



Jersey Financial
Services Commission

Consultation Paper

No. 1 2017

Financial Services (Jersey) Law 1998: Investment Business Fees

A consultation on proposals to change fee rates

Issued: March 2017

Consultation Paper

The Jersey Financial Services Commission invites comments on this consultation paper. Comments should reach Jersey Finance Limited by 21 April 2017.

Responses should be sent to:

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Alternatively, responses may be sent directly to the JFSC by 21 April 2017. If you require any assistance, clarification or wish to discuss any aspect of the proposal prior to formulating a response, it is of course appropriate to contact the JFSC.

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It is the policy of the JFSC to make the content of all responses available for public inspection unless specifically requested otherwise.

It is the policy of Jersey Finance Limited (unless otherwise requested or agreed) to collate all responses and share them verbatim with the JFSC on an anonymised basis (with reference made only to the type of respondent, e.g. individual, law firm, trust company etc.) This collated, anonymised response will, typically, be placed in JFL's permanent electronic archive which is currently open to all JFL members.

Glossary of Terms

Commission/JFSC	Jersey Financial Services Commission
Commission Law	Financial Services Commission (Jersey) Law 1998, as amended
IB	Investment Business
MiFID	The package of reforms to the EU's investment business regime, including EU legislative change

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1 Consultation

1.1 Basis for consultation

- 1.1.1 The JFSC is issuing this consultation paper in accordance with Article 8(3) of the Financial Services Commission (Jersey) Law 1998, as amended (**Commission Law**), under which the JFSC “*may, in connection with the carrying out of its functions... consult and seek the advice of such persons or bodies whether inside or outside Jersey as it considers appropriate*”.
- 1.1.2 In addition, Article 15(3) of the Commission Law, requires that before the JFSC may introduce and publish any fee “*...the Commission must first publish a report that must include:*
- (a) details of the duty or power for or in respect of which the fee is to be determined;*
 - (b) details of the proposed fee;*
 - (ba) details of the extent (if any) to which any penalties received have reduced the level of fee that would otherwise have been proposed;*
 - (c) a request for comments on the level of the proposed fee; and*
 - (d) a date, that is at least 28 days after the publication of the report, before which those comments may be made to the Commission”.*
- 1.1.3 The JFSC considers that this consultation paper constitutes such a report as required by the Commission Law.

1.2 Who will be affected by the proposed changes?

- 1.2.1 These amendments will affect all persons registered under the Financial Services (Jersey) Law 1998 to conduct investment business (**IB**), and persons that are issued with a registration certificate on or after 1 May 2017.

1.3 Responding to the consultation

- 1.3.1 The JFSC invites comments, in writing, from interested parties on the content of this consultation paper and its likely impact on registered IBs.
- 1.3.2 Comments should be received by either Jersey Finance Limited or the JFSC no later than 21 April 2017.

1.4 Next steps

- 1.4.1 Following this consultation, the JFSC will publish feedback and the final fees notice in the second quarter of 2017. Firms will be notified when either their invoices are ready, or they need to supply information for fees to be calculated, via the myJFSC portal.

2 The JFSC

2.1 Overview

- 2.1.1 The Jersey Financial Service Commission (**JFSC**) is a statutory body corporate established under the Commission Law. It is responsible for the supervision and development of financial services provided in or from within Jersey.
- 2.1.2 Article 15(2) of the Commission Law provides that fees set by the JFSC are to be retained and must, together with any other income:
- 2.1.2.1 raise sufficient income to meet the JFSC's liabilities;
 - 2.1.2.2 cover the JFSC's expenses; and
 - 2.1.2.3 provide a reserve for the JFSC of such amount as it considers necessary.

2.2 The JFSC's functions

- 2.2.1 Article 5 of the Commission Law prescribes that the JFSC shall be responsible for:
- 2.2.1.1 the supervision and development of financial services provided in or from within Jersey;
 - 2.2.1.2 providing the States, any Minister or any other public body with reports, advice, assistance and information in relation to any matter connected with financial services;
 - 2.2.1.3 preparing and submitting to the Minister recommendations for the introduction, amendment or replacement of legislation appertaining to financial services, companies and other forms of business structure;
 - 2.2.1.4 such functions in relation to financial services or such incidental or ancillary matters:
 - › as are required or authorised by or under any enactment, or
 - › as the States may, by Regulations, transfer; and
 - 2.2.1.5 such other functions as are conferred on the JFSC by any other Law or enactment.

2.3 Guiding principles

- 2.3.1 Article 7 of the Commission Law provides that in exercising its functions the JFSC may take into account any appropriate matter, but that it shall have particular regard to:
- 2.3.1.1 the reduction of the risk to the public of financial loss due to dishonesty, incompetence or malpractice by, or the financial unsoundness of, persons carrying on the business of financial services in or from within Jersey;
 - 2.3.1.2 the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;
 - 2.3.1.3 the best economic interests of Jersey; and
 - 2.3.1.4 the need to counter financial crime in both Jersey and elsewhere.

3 Proposals

3.1 Proposed fee rate changes

- 3.1.1 The JFSC proposes to increase IB fee rates (including application fees) by just under 3%, and for Class A – D licence holders to widen the bands in which a charge is levied per investment employee. The detailed proposals are set out in section 3.4 below.
- 3.1.2 No penalties have been received which would reduce these fees.
- 3.1.3 The proposed fees notice reflecting the proposals can be found in Appendix B.
- 3.1.4 As in 2017, fees will be administered via firms' myJFSC portal accounts. Firms will receive an email prompt to notify them that an invoice is awaiting payment, or that they need to supply information for fees to be calculated.

3.2 The work of the JFSC

- 3.2.1 The JFSC is the Island's statutory regulator of financial services. Our work includes the authorisation and supervision of financial services firms, as well as policy development and enforcement activity. The Companies Registry is an integral part of the JFSC.
- 3.2.2 Our Business Plans and Annual Reports set out our priorities and report on outcomes respectively. Some of the work we have carried out in 2015, 2016 and 2017 to date includes:
 - › Core 'day to day' supervision of firms, also covering authorisation activity and, where necessary, the progression of a number of complex enforcement cases;
 - › Policy work, including a focus on MiFID 2 as a key priority;
 - › A public awareness campaign relating to investment mis-selling¹;
 - › Training for industry, as well as the provision of speakers to industry seminars;
 - › Input into the area of innovative fintech, including the introduction of a regulatory regime for virtual currencies;
 - › Involvement in the Jersey Fraud Prevention Forum as well as a modest contribution to the financial education of young people in the Island;
 - › Continuous improvement of the JFSC's cyber-defences;
 - › Helping to secure an excellent outcome for Jersey in its MONEYVAL assessment, a key determinant of future market access for 'Jersey plc';
 - › Other targeted international engagement, such as through the Group of International Finance Centre Supervisors, or demonstrating the equivalence of our regime to EU authorities; and
 - › Introduction and progression of a 'change programme' to modernise the JFSC's systems and increase the skills of our staff.
- 3.2.3 It is important to emphasise the unprecedented step-change in financial regulation and international relations brought about by the financial crisis in 2007/8. Since then, thousands of pages of requirements have been added to the global rulebook by both

international, supranational and national standard setters. International finance centres like Jersey are under greater scrutiny, daily, than ever before.

- 3.2.4 Given our statutory remit, the JFSC's view is that we do not undertake significant amounts of discretionary work compared to what is expected of a modern regulator, and it is not credible to believe our workload will decline in the near future. So, the JFSC needs to be sustainably funded to carry out its current level of activity.

3.3 The JFSC's financial position

- 3.3.1 The JFSC's recent financial performance can be summarised as follows:
- 3.3.1.1 in 2014, the JFSC's income and expenditure were in balance, but absent an exceptional enforcement cost recovery there would have been a deficit of over £950,000 (after restatement due to FRS102);
 - 3.3.1.2 in 2015, the JFSC made a loss of some £640,000;
 - 3.3.1.3 although still subject to audit, our 2016 accounts are expected to show a loss of somewhat below £400,000.
- 3.3.2 Because the JFSC holds reserves, these losses have been able to be accommodated, but that position is not sustainable; indeed, as well as bringing the JFSC's annual finances back into balance, the reserves need to be rebuilt to appropriate levels over a reasonable period of time.

3.4 Regulatory fee proposals

- 3.4.1 Given the above facts, the JFSC has begun a programme of increasing fees to secure its financial sustainability, with the aim of reaching total income from 'regulated' entities² of some £13m by 2019 (an increase of 15% above the same fees in 2015).
- 3.4.2 This 'pathway' for the development of regulatory fees has been set out to and implementation begun for the banking, funds, trust company, general insurance mediation, money service business and Schedule 2 sectors³.
- 3.4.3 Last year, the JFSC increased IB fee rates, although the sector was not formally placed on the (2015 fees + 15%) by 2019 pathway. In the calendar year 2015, IB fees received by the JFSC totalled £1,174,000. Applying the pathway to the IB sector would mean the JFSC looking to collect a total of £1,350,000 in IB fees by 2019.
- 3.4.4 Although yet to be audited, the JFSC expects IB fees for 2016 to be around £1,235,000⁴.
- 3.4.5 The JFSC therefore proposes to aim to collect £1,292,000 in investment business fees from the 2017/18 (this) fee period and £1,350,000 in the 2018/19 fee period (that is,

¹ For which a financial contribution was made towards the costs by the UK Personal Finance Society.

² That is, the JFSC's non-Registry income.

³ See CPs 2, 5, 9, 10, 11 and 12 (2016), available on our website.

⁴ This is somewhat lower than expected based on the changes to fee rates last year.

smoothing the £115,000 difference between the 2016 fees and the desired 2019 fees over the next two fee periods).

- 3.4.6 There have been some significant structural changes to the licensed IB sector post the collection of 2016 fees, including a number of large fee payers who have exited the market, and so will not pay any fees in 2017. If fee rates were left as they are, we estimate we would collect around £100,000 **less** in IB fees than last year.
- 3.4.7 This loss in fees must be made up, in addition to the additional amount the JFSC proposes to collect. If the JFSC attempted to collect the £1,292,000 solely through an across-the-board fee rate increase, this would imply an almost 14% increase in fee rates⁵.
- 3.4.8 The JFSC does not believe this is the appropriate methodology to adopt. Instead we propose the following changes:
- › fee rates, including for applications, will increase by just below 3% across-the-board;
 - › for class A – D licensees, the employee band that currently covers the first 10 investment employees will instead apply to the first 15 investment employees; and
 - › the employee band that currently covers the next 20 investment employees will instead cover the next 25 investment employees (i.e. the maximum total number of investment employees chargeable increases from 30 to 40).
- 3.4.9 This means that (assuming a firm has not changed its investment business employee numbers or licence types since the last fee period):
- › firms in the band up to 10 investment employees will see their IB fees increase by just under 3%;
 - › firms with more than 10 investment employees will experience a greater percentage increase in their IB fees, depending on exactly how many investment employees they have;
 - › the maximum IB fee, payable by those with 40 or more investment employees, will be £56,004 (for firms with licence classes A-C).

3.5 Question

- 3.5.1 Do you agree with the proposed changes to the IB fee structure and rates?

⁵ £1,292,000 / (£1,235,000 fees last period - £100,000 forecast reduction in fees) = 13.8%.

Appendix A - List of Bodies Who Have Been Sent This Consultation Paper

- › Chartered Institute for Securities & Investment
- › Jersey Bankers Association
- › Jersey Finance Limited
- › Professional Finance Society

Appendix B - Draft Investment Business Fees Notice

Notice of Fees

Published in accordance with:	Article 15 of the Financial Services Commission (Jersey) Law 1998, as amended
Payable by or in relation to:	Investment Business
Pursuant to:	Articles 8(3) and 9(6) of the Financial Services (Jersey) Law 1998, as amended; and Article 15(6) of the Financial Services Commission (Jersey) Law 1998, as amended
Commencement date:	The fees set out in this notice and the attached schedule are effective for the period from 1 May 2017 – 30 April 2018

1 Interpretation

1.1 In this notice, unless the context otherwise requires -

Commission	means the Jersey Financial Services Commission
investment employee	in respect of a registered person, means: <ul style="list-style-type: none"> (a) a person employed on the relevant date either under a contract of service or a contract for services by the registered person as: <ul style="list-style-type: none"> (i) a dealer, (ii) a discretionary investment manager, (iii) an adviser, or (iv) a supervisor; and (b) a person employed on the relevant date either under a contract for service or a contract for services in any of the categories of work specified in paragraph (a) of this definition by a person who is himself or herself employed on the relevant date either under a contract of service or a contract for services by the registered person⁶, <p>and if, on the relevant date, there exists a post in the service of the registered person that is vacant but would normally be occupied by a person to which paragraph (a) of this definition applies, includes that person</p>
Law	means the Financial Services (Jersey) Law 1998, as amended
registered person	means a person registered under the Law to carry on investment business

⁶ In practice this captures 'indirect' investment employees who are employed by third parties to conduct these roles on behalf of the registered person.

relevant date	means 1 April 2017, or the date of the application for registration if such application occurs between 1 May 2017 and 30 April 2018
supervisor	means a person who is responsible, either alone or jointly with one or more other persons, for the management, supervision and control of an investment employee who is not a supervisor

2 Application fee

- 2.1 The fee to accompany an application for registration to carry on investment business shall be the amount specified in the table set out in the Schedule.

3 Annual fee

- 3.1 A person registered to carry on investment business at any point during the period 1 May 2017 to 30 April 2018 shall pay a fee calculated in accordance with the table set out in the Schedule.
- 3.2 If a person is registered after 31 December 2017 the annual fee payable on registration shall be half the fee otherwise payable.
- 3.3 The Commission may remit an annual fee, in whole or in part, if:
- in its opinion the person liable to pay the fee is a member of an associated group of registered persons; and
 - another member of that group has paid a like fee.

4 Late payment of fees

- 4.1 If a registered person fails to pay, with value, the whole or any part of a fee on or before the date it becomes due the person shall be liable to pay, unless otherwise agreed by the Commission, an additional late payment fee of 5% of the amount unpaid for each complete month it remains unpaid.
- 4.2 The due date will be 30 days from the date of the invoice.

5 Late filing fees

- 5.1 If a registered person fails to file or deliver any document to the Commission under the provisions of the Law or under any provisions of any Order issued in accordance with the Law on or before the date that the document becomes due, the registered person shall be liable to pay a fee of £100 for each complete month or part thereof that the document remains un-filed or undelivered unless the registered person has given the Commission prior written notice of the reasons for the late filing or delivery of a document and the Commission has agreed in writing that the filing may be late. Any such later agreed date shall become the due date for the purposes of the calculation and the payment of late filing fees.

Schedule

<i>Classes of investment business</i>	<i>Application fee</i>	<i>Annual fee</i>
Class A, B or C or any combination of these classes	£1,684	(i) £2,729; (ii) £1,905 for each of the first 15 investment employees; and (iii) £988 for each additional investment employee, up to a maximum of 25 additional investment employees.
Class D only	£839	(i) £2,523; (ii) £988 for each of the first 15 investment employees; and (iii) £494 for each additional investment employee, up to a maximum of 25 additional investment employees.
Class E only	£839	£988 for each fund in respect of which the applicant or registered person carries on investment business on the relevant date.