

FEEDBACK ON CONSULTATION PAPER NO.1 2013

MANAGED ACCOUNTS

Feedback on a consultation relating to the possible amendment of Jersey's regime in relation to the regulation of the activities of those involved in the management of managed accounts.

CONSULTATION FEEDBACK

This Paper reports on the responses received by the Jersey Financial Services Commission (the “**Commission**”) on Consultation Paper No. 1 2013: Managed Accounts.

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GLOSSARY

Codes	means Codes of Practice issued by the Commission.
Consultation Paper	means Consultation Paper No 1 2013: Managed Accounts published by the Commission.
the Commission	means the Jersey Financial Services Commission.
the Commission Law	means the Financial Services Commission (Jersey) Law 1998.
FSB Codes	means the Codes of Practice for Fund Services Business.
FS(J)L	means the Financial Services (Jersey) Law 1998.
IB Codes	means the Codes of Practice for Investment Business.
Jersey Finance	means Jersey Finance Limited.
managed account	has the meaning set out on section 4.5.5 of the Consultation Paper but with the substitution of US\$ 1 million for US\$ 5 million.

1 OVERVIEW

1.1 Background

- 1.1.1 Industry has been concerned for some time that the way in which the business of managing a managed account is regulated is a cause of potential difficulty for registered persons in that it requires the registered person to be registered both for Fund Services Business and Investment Business. Industry has expressed the view not only that no benefit is obtained by requiring dual registration but that the requirement is a hindrance to business.
- 1.1.2 The Commission has reviewed the registration requirements and raised questions in relation to them in the Consultation Paper, published in March 2013. Ascertaining a method by which the managers of managed accounts might be relieved from the requirement of dual registration in respect of the managing of a managed account required consideration of the managers, and the kinds of managed account, to which any varied regime might apply.

1.2 Feedback on the proposals contained in the Consultation Paper

- 1.2.1 The Commission received comments directly from Altis Partners (Jersey) Limited and from Jersey Finance. The latter's response contained comments that it had received from twelve persons or groups.
- 1.2.2 The respondents are listed in the Appendix. A summary of the comments received, along with the Commission's response to those comments, can be found in section 2 of this Feedback Paper.
- 1.2.3 The Commission is grateful to respondents for taking the time to consider and comment on the proposals. Each respondent has been sent a copy of this Feedback Paper.

2 SUMMARY OF RESPONSES

2.1 Structure of this section

2.1.1 The questions posed in the Consultation Paper and a summary of the responses received to each is set out in sections 2.2 to 2.10 below. Copies of the Consultation Paper can be obtained from the Commission's website or by contacting the Commission directly.

2.2 Question 4.1.5

Do you agree that it should continue to be possible for managed accounts to be managed in or from within Jersey? Please give your reasons.

2.2.1 All respondents which expressed a view were in favour.

Commission Response

2.2.2 The Commission considers that it should continue to be possible for managed accounts to be managed in or from within Jersey and intends to take such steps as are necessary to ensure that this can happen in a way which balances the interests of industry and investors.

2.3 Question 4.2.2

Do you agree that no benefit is obtained by requiring the managers of managed accounts to be registered for two types of business under the FS(J)L in respect of the same activities? Please give your reasons.

2.3.1 All respondents which expressed a view were in favour.

Commission Response

2.3.2 The Commission intends to take such steps as are open to it to remove the requirement of registration for two types of business under FS(J)L in respect of the same activities insofar as it can do so in a way which balances the interests of industry and investors.

2.4 Question 4.3.4

Do you agree with the approach outlined here [paragraph 4.3 of the Consultation Paper] in relation to managed entities? In particular, have you any views on the period within which a managed entity carrying out this activity would be expected to change into a full presence? Please give your reasons.

2.4.1 A variety of responses was contained within Jersey Finance's response. With the exception of the respondent which favoured the abolition of the concept of Manager of Managed Entities, all respondents were in favour of managed entities being permitted to manage managed accounts as a form of fund services business but some favoured a longer transitional period than the twelve months set out in paragraph 3 of the Consultation Paper to become a "full presence" entity or no requirement to become a "full presence" entity.

Commission Response

- 2.4.2 Subject to law drafting advice, the Commission intends to proceed with the following regime in relation to the managing of managed accounts by managed entities:
- 2.4.2.1 the managed entity would have to be managed by a manager holding an appropriate registration;
 - 2.4.2.2 the directors/employees with responsibility for the day-to-day management of the managed assets and resident in Jersey and in relation to whom the Commission has no objection would need to be an integral part of the business of the promoter (that is, the business behind the managed entity);
 - 2.4.2.3 the span of control requirements would need to be satisfactorily dealt with; and
 - 2.4.2.4 a business plan would need to be provided to the Commission which was acceptable to the Commission and which made adequate arrangements in relation to a timescale for the operation to become stand-alone; in this regard it is unlikely that a period of longer than 24 months for the entity to become "real presence" would be acceptable to the Commission.
- 2.4.3 Notwithstanding the above, the managed entity would be required to comply with the FSB Codes in full from the outset of being registered to carry on the business of managing a managed account.

2.5 Question 4.4.5

Do you agree with the approach outlined here? [Paragraph 4.4 of the Consultation Paper – creation of a new class of business of managing a managed account]. If you do not, would you please state your reasons and make alternative suggestions?

- 2.5.1 The majority of respondents which expressed a view were in favour of this proposal although one respondent expressed the view that the creation of a separate class of managing managed accounts was unnecessary.

Commission Response

- 2.5.2 The Commission proposes, subject to law drafting advice, to recommend the creation of a new class of business – manager of a managed account (provisionally designated Z[M]) – under the Financial Services (Financial Services Business) (Jersey) Order 2009. The Commission also proposes, again subject to law drafting advice, to recommend the creation of an optional exemption, available to persons registered to manage managed accounts, from the requirement to be registered to carry out investment business. The Commission will then arrange for the introduction of an appropriate application procedure and the setting of an appropriate fee payable on application and subsequently. In this regard it is not proposed to treat each managed account as a pool of assets in respect of each of which a fee is payable. The fee structure will be kept under review.

2.6 Question 4.5.6

Do you agree with the Commission's suggested definition of a managed account [as set out in paragraph 4.5.5 of the Consultation Paper]? If not, would you please state why not and suggest an alternative definition?

- 2.6.1 Respondents made two points:
- 2.6.1.1 that the definition of a manager should be extended so as to permit a role for an investment adviser; and
 - 2.6.1.2 that ownership of a managed account by more than one beneficial owner should be permitted.

Commission Response

- 2.6.2 The Commission proposes to recommend that the new regulatory regime for the managing of managed accounts should provide for a manager of a managed account, which will be the investment manager. If investors and advisers wish to establish an arrangement which also includes the appointment of an investment adviser, they should follow the general requirements in relation to such an appointment as provision for such an appointment will not be part of the managed accounts regime.
- 2.6.3 The Commission proposes that the minimum size of a managed account be set at US\$ 1 million and this is discussed in relation to question 4.5.9, below. The Commission also proposes that the starting point is that a managed account may be owned by one individual beneficial owner, a husband and wife or the members of a civil partnership. It is intended that the Commission shall have power to agree that a managed account may be owned by a family trust or a family office which manages funds for more than one member of a family or more than one family entity, subject always to a required minimum investment of US\$ 500,000 per investor, but provision should also be made to prevent "artificial arrangements" being created with a view to the aggregation of funds by unconnected persons so as reach the minimum US\$ 500,000 investment.

2.7 Question 4.5.7

Do you agree that the manager of a managed account should be permitted to continue to be registered as an Investment Business, if it wishes, notwithstanding its registration as a Fund Services Business?

- 2.7.1 All respondents which expressed a view were in favour of this.

Commission Response

- 2.7.2 The Commission will consult with the Law Draftsman but believes that no changes will be required to enable the possibility of registration for investment business to continue alongside the proposed new managed account regulatory regime.

2.8 Question 4.5.8

Do you agree to the creation of a new class of Fund Services Business - manager of a managed account? Please give your reasons.

2.8.1 Three of the four respondents which expressed a view were in favour. The fourth respondent did not see any benefit from the creation of a new class.

Commission Response

2.8.2 As mentioned above in relation to question 4.4.5, the Commission proposes, subject to law drafting advice, to recommend the creation of a new class of business - manager of a managed account - under the Financial Services (Financial Services Business) (Jersey) Order 2009. In this regard the proposed definition of a managed account is as follows (subject to law drafting advice):

2.8.3 "Managed Account" means a portfolio of assets beneficially owned by one individual (but subject to the proposed powers mentioned in the Commission response to in paragraph 2.6.1 above):

- (i) where not less than US\$ 1 million (or its equivalent) has been contributed to the account at the commencement of its management by the Registered Person;
- (ii) which is managed on behalf of that person by a person (the "Registered Person") registered to undertake fund services business as a manager of a managed account or registered for investment business;
- (iii) which is managed as a discretionary portfolio pursuant to an investment strategy that is the same as or is substantially similar to that of a fund (the flagship fund) or part thereof of which the Registered Person is already the manager or investment manager."

2.9 Question 4.5.9

Do you consider a minimum size for a managed account to be appropriate? If so, would you please indicate the level, which need not be within the range of US\$ 5 million to US\$ 10 million mentioned above.

2.9.1 There was a general consensus among the respondents which expressed a view that US\$ 1 million is a more appropriate minimum than the US\$ 5 million proposed in the Consultation Paper.

Commission Response

2.9.2 The Commission considers that an appropriate minimum size for a managed account at inception is US\$ 1 million.

2.10 Question 4.6.2

Do you agree with the suggestion that the Codes which are required to be followed (the FSB Codes or the IB Codes) should depend on the kind of business for which the manager of the managed account is registered (and, if registered for both types of business should follow both sets of Codes), in the way outlined above?

2.10.1 The five respondents which expressed a view agreed. Two of those respondents expressed the view that it would be appropriate to have one set of Codes of Practice governing both Fund Services Business and Investment Business; one of those two respondents expressed the view that some aspects of the IB Codes are more appropriate than the FSB Codes to the activity of managing a managed account.

Commission Response

2.10.2 In view of the project of harmonising the Codes recently undertaken, the Commission considers that the Codes as restated (to be published soon) display a high degree of consistency and considers that it is not appropriate to give priority to a further review of the Codes at this stage; however, further consideration may be given at a later stage to a further review and, if appropriate, amendment, of the FSB Codes.

3 NEXT STEPS

3.1 Progressing Changes to the Regulatory Regime

- 3.1.1 The Commission will liaise with the Law Draftsman over the extent to which the changes in the regime in relation to managed accounts requires amendment to legislation and will instruct the making of such changes as are necessary. The Commission will also consider whether any amendments to the FSB Codes are necessary or desirable in the light of the proposed regime in relation to managed accounts and will publish a consultation paper in relation to any such amendments.

APPENDIX

List of respondents to the Consultation Paper:

- Altis Partners (Jersey) Limited
- Jersey Finance (containing responses from 12 persons or groups.)