within the funds regime in Jersey.*

*Implementation of the Article 2(10) Approach also seemed likely to introduce an (otherwise unique) optionality where a dual licensed IB/FSB entity could elect to undertake work on a given SMA under the IB or FSB regime. In order that the Jersey Financial Services Commission (the "**Commission**") might know at any*

given time which set of regulations applied to a given account, this would likely have led to regulation (and notifications to the Commission) being done on an account-by-account basis. As well as potentially being an administrative burden for industry and the Commission, this would stand in contrast to the general approach under FS(J)L of regulating FSB service providers on a 'per activity' basis (rather than on a 'per appointment' basis).

The Commission, working with the Financial Services Unit within Government, has developed an alternative to the Article 2(10) Approach, the essence of which is set out below.

*The new approach ("**QSMA**") is considered an appropriate reflection of the sophistication of those clients who would be likely (and eligible) to use it. The Commission's intention is for QSMA to be simple in concept and, to the extent possible, concise and clear in operation. It is also hoped that it might have a long-life and, subject to appropriate cross-referencing updates, be largely unaffected by the Jurisdictional Review work in the funds' space. QSMA will treat existing and new businesses doing activity within its scope equally and will not require transitional provisions to implement. At its core it is a development of an existing, well-known and popular concept in the IB and trust company business regimes in Jersey. It is hoped therefore that industry will recognise its themes and that it will sit comfortably within the context of the broader financial services offering that Jersey has under FS(J)L.*

Jersey Finance Limited has agreed to assist the Commission in conducting this consultation by disseminating it electronically amongst its members. This non-traditional approach in connection with this consultation (which will run for a period of one month) was thought prudent in light of the comparatively long gestation of this initiative.

The consultation allows respondees to determine the level of personal information provided back to the Commission. Should any respondees wish to engage in a separate dialogue with the Commission after completing this survey they would be very welcome to do so and should contact Simon Allen, Senior Manager – Policy & Strategy, on (01534) 822050 or by email to s.allen@jerseyfsc.org in such regard. All comments and contributions would be welcomed.

The steps of this consultation largely follow a similar format:

1) The setting out of a proposed provision of the QSMA approach;
2) Commentary on that provision (where this is felt likely to be helpful);
3) Consultation question (typically requiring a 'Yes/No' response); and
4) A 'comments box', allowing respondees an opportunity to enter any additional views or observations on the proposed provision.

There will also be the facility at the end of the consultation for the submission of any final or further comments.

The Commission expresses its gratitude to Jersey Finance Limited and, in advance, to those who complete the questions posed in this consultation.

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1. The proposed new approach (called "QSMA") is to be given effect to by Order, anticipated to be:
Financial Services (Qualifying Segregated Managed Accounts) (Jersey) Order 201-

Commentary:
QSMA is not therefore 'set in stone' and can be refined, relatively easily, in light of experience.

2. QSMA will be a technical exemption from the requirement to be Class B, IB-licensed for activity falling within its scope (but, as with PIRs, QSMA activity will remain IB and application of the relevant desired articles of FS(J)L will be preserved, eg: investigation, enforcement, step-in rights etc). QSMA activity will not itself therefore be regulated, although similarly to PIRs, it takes place within (and against the backdrop of) a regulated environment.

Commentary:
When one looks to the private end of the financial services spectrum in Jersey, in particular in the IB space, one frequently sees the operation of Professional Investor Regulated Schemes ("PIRs") established pursuant to the Financial Services (Investment Business (Restricted Investment Business – Exemption)) (Jersey) Order 2001. PIRs schemes require a relevant consent in relation to the issue of securities pursuant to the Control of Borrowing (Jersey) Order 1958 ("COBO"). In contrast managed accounts are purely contractual in nature.

Nevertheless, the Commission notes that, as a concept, PIRs is widely understood, relatively straightforward to operate, popular with industry and something which (not least in its absence of prescriptive requirements as to the conduct of PIRs activity) reflects the sophisticated nature of those eligible to participate in it. The Commission is also mindful of the fact that those who utilise managed accounts in the hedge-fund space are often at the apex in terms of sophistication amongst those that utilise international financial services.

When considering a managed accounts hedge-fund solution, PIRs therefore

appears to be a familiar and logical starting point. However, the form of PIRs is settled and the Commission does not wish to interfere with its existing operation in the market place. It would seem sensible therefore to take PIRs as a concept and work-up a version of it specifically with hedge-fund managed accounts in mind. In so doing the opportunity can be taken, where it is thought appropriate, to strengthen certain PIRs requirements in the context of managed accounts to better reflect their (probably more flexible) nature.

The principle of a PIRs-style solution thus having been accepted by the Commission, the focus would then move to consideration of steps to ensure that only those for whom it is appropriate to participate in QSMA may take part in an arrangement falling within its scope.

RESPONSE 1:

Do you agree that developing a hedge-fund managed accounts solution from a PIRs-style foundation is a sensible approach?

- Yes
- No

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RESPONSE 2:

In particular, do you agree that the market participants that are likely to use it will not (due to their sophistication) require the label 'regulated' for such activity?

- ○ Yes (market participants will NOT require the 'regulated' label)
- ○ No (market participants WILL require the 'regulated' label)

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3. As a consequence of the exemption from the requirement to be IB-licensed for activity within QSMA's scope, the IB Codes will not apply to the conduct of QSMA activity.
- The Commission accepts that: (i) activity falling within the scope of QSMA is extremely likely to be a 'fully-negotiated' arrangement, such that there is no obvious rationale for attempting to prescribe how it should operate in the 'ordinary course'; and (ii) that clients eligible to utilise QSMA services will be highly sophisticated and therefore able to specify the particular requirements which they wish to see in place.
- Accordingly, the Commission will not prescribe mandatory valuation procedures (either frequencies or any need for independent third party verification) in respect of QSMA activity.

Note: in the event that the manager of the QSMA account ("the Operator") is otherwise IB-licensed, its ANLA will (as at present) continue to apply on a 'whole business' basis, thus encapsulating the QSMA activity.

RESPONSE 3:

Do you agree with the approach indicated above?

- ○ Yes
- ○ No

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4. QSMA will only confer an exemption from the need for a (Class B) IB licence for activity falling within its scope on the manager (the "Operator") of the segregated managed account (SMA). There will be no equivalent therefore of the Financial Services (Trust Company Business (Exemption No. 6)) (Jersey) Order 2001 for other service providers. For example, Jersey-based investment advisers will continue to require an IB licence to advise an Operator of an SMA falling within QSMA's scope.

Commentary:
It is in large part for this reason that the Commission does not consider that it would be appropriate for interests in accounts operated pursuant to QSMA to be carved-out of the FS(J)L definition of 'investments'.

5. As it will operate in the IB space, QSMA relates only to 'Segregated' Managed Accounts (each, an "SMA") and has no application to funds, which might be considered 'Pooled' Managed Accounts.
- The regulation of the funds space in Jersey (both under the Collective Investment Funds (Jersey) Law 1988, as amended (the "CIF Law") and COBO), and the associated regulation of service providers to such funds under FS(J)L, will remain untouched by QSMA.
Note: Consequently, whilst funds (and, indeed, other entities) will not be prohibited from being a client that utilises QSMA if all of the relevant conditions for doing so are met, as an IB exemption, the QSMA Order will not (and cannot) have a bearing on whether the Operator, in acting as such, may be conducting FSB. QSMA is only of relevance where one would otherwise (ie: but for the QSMA Order) have been required to be Class B, IB-licensed for such activity.

RESPONSE 4:

Do you agree with the approach indicated in 4. and 5. above?

- Yes
- No

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6. The *precise* wording of the definition of a Segregated Managed Account ("SMA") remains to be settled. This is likely to be finalised through a process of discussion (which has already commenced) involving Government (specifically the Financial Services Unit but likely to include the Law Draftsman's Office), the Commission, Jersey Finance Limited and a number of prominent local legal practitioners from the FSB and IB arenas. However, its essential characteristics will be:

(a) that it is a portfolio of investments; (the latter term as defined in FS(J)L).
(b) in respect of which the Operator is appointed to undertake discretionary investment management; and
(c) that where there are joint owners, their participation in the SMA does not give rise to a fund (as distinct from the ability of a fund to utilise QSMA). Accordingly, there should be no unitisation and, where the SMA is jointly owned, the joint owners must be connected parties.
Note:
(1) It would not seem sensible to craft new definition(s) for 'fund' and the intention is to use the existing Article 3 definition from the CIF Law and the usual adjustment thereto to reference COBO funds (ie: a fund which would be a collective investment fund pursuant to the CIF Law but for the fact that it does not acquire capital by means of an offer to the public of units for subscription, sale or exchange, as described in that law).
(2) Notional unitisation (eg: for purposes of performance fee calculation) will not be objectionable.

Commentary:
The Commission accepts that a requirement for a single beneficial owner might well be unrealistic and uncommercial. However, where there are joint owners such ownership should not give rise to a fund; QSMA operates as an IB exemption and is distinct from our regulatory regime relating to funds. 6c) above is therefore considered to be a reflection of that. Unitisation is considered a key characteristic of a fund and is therefore (formally, at least) prohibited.

Naturally, the question arises as to what 'connected' means and the Commission

is working currently on a definition that aims to be adequate in scope without being excessively complex. An ancillary question is what ought to happen where a connection is lost (ie: if joint owners cease to be connected). The Commission is also currently considering this.

RESPONSE 5:

Do you agree with the approach indicated above?

- Yes
- No

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7. In order to fall within the scope of QSMA, an SMA must meet the prescribed requirements (hence 'Qualifying' SMAs/QSMA). These include:

(a) minimum initial subscription of US$1million (simple and objective). No exceptions, no derogations, no alternative criteria.
- Thereafter performance fluctuations and withdrawals will not be considered relevant.
- US$1million is the amount to be collateralised by a client, not of the risk/notional exposure
- Where there are joint owners, it is not essential that they each have an interest of the value of US$1m in the SMA at inception.
(<u>However</u>, joint owners will be warned that QSMA is designed for persons investing such a sum and that, if they should not be making such a contribution, they should take particular care to establish that participation in QSMA is suitable for them).

<u>Commentary:</u>
Because a pure numerical threshold is an objective test, there would be no need for clients or the Operator to confirm/counter-confirm the eligibility of the client.

A requirement for a minimum subscription of US$1million is a key part of efforts to ensure that unsuitable persons do not gain access to a facility which would not be appropriate for them. Requiring such sum to be only the notional exposure of the account would (depending on the underlying asset) potentially result in persons qualifying for use of QSMA with a fraction of that sum, which would not be acceptable.

Introduction of other qualifying criteria for clients (cf: the non-financial limbs of the PIRs, Expert and Eligible Investor definitions), the door opens to subjectivity, eligibility confirmations and longer form applications whereas it is the intention for QSMA to be as straightforward in application as possible.

Based on initial feedback to date, the Commission understands that an amount of US$1million would still cater for a scenario where a client wishes to trial an

Operator with an initial test (or incubator) sum before engaging more substantially with them.

On the question of whether each joint owner might have been required to make a contribution of US$1million, it is appreciated that it may, in practice, be difficult always to ascertain this. It has also been suggested to the Commission that, commercially, it might be unduly intrusive to delve into family arrangements (particularly in markets such as the Middle East and Asia) and insist upon such detailed financial disclosure. [This is of course distinct from knowing who your client is, which is essential under our AML/CFT regime]. The requirement that joint owners be 'connected' should greatly reduce any risk of a clubbing together of persons who individually would not be suitable to use QSMA. Further, the risk of undue influence is also considered to be relatively minimal given the fully-negotiated nature of SMAs; they are not off-the-shelf products in the way that interests in a public fund might be.

RESPONSE 6:

Do you agree with the approach indicated above?

- Yes
- No

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[7. In order to fall within the scope of QSMA, an SMA must meet the prescribed requirements (hence QSMA, 'Qualifying' SMAs). These include:]
...
(b) for any period in which QSMA activity is undertaken, the Operator of the SMA must be FSB- licensed. Such licence is to include at least one of the following classes:
Manager, Investment Manager, Trustee, General Partner
- There is no requirement that the Operator be a real-presence FSB entity (ie: it may be an FSB-licensed managed entity). Accordingly, the question of timeframe for transitioning to real-presence does not apply.
- As it is a 'whole person' arrangement, the MoME / ME framework will not be revised to expressly reference QSMA activity (noting here that it does not refer to PIRs activity either).
- Conducting QSMA activity will not prevent an Operator (which is an FSB-licensed managed entity) electing to comply only with the High Level Principles of the FSB Codes. Although they are not funds, because of the sophistication of those eligible to use such services, SMAs within the scope of the QSMA Order will be *deemed* by the Commission to be materially equivalent to Qualifying Funds for such purposes.

Commentary:
The requirement for FSB status represents a significant difference to PIRs. It will guarantee the regulated status of the Operator (therefore involving a 'fit and proper' test, Principal Person approvals, presence of a Compliance Officer and, where the Operator is a managed entity, application of the MoME regime), all of which naturally provides significant comfort. This approach in connection with QSMA is not thought dissimilar in concept to the Designated Service Provider (DSP) qualification re: Private Placement Funds (PPFs). Requiring a DSP to a PPF to be an FSB does not change the character of what is being done by the DSP in connection with the PPF (ie: administering a PPF does not become FSB activity, in the same way that operating within QSMA will not be an FSB activity); rather, it is about drawing an appropriate degree of comfort from a status in one context in another.

The relevant FSB status (together with the nexus to current hedge-fund strategy(ies) pursued by the Operator's client Unclassified Fund(s) referred to below) are the irreplaceable link / bridge which permits access to QSMA.

RESPONSE 7:

Do you agree with the approach indicated above?

- Yes
- No

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[7. In order to fall within the scope of QSMA, an SMA must meet the prescribed requirements (hence QSMA, 'Qualifying' SMAs). These include:]
...
(c) the SMA must only pursue hedge-fund strategies; and

(d) the hedge-fund strategy(ies) under which the SMA is operated (the "QSMA Account Strategy") must replicate, or alternatively be comprised of elements from, the hedge-fund strategy(ies) *currently* employed by one or more Unclassified Funds to which the Operator is appointed to provide FSB services (such funds, the "Reference Funds").
- The QSMA Account Strategy may provide for co-investment into the same assets as the Reference Funds.
- Provided that the requisite nexus in strategies with current mandates used by the Reference Funds exists, it is accepted that the actual investment positioning of a QSMA Account may be at variance from time to time to the position of any of the Reference Funds

Commentary:
QSMA is intended to provide the Island with the opportunity to grow its footprint in the hedge-fund area of financial services activity where the current interplay of our FSB and IB regimes is argued to be placing us at a competitive disadvantage relative to some of our peers. The capture of additional managed account business in the hedge-fund space, being high-value and relatively low impact, would also be aligned with key Government objectives for Jersey in the financial services arena. There may also be the ancillary benefit of exposing potential SMA clients who do not currently use Jersey at all to the Island's wider financial services offering. This ancillary benefit alone might be significant given the sophistication of such clients.

Accordingly, QSMA is a hedge-fund initiative; it is not designed to undermine the traditional (Class B) IB regime in the discretionary investment management space, which is why 7c) and d) are considered necessary.

The Commission does not, currently, think it prudent to attempt to precisely

define hedge-fund. Expansive pages of definitions (which might not carry universal agreement) would be unhelpful against a backdrop of attempting, where possible, to ensure that QSMA is clear and concise in terms of its criteria. The Commission notes in this regard that its Expert Fund Guide (paragraph 2.18), in the context of the dispensation from the requirement for an open-ended fund to appoint a custodian, refers to a hedge-fund without defining the concept. Ultimately, it is for an Operator to be comfortable that they can demonstrate that they are operating within QSMA's parameters.

<u>RESPONSE 8</u>:

Do you agree with the approach indicated above, in particular, leaving the term 'hedge-fund' undefined?

- ○ Yes
- ○ No

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8. The aggregate assets under management (AUM) of the Operator's QSMA activity relative to the individual and aggregate NAVs of its client Unclassified Funds will not be a factor in determining whether QSMA is (or remains) available to an Operator.

Even where the AUM of the aggregate QSMA activity undertaken exceeds the aggregate NAV of an Operator's client Unclassified Funds, because the Operator must be FSB-licensed (in the relevant class of such activity) in order to rely upon QSMA, the conduct of QSMA activity will necessarily be considered 'ancillary' to the conduct of FSB activity (including for the purposes of the Commission's FS(J)L Licensing Policy, in particular paragraph 9.1 thereof).

Commentary:
A threshold in this regard (if set) might expose an Operator's ability to shelter under QSMA to a fundamental fragility over which the Operator may have limited control.

It is accepted that the relative wealth and investment appetite (and any vagaries therein) of those using the Operator's QSMA services contrasted to those of persons investing in its client Unclassified Funds (and vice-versa) should not be a determinant of whether QSMA remains available to an Operator.

RESPONSE 9:

Do you agree with the approach indicated above?

- ○ Yes
- ○ No

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9. No requirements will be prescribed concerning <u>where</u> the account must be held or in <u>whose</u> name *other than* to provide that the SMA must not be in the name of the Operator and that the Operator must not have custody of the investments comprised in the account.
Note: no financial service business exemptions will be conferred by QSMA on the party or parties in whose name the managed account is or which has custody of the account / investments comprised within it.

<u>Commentary:</u>
This is a bankruptcy remoteness measure, more than an anti-fraud / anti-misuse measure. The Commission accepts that the QSMA account should be capable of being in the name of the client, the client's nominee or the client's agent provided in the latter two cases this is not the Operator.
It is not the Commission's intention to prevent large groups that have a custody arm separate to their management arms from providing both services (via distinct legal entities).

RESPONSE 10:

Do you agree with the approach indicated above?

- ○ Yes
- ○ No

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10. A simple, short-form Investment Warning, in the prescribed format (and similar to the PIRs-style investment warning), must be embedded in the investment management agreement, mandate or other document (such as a revocable power of attorney) giving rise to the discretionary investment authority of the Operator over the QSMA account.
- Client's execution of the IMA, mandate or other document will constitute the acceptance and acknowledgement.
- Where a document's form is prescribed and cannot be altered the investment warning could, instead, be a standalone document.
- Operator will retain proof of execution (rather than submit this to the Commission).
- If the account has not been used (including if it should have a zero-balance) for a period of longer than six months and is then subsequently re-used (or re-capitalised to any extent), its QSMA status will be lost if the investment warning is not re-issued to and re-acknowledged by the client.

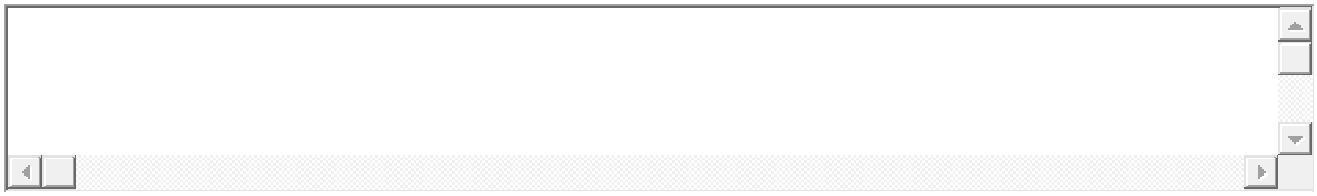
Commentary:
Concerning the final point, the Commission's concern is one of 'mindfulness'; a desire to ensure that the QSMA client does not forget (ie: keeps in contemplation) the regulatory status of what they are participating in when QSMA is used. For the avoidance of doubt, there would be no requirement for a fresh subscription of US$1 million to take place.

RESPONSE 11:

Do you agree with the approach indicated above?

- ○ Yes
- ○ No

Comments



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11. Notice of first reliance on QSMA to be given to the Commission.
- Short form notification (in the prescribed format), to be submitted immediately upon (or, more likely, shortly before) first reliance is placed on QSMA. Further notices not required.
- Submission of this 'first use' notice will be a criteria for applicability of QSMA (therefore no safe-harbour without compliance).
- No public record (for example on the Commission's website, against the list maintained of regulated entities and their respective law classes) will be maintained.
- The Commission would also request that an Operator inform the Commission upon their cessation of any QSMA activity.

Commentary:
This notice obligation does not equate to a requirement for the Commission's prior consent to be given before QSMA is used. Rather, it could be considered akin to the role played by the need for a COBO consent in the context of PIRs, albeit less burdensome given that nothing is required in response/by way of decision from the Commission. [The Commission would also argue that disclosure of the fact of doing QSMA activity (ie: a form of investment business) is an existing obligation on an Operator by virtue of their FSB-licensed status and the requirement to keep the Commission appraised of material changes to information provided to it. However, the explicit QSMA condition will be added to put the matter beyond argument.]

The Commission accepts that notice on a per contract/SMA basis would be impractical and a move away from a 'per activity' approach to service provider regulation.

In connection with QSMA, it is particularly relevant to the Commission to know that QSMA is being undertaken given that the Operator must be FSB licensed. In the unlikely event that the Commission had a particular concern that a particular FSB-licensed entity ought not to conduct further QSMA activity (or indeed any non-FSB activity) this could be raised with the licensee in connection with their FSB status – the maintenance of which, in the case of QSMA, is a

condition for use of QSMA and/or, in an extreme case, through the use of directions.

RESPONSE 12:

Do you agree with the approach indicated above?

- Yes
- No

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12. Statistical reporting of QSMA activity should (on an on-going basis) be done by the Operator, in a similar manner to current Class B IB reporting. AUM and number of clients to be reported on calendar quarter dates (derogation possible for 1st reporting period if would be impractical).
- Operator (as an entity) is responsible for reporting, not a specific officer of it.
- The Commission will publish a prescribed form (for electronic / online submission), which will be very similar to the current IB form (but cut-down, lacking the 'top 5 portfolios' query).

Commentary:
Unlike with PIRs, it will therefore be known (in broad terms) what is sheltering in the QSMA safe-harbour. The Island's statistics will not therefore be prejudiced by QSMA.

RESPONSE 13:

Do you agree with the approach indicated above?

- ○ Yes
- ○ No

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13. Annual QSMA 'utilisation' fee

- This is <u>not</u> a tax (no correlation with the value of QSMA activity done); neither would it be levied on a per contract basis.

- Simple ('entry charge') approach: x1 fee, per Operator, per annum. Same fee for all Operators.

- Intended, partly: (i) to offset the anticipated loss of a few Class B licence fees; (ii) to reflect work processing statistics; (iii) to reflect work in assessing satisfaction of QSMA conditions during FSB on-site inspection visits; and (iv) as a *quid pro quo* for lifting of IB Licence, Codes and Client Assets Order requirements.

- Failure to send the fee when due would not prevent QSMA safe-harbour being operative (but likely to involve uplift penalty).

- To be paid on first reliance on QSMA (pro-rated for balance of charging year remaining) and thereafter annually on 31st July for so long as QSMA is utilised by the Operator.

- The Commission would suggest an annual QSMA fee of £10,000 per year (such amount representing, approximately, 50% of the average, annual IB licence fee paid in connection with Class B activity).

- Persons paying a Class B IB licence fee in the same year would be exempt from paying the QSMA fee for that year (ie: no double-charging).

Note: as QSMA operates within the IB space (such QSMA accounts therefore not constituting funds) there is no need to remove QSMA activity from the 'pools of funds' taken into account in connection with the Operator's FSB fees for their 2nd and subsequent years as an FSB.

<u>Commentary:</u>

Although 31st July is the annual date for payment of FSB fees, all Operators will be FSB-licensed and consequently should be sending fees by such date to the Commission. In contrast, Operators may not be IB licensed and therefore may not be sending any fees to the Commission in May. From a practical / prudence perspective (to reduce the likelihood of oversight), the FSB date is therefore thought the most sensible, as well as probably the most convenient, notwithstanding that QSMA activity remains investment business activity.

RESPONSE 14:

Although doubtless something Operators would prefer did not exist, would you consider such a fee to be acceptable / reasonable?

- Yes
- No

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14. Upon the QSMA Order being brought into force, the Commission will issue a "Dear CEO…" communication (specifically addressing QSMA), which will provide some detail as to the Commission's expectations in connection with the conduct of QSMA activity by an FSB-licensed Operator. Its coverage would include the following points:

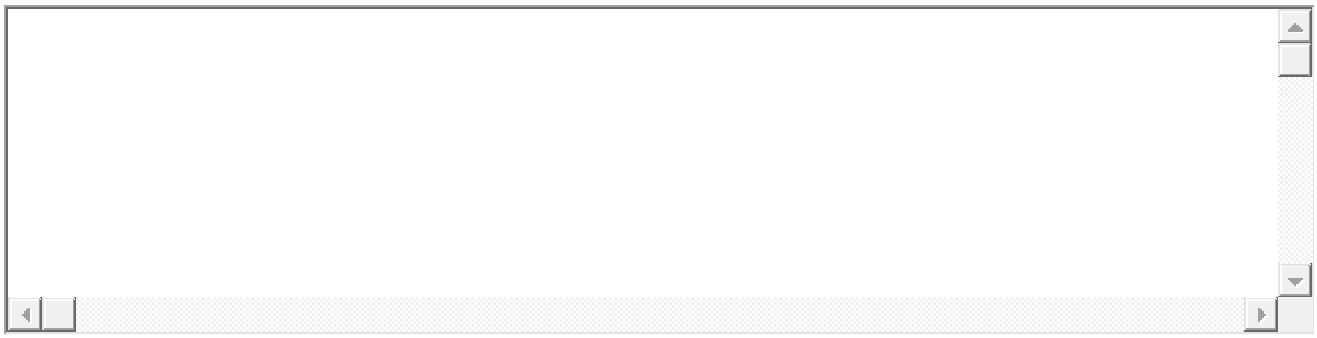
- **an Operator must give careful consideration to its obligations at law as a fiduciary in connection with conflicts of interest between it and its clients (and between different categories/groupings of clients). The Commission's expectation would be for each QSMA client to receive a copy of the Operator's conflicts of interest policy, although it is anticipated that clients sufficiently sophisticated to access QSMA services would routinely request this anyway. From the FSB perspective, the Operator should bear in mind that instances of inappropriate/undesirable conflict management might call into question their 'fit and proper' person status (in particular, the integrity) of the Operator. Indeed, as a general matter, the continued FSB status of the Operator (a requirement to access QSMA's safe-harbour) should not be thought to be immune from unacceptable conduct in the course of conducting QSMA activity.**
- **the fact that the Operator should expect FSB supervision inspections to look at QSMA, primarily to establish that its criteria are satisfied. A member of staff from the Commission's IB team may well accompany the FSB team on such visits.**
- **when the FSB-licensed Operator takes on a new line of business (ie: QSMA), whether or not it produces an ANLA, it is expected to assess the impact (which may be positive or negative) of doing so upon its financial needs and to make such adjustments as are appropriate in the circumstances. As previously noted, an IB licensee will need to include QSMA activity in its 'whole business' ANLA as currently.**
- **that pursuant to the FSB Codes, the FSB-licensed Operator is required to have and maintain the appropriate level of PII cover. Where a managed entity is concerned, this must be sufficient to "withstand the risks to which its**

business is subject" including, therefore, as may arise by virtue of such Operator's QSMA activity.

- **with regard to its range of business activities, an Operator should bear in mind in connection with all of its clients the prevailing disclosure obligations to which it is subject.**
- **in connection with AML/CFT obligations, it is to be borne in mind that QSMA activity is still investment business pursuant to FS(J)L.**
- **the Sensitive Activities Policy should be borne in mind in connection with QSMA activity.**
- **the Commission does not have the resources to review the specific wording of every condition on every FSB-licensed entity's FSB licence (or grandfathered CIF Law permit) from the perspective of establishing whether they might present difficulties in terms of access to QSMA. Neither is it considered prudent for the QSMA Order to introduce a blanket access to QSMA irrespective of the wording of any such FSB licence conditions. Accordingly, any would-be Operator wishing to undertake QSMA activity must review their individual FSB licence conditions (and, indeed, any other conditions on them imposed pursuant to a regulatory law in Jersey) to confirm that the wording thereof is not problematic in terms of commencing QSMA activity. If a condition is thought to be problematic in terms of access to QSMA (or in connection with the continued ability of a managed entity to apply only the High Level Principles of the FSB Codes), the Commission should be approached with a request for a variation. In the vast majority of cases involving FSB licence conditions, it is not anticipated that there would be any need to do so. However, for the avoidance of doubt, persons licensed pursuant to a regulatory law in Jersey should not assume that any licence condition to which they are subject is in any way varied merely by the bringing into force of the QSMA Order.**
- **although SMAs within the scope of QSMA are not funds, for the purposes of the FS(J)L Licensing Policy, the FSB Codes and all ancillary / related Guidance Notes, conduct of QSMA activity is deemed by the Commission to be materially equivalent to acting for a Qualifying Fund, such that an Operator (which is a managed entity) may continue to elect to comply only with the High Level Principles of the FSB Codes.**

RESPONSE 15:

Do you wish to make any further comments in connection with the foregoing QSMA proposal?



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Jersey Financial Services Commission

MANAGED ACCOUNTS: A HEDGE FUND INITIATIVE

In order to assist with assessing the business case for progressing this project, please answer the following question:

Assuming an acceptable regulatory framework is in place by the end of 2014, I would estimate the percentage likelihood of being directly involved in 'managed account' business during 2015 at:

[enter percentage] %

How long did it take you to complete this survey?

_____ mins

This is the first electronic consultation hosted by Jersey Finance Limited. Jersey Finance would be grateful for any feedback or suggestions which might assist in devising and running future consultations of this type.

Next

Jersey Financial Services Commission

MANAGED ACCOUNTS: A HEDGE FUND INITIATIVE

Name

Email

I am responding

- solely in a personal capacity
- on behalf of an organisation

Name of organisation

I would describe my organisation as

I would describe the size of my organisation (in a Jersey context) as

Permissions

- I would like my submission to remain anonymous (save, if provided, by reference to my organisation type and size)
- I give permission for full details of my submission to be supplied to the JFSC (if requested)

By clicking **'Submit my response'**, you are completing the consultation and will not be able to edit your responses.

Submit my response