



Jersey Financial
Services Commission

Feedback on Consultation Paper No. 7 2017 “Data for Risk Based Supervision” (CP7)

Feedback on responses received to the consultation on proposals regarding the provision of data to support risk based supervision

Issued: February 2018

Glossary of Terms

All defined terms used in the consultation are indicated by *italics* and defined in *CP7's* Glossary of Terms.

Terms used in this paper only (and not *CP7*) are as follows:

FSB	Fund Services Business
CP7	“Consultation Paper No. 7 2017 Data for Risk Based Supervision”, issued by the <i>JFSC</i> in August 2017. Available at: › https://www.jerseyfsc.org/media/1480/consultation-paper-7-data-for-risk-based-supervision.pdf
KRI	Key risk indicator
MoME	Manager of Managed Entities
Notice	A formal Notice to provide information to the <i>JFSC</i> issued under the <i>BB(J)L</i> , <i>CIF(J)L</i> , <i>IB(J)L</i> , <i>FS(J)L</i> or the <i>Supervisory Bodies Law</i>
regulatory laws	<i>BB(J)L</i> , <i>CIF(J)L</i> , <i>FS(J)L</i> and <i>IB(J)L</i>
TCB	Trust Company Business

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1 Executive summary

1.1 Overview

- 1.1.1 As anticipated the *JFSC* received substantial feedback on *CP7* and wishes to thank those that took the time to formally respond to *CP7* as well as those that engaged with the *JFSC* at the Risk Data Seminars or through the trade association discussions.
- 1.1.2 In addition to the feedback received through the ongoing consultation process the *JFSC* received sixty eight formal responses covering in excess of eighty *Affected Businesses*. Formal responses were received directly from *Affected Businesses* and industry bodies and via *Jersey Finance*¹. The *JFSC* notes that, in some cases the response from an industry body echoed responses made by their members directly to the *JFSC*.
- 1.1.3 Overall, responses were very positive regarding the idea of data collection to support risk based supervision but a number of core concerns have been identified, which are described more fully in Sections 4 and 5.
- 1.1.4 Given the volume of responses received, the diverse nature of the comments received and the revised approach as described in Section 2.2, this feedback paper does not include detail on all concerns raised but the *JFSC* wishes to assure respondents that all feedback has been, and is continuing to be, considered.

1.2 Core concerns highlighted

- 1.2.1 Having considered the responses received the *JFSC* has identified a number of core concerns which have been categorised as follows:
 - 1.2.1.1 The proportionality of the *JFSC* using its statutory powers to collect the data, especially given the criminal offence associated with non-compliance.
 - 1.2.1.2 The ability of *Affected Businesses* to provide the proposed data within the proposed timeframe.
 - 1.2.1.3 The clarity of scope of *CP7* in respect of who is expected to provide the proposed data.
 - 1.2.1.4 The lack of detailed definition regarding the proposed data to be collected.
 - 1.2.1.5 The cost to *Affected Businesses* of providing data to the *JFSC* in the manner proposed and whether there is any benefit to the *Affected Businesses*.
 - 1.2.1.6 The relevance of the proposed data, including historic and projected data, and the apparent “one size fits all” approach.

¹ The *Jersey Finance* response was provided drawing on input from a working group that comprised a mixture of Industry bodies and individual participants.

- 1.2.1.7 The interaction between the *JFSC*'s proposed data collection exercise and other existing or proposed data collection activities e.g. data already provided to an Island authority, data to be included in the Island's *NRA*, data required for the Common Reporting Standard and the Foreign Account Tax Compliance Act.
- 1.2.1.8 Concerns over the ability of the *JFSC* to securely hold an increasing amount of sensitive data.

1.3 Overview of this paper

- 1.3.1 This paper represents the second feedback document and in some cases the feedback builds on that provided in the November 2017 Risk Data Seminars Q&A document (first feedback document). The paper is set out as follows:
 - 1.3.1.1 **Section 2** sets out developments since August 2017 and a high level statement regarding a revised approach to collecting data.
 - 1.3.1.2 **Section 3** provides detail on the revised approach.
 - 1.3.1.3 **Section 4** addresses two particular concerns: compelling the collection of data through Notices issued under the *BB(J)L*, *CIF(J)L*, *IB(J)L*, *FS(J)L* or the *Supervisory Bodies Law (Notices)* and the ability to comply with the data request.
 - 1.3.1.4 **Section 5** provides a summary of the remaining core concerns raised by respondents in respect of *CP7* and the *JFSC*'s response to these concerns.

2 Developments since August 2017

2.1 Ongoing consultation

- 2.1.1 Following publication of *CP7* in August 2017, as part of its consultation process, the *JFSC* has actively engaged with Industry on its proposals regarding the provision of data to support risk based supervision.
- 2.1.2 As highlighted at paragraph 4.4 of *CP7* the consultation paper did not address data collection in the context of the Island's *NRA*. Specifically, paragraph 4.4.3 noted that further information regarding the *NRA* would be published in the latter part of Q3 2017. In this regard, a communiqué was published by the Joint Financial Crime Strategy Group² on 3 October 2017 and is available at: [Communiqué - national risk assessment of money laundering and terrorist financing](#).
- 2.1.3 Section 3 of the communiqué notes that mutually beneficial interactions and synergies have been identified between *NRA* data requirements and data to support risk-based supervision.
- 2.1.4 Consequently, the recent active engagement with Industry, compliance officers, and other relevant Island authorities, on data collection has been undertaken in conjunction with the government, in particular through:
- 2.1.4.1 a series of Risk Data Seminars in October 2017 which were attended by in excess of 275 individuals; and
- 2.1.4.2 discussions on data collection with representatives of a number of trade associations³ - September 2017 to January 2018.
- 2.1.5 Following the October Risk Data Seminars the *JFSC* published a Q&A document which is available at: <https://www.jerseyfsc.org/media/1599/jfsc-risk-data-seminars-qanda.pdf> and represents the first level of feedback on the *CP7* data collection proposals.

2.2 Revised approach

- 2.2.1 The *JFSC* is committed to capturing sufficient data to support risk based supervision across all aspects of the regulatory framework: prudential, conduct of business and financial crime. The intention remains to capture data that will inform decisions on the level of risk of individual *Affected Businesses* as well as form a view on financial crime risks in sectors and Industry as a whole, enabling supervisory resources to be most appropriately targeted.

² Details regarding the Financial Crime Strategy Group, including its membership, are available at: <https://www.gov.je/crimejustice/crimeprevention/pages/financialcrime.aspx#anchor-2>

³ Representatives of the following trade associations were engaged: Jersey Association of Trust Companies; Society of Trust and Estate Practitioners; Jersey Bankers Association; Jersey Funds Association; Chartered Institute for Securities and Investments; Personal Finance Society; Jersey Society of Chartered and Certified Accountants; the Jersey Law Society; Jersey Estate Agents Association and the Chamber of Commerce.

- 2.2.2 As a result of feedback received, both through the ongoing consultation process described in paragraph 2.1 and formal written feedback received in respect of CP7, the JFSC has developed a revised approach to data collection which is explained in this feedback paper.
- 2.2.3 In addition to the feedback received, the JFSC has taken account of the results of the 2016 JFSC Severity Survey⁴ which highlighted terrorist financing, money laundering and breaching sanctions as three of the top four perceived risk areas.
- 2.2.4 The revised approach impacts the timing of the data collection, the nature of the initial data to be collected and the manner in which data will be initially collected.
- 2.2.5 As a result of the revised approach the proposed transition, as set out in paragraph 6.2 of CP7 is no longer valid. It is no longer intended that the new application process will be the first step in the JFSC's move to collecting data from *Affected Businesses*.
- 2.2.6 In summary, the revised approach is to collect data starting in 2018 which will provide:
 - 2.2.6.1 a base understanding of the scale and structure of *Affected Businesses* (organisational/footprint data);
 - 2.2.6.2 some financial crime compliance data, including details relating to financial sanctions; and
 - 2.2.6.3 key information about an *Affected Business's* customers to assess their vulnerability to being abused for money laundering or the financing of terrorism.
- 2.2.7 The data will be used:
 - 2.2.7.1 in the JFSC's development of its risk based approach to supervision;
 - 2.2.7.2 in aggregated form as part of the Island's NRA; and
 - 2.2.7.3 to inform the development of further data collection and reporting requirements.
- 2.2.8 Details regarding the revised approach, including future plans for collecting data, are in Section 3.

⁴ http://www.jerseyfsc.org/pdf/JFSC_Severity_Survey_Results.pdf

3 Revised approach

3.1 Overview

- 3.1.1 As a result of the developments since August 2017, and as highlighted in paragraph 2.2, the *JFSC* is focussing its initial data collection on the collection of organisational/footprint data that is relevant for assessing an *Affected Business's* vulnerability to being abused for money laundering and the financing of terrorism.
- 3.1.2 The *JFSC* is working, in conjunction with government and representatives of trade associations, on the identification of data items and any necessary definitions.
- 3.1.3 In 2018 the *JFSC* will collect *AML/CFT* risk based supervision data in phases:

3.2 Phase 1: Organisational/footprint data

- 3.2.1 The focus of the first data collection exercise is organisational/footprint data as well as some *AML/CFT* related compliance data, including data relating to financial sanctions monitoring and key risk indicators.
- 3.2.2 The following *Affected Businesses* will be asked to submit data on behalf of their organisation. Please note phase 1 data does not need to be reported at regulated activity (licence) level:
 - 3.2.2.1 Alternative investment fund service businesses
 - 3.2.2.2 Deposit-takers
 - 3.2.2.3 Experienced Personal Advisers
 - 3.2.2.4 Fund functionaries to Recognized Funds
 - 3.2.2.5 Fund services businesses (**FSBs**) (excluding managed entities) and any that are also a participating member in a *TCB* affiliation (these will be included in 3.2.2.8)
 - 3.2.2.6 Investment businesses
 - 3.2.2.7 Money service businesses
 - 3.2.2.8 *TCBs* (affiliation leaders to respond on behalf of their participating members), including managed *TCBs*
 - 3.2.2.9 Specified Schedule 2 businesses, including:
 - › Lawyers
 - › Accountants
 - › Estate agents
 - › Casinos
 - › Lenders
 - › Other services as set out in paragraphs 7(1)(a) and 7(1)(c) to (n) of Part B of Schedule 2 to the Proceeds of Crime (Jersey) Law 1999
- 3.2.3 In terms of reporting periods:
 - 3.2.3.1 Organisational/footprint data is primarily as at 31 December 2017, exceptions to this are highlighted in the accompanying guidance

- 3.2.3.2 Compliance data covers primarily calendar years 2016 and 2017, the exception being data regarding triggers and frequency of screening when data should be provided as at 31 December 2017
- 3.2.4 Given the extremely short timetable for providing data the *JFSC* is seeking to make the practical provision of data as painless as possible. *Affected Businesses* will be sent an email containing the *Notice* advising them of the requirement to provide data to the *JFSC* and inviting them to log onto the *JFSC* portal and download an Excel workbook. Once completed the Excel workbook should be uploaded to the *JFSC* through the portal.
- 3.2.5 Details of the data to be supplied along with guidance documentation will be issued shortly. This data will be collected in March/April 2018.

3.3 Phase 2: Regulated activity (licence) specific data

- 3.3.1 In Q3 2018, the *JFSC* will be requesting further data from the *Affected Businesses* referred to above. This data will also be collected through an Excel workbook uploaded through the *JFSC* portal.
- 3.3.2 Whilst Phase 1 data is to be provided for an *Affected Business* as a whole the Phase 2 data is to be provided based on the regulated activity undertaken by each *Affected Business*. For example, an *Affected Business* that carries on trust company business and fund services business will be requested to provide data separately about each activity.
- 3.3.3 The data request at regulated activity level will comprise (i) AML/CFT compliance data; (ii) key data about an *Affected Business's* customers, including about beneficial owners and controllers; and (iii) data on the use of concessions in the *Money laundering Order*, to assess their vulnerability to being abused for money laundering or the financing of terrorism. It is proposed to also "slice" some of the data to be requested at regulated activity level, e.g. to collect data about customers of *banks* who are high net worth individuals, retail customers, corporate customers and institutional customers.
- 3.3.4 Some of the details of the data to be collected have already been discussed with trade association representatives but those discussions have not yet been finalised. The *JFSC* understands that Industry needs to understand details of the data to be supplied as soon as possible and is working hard to finalise these discussions.
- 3.3.5 Dependent on the data being requested, the reporting period for this data is either calendar years 2016 and 2017 or as at 31 December .

3.4 Phase 3: Funds and fund services business managed entities

- 3.4.1 In Q3 2018, based on the data submitted to the *JFSC* in response to the Phase 1 questionnaire, the *JFSC* will be requesting data in respect of public funds (including unregulated funds) and private funds which is in addition to that already collected. The specifics of this data, both scope of coverage and nature of questions, are still to be finalised.
- 3.4.2 Recognising that the *JFSC* currently receives a significant amount of quarterly fund data and that approximately 73% of the *FSBs* are managed entities, the *JFSC* has decided to adopt a different approach to collecting data from these *Affected Businesses*.

- 3.4.3 Again in Q3 2018, the *JFSC* will be requesting data from managers of managed entities (**MoMEs**) in respect of the entities they manage. The questionnaire is still being finalised but will be a specific targeted set of questions which a MoME will be asked to complete for each managed entity.

3.5 Insurance sector

- 3.5.1 With respect to the Insurance sector there is less synergy between the risk based supervision data project and the *NRA*. *Affected Businesses* undertaking only general insurance or general insurance mediation business are not within the scope of the AML regime.
- 3.5.2 It is also recognised that the footprint of the long term insurance industry in Jersey is small. Consequently, AML/CFT risk based supervision data from this sector will be gathered through bilateral discussions with relevant Category B permit holders and a sample of Category A permit holders rather than through an Excel workbook.
- 3.5.3 For organisational/footprint data, a more limited collection of data is envisaged and dialogue has been restricted to relevant Industry bodies and respondents derived from those that participated in the *CP7* consultation.
- 3.5.4 For organisational/footprint purposes 2017 data will be required from the Insurance Sector, as follows:
- 3.5.4.1 Category A insurers (those incorporated overseas): limited footprint data will be required on business conducted with Jersey resident customers where the business is conducted through a Jersey office or introducer.
 - 3.5.4.2 Category B insurers (those incorporated in Jersey): full footprint data will be required; and
 - 3.5.4.3 General Insurance Mediation Businesses: limited footprint data will be required where the business is not incidental to the main activity of the *Affected Business* and only with respect to customers that are not included within a return made in respect of financial services business.
- 3.5.5 In all three cases: data will be required later in 2018.

3.6 AML/CFT risk based supervision data – 2019 onwards

- 3.6.1 When analysing data with a view to understanding risks it is important to look at data over a period of time. This is true for both risk based supervision and the Island's *NRA*. Consequently, the *JFSC* will be collecting the 2018 data items in 2019 (in respect of 2018), including organisational/footprint data.
- 3.6.2 Analysis of data received, experience gained in the development of processes and systems (and learning from the issues encountered), will be used to determine any changes required for the collection of AML/CFT risk based supervision data in later years.

3.7 Further communications

- 3.7.1 Prior to issuing *Notices*, the *JFSC* will publish, in pdf form, the data items and associated guidance. Should an *Affected Business* have any concerns in meeting the timescales and/or a particular data collection item please contact your supervision manager, in writing, as soon as possible.

3.8 Future plans

- 3.8.1 The *JFSC* will develop its data collection capabilities in 2018, including through the implementation of new systems for the collection of data and new specifications of data requirements relating to existing processes, such as *bank* prudential reporting.
- 3.8.2 It is intended to use the same Portal for these in order to ease the collection process for firms and Industry and achieve efficiency savings.
- 3.8.3 Into 2019 and beyond, assessment of the data collected will be used to drive future work, informed also by the output of the *NRA* exercise and any data related recommendations.
- 3.8.4 In particular, this will include widening the scope of *KRI* data collection, as envisaged in *CP7*, to cover all types of risks. It should also be possible at that point to achieve efficiencies, for example addressing any overlapping requirements.

4 Use of Notices and ability to comply

4.1 Concerns around use of Notices

- 4.1.1 Many respondents, including the *Jersey Finance* working group, were concerned about the potential consequences of the *JFSC* using its statutory powers to collect data for the purpose of risk based supervision.
- 4.1.2 Specifically, respondents noted that, if the *JFSC* used its statutory power to serve a *Notice* requiring that an *Affected Business* provide specified data, in a specified format, to a specified timeframe, then failure to comply with such a *Notice* is a criminal offence. If found guilty of the offence the punishment includes a fine or possibly imprisonment.
- 4.1.3 Respondents also commented that the use of such *Notices* to obtain data appeared heavy handed and was considered to set the wrong tone for regulator/Industry cooperation.

4.2 JFSC response regarding concerns around use of Notices

- 4.2.1 The *JFSC* currently collects data, for a number of reasons from a number of *Affected Businesses*, utilising a variety of powers, some of which are statutory powers. This data includes but is not limited to:
 - 4.2.1.1 prudential reporting by deposit-takers (requirement to provide contained in Principle 6 of the Code of Practice for Deposit-taking Business);
 - 4.2.1.2 Adjusted Net Liquid Asset reporting by Investment Businesses and *TCBs* (requirement to provide contained in the Financial Services (Trust Company and Investment Business (Accounts, Audits and Reports)) (Jersey) Order 2007);
 - 4.2.1.3 declarations of compliance with Codes of Practice received from a number of *Affected Businesses* (requirement to provide contained in either secondary legislation or a Code of Practice); and
 - 4.2.1.4 financial statements provided by a number of *Affected Businesses* (requirement to provide contained in one of the following: primary legislation; secondary legislation; or a Code of Practice).
- 4.2.2 Whilst no routine data is currently collected under *Notice*, the use of a *Notice* for the purpose of regularly collecting data is not a recent development. For example, the *JFSC's* predecessor issued a *Notice* under the *BB(J)L* in January 1992 to compel the submission of prudential data. A position that lasted until July 2014.
- 4.2.3 Irrespective of whether a statutory power is utilised to collect the proposed data for risk based supervision purposes it is a criminal offence to knowingly or recklessly mislead the *JFSC* when the *Affected Business* is aware that the data will be used in the exercise of a supervisory function (as is the case in this instance).
- 4.2.4 Consequently, the *JFSC* does not view the use of *Notices* as being a heavy handed attempt to impose the risk of penalties on Industry, rather the use of *Notices* is intended to achieve three things:

- 4.2.4.1 establish a statutory requirement for the data to be provided to the *JFSC*, recognising that many *Affected Businesses* may have client confidentiality agreements which mean the data could only be supplied if formally requested by the regulator;
 - 4.2.4.2 formally advise every *Affected Business* of the requirement to provide data: alternatives might be more likely to be overlooked; and
 - 4.2.4.3 formally require that the data is provided to the *JFSC* by a specified date in a specified form: alternatives would not compel a response, leaving open the possibility that an *Affected Business* might choose to not respond, and would leave open the format in which the data is provided.
- 4.2.5 As the *JFSC* continues to develop its regulatory framework for collecting data on a regular basis, it is actively investigating where in the regulatory framework the requirements to provide specific data, in a specified form on an ongoing basis should be located. Further thought is currently being given to incorporating the data requirements in a Code of Practice.
- 4.2.6 With respect to the 2018 data collection for risk based supervision purposes the *JFSC* will be requiring *Affected Businesses* to provide this data under *Notice*.

4.3 Concerns on the ability to comply

- 4.3.1 Respondents noted that *Affected Businesses* may have difficulty submitting some of the proposed data items. These comments were made across the board by a range of respondents of differing size and complexity.
- 4.3.2 Many respondents commented on the difficulty of extracting the proposed data, and delivering it to the *JFSC* in the proposed format. Comments varied from having to extract data from current sophisticated recording systems where the proposed data may be spread across a number of different systems, to having to manually extract data from paper files.
- 4.3.3 Additionally, respondents noted that, aside from the operational issue of manual input errors as highlighted in paragraph 5.2 of *CP7*, there is a real risk that businesses will misinterpret questions/terminology where there is subjectivity and/or a lack of guidance on the terminology used and consequently may fail to deliver data that meets the requirements of the *JFSC*.

4.4 JFSC response regarding concerns on the ability to comply

- 4.4.1 Whenever the *JFSC* uses its statutory powers it has to be proportionate in its response to issues that arise.
- 4.4.2 Under the revised approach the initial data to be collected is focussed on AML/CFT relevant data and broadly, the *JFSC* believes that the data items which will be requested are those which an *Affected Business* would need to have access to in order to fulfil its responsibility to have adequate and effective systems to counter the risk of money laundering and/or terrorist financing.
- 4.4.3 It is important to reiterate that the *JFSC* acknowledges that errors occur and indeed *Affected Businesses* have from time to time made mistakes with their reporting. When this has been the case the *Affected Business* has generally notified the *JFSC* and remedied the situation by the provision of corrected data. This course of action will be open to *Affected Businesses* and is to be encouraged.

- 4.4.4 The *JFSC* is not seeking to impose harsh regulatory sanctions, nor refer an *Affected Business* to the Attorney General, for each and every issue that arises with data submissions. Where data submission issues arise each case will be considered on its own merits. Consequently, the *JFSC* is unable to detail in this feedback paper exactly what potential regulatory or criminal action may be taken.

4.5 Complete and explain approach

- 4.5.1 The *JFSC* recognises that this is the first time it has undertaken such a major data gathering exercise, and there are a number of different ways in which an *Affected Business* can comply with a regulatory framework that includes requirements which are principles-based.
- 4.5.2 We are therefore providing an ability for *Affected Businesses*, for certain data items only, to provide an explanation of why they cannot submit a specific data item in line with the guidance provided and explain the basis upon which they have completed the data submission. To be clear, failure to respond to an applicable question will not be acceptable and, instead, the *JFSC* will accept responses derived by extrapolating data or estimates supported by specific criteria. This will be clearly stated in the *Notice*. Depending on the reasons given, we may then choose to contact the *Affected Business* to request a more detailed explanation.
- 4.5.3 In certain cases, we may take the view that the inability to supply a specific data item in line with the guidance provided, taking into account any reasons provided by the *Affected Business*, may amount to a regulatory breach. In that situation, the issue will be taken up with the *Affected Business* as part of its ongoing supervision.
- 4.5.4 It is important to note that where the Island is not able to collect data on a particular sector, this will result in a higher vulnerability rating for that sector in the *NRA*, where the absence of data prevents a vulnerability from being assessed.
- 4.5.5 Should you have any concerns in meeting the timescales and/or any particular data collection requirement please contact your supervision manager, in writing, as soon as possible.

5 CP7 feedback on core concerns

5.1 Scope of Affected Business and Activities

- 5.1.1 Respondents expressed concern over the scope of proposed data collection as described in the body of *CP7* as, in their opinion, the text appears to take the scope of data collection beyond *Affected Businesses* (respondents specifically referred to private trust companies).
- 5.1.2 Concerns were also raised regarding the treatment of managed entities and persons that rely on registration exemptions e.g. in respect of professional investor regulated schemes.
- 5.1.3 Respondents noted that there are some persons carrying on financial services business that are an *Affected Business* by reason of being relevant persons under the *Money Laundering Order* but who are not required to register with or notify the *JFSC* under the *Supervisory Bodies Law*.
- 5.1.4 Respondents sought clarification regarding the treatment of activities carried out by *Affected Businesses* which are not regulated activities.

JFSC response

- 5.1.5 The *JFSC* accepts that private trust companies do not meet the definition of *Affected Business* as provided in *CP7*.
- 5.1.6 The *JFSC* recognises that the current legislative framework includes a number of either full or partial exemptions from regulation, the regulatory effect of which is not always the same. In terms of regulatory oversight by the *JFSC* not all exemptions have the same effect. It is possible that a person may be in any one of the following positions:
 - 5.1.6.1 A person is removed from the regulatory framework completely – no prudential, conduct of business or AML/CFT regulation applies e.g. recruitment agents arranging for a person to be a director of a company are specifically taken out of the *TCB* regime.
 - 5.1.6.2 A person is regulated for prudential/conduct of business purposes but not for compliance with the AML/CFT regime e.g. persons carrying on general insurance or general insurance mediation business, and vice versa - see paragraph 5.1.6.7.

Limited exemptions

- 5.1.6.3 A person enjoys a limited exemption i.e. no registration is required with the *JFSC* under a *regulatory law* but all other aspects of that particular *regulatory law* apply as if the person were a registered person (including powers granted to the *JFSC* to take enforcement action).
- 5.1.6.4 These exemptions split into two types:
 - › exemptions which can only be relied upon once **formal notification has been given to the JFSC**; and
 - › exemptions which can be relied upon immediately, **no formal notification is required**.

5.1.6.5	<p>These persons may be within the scope of regulation for prudential/conduct of business and compliance with the AML/CFT regime e.g. person with a turnover for the last completed financial period for their money service business activities which is less than £300,000</p> <p>OR</p> <p>these persons may be regulated for prudential/conduct of business but not fall directly within the scope of regulation for compliance with the AML/CFT regime e.g. private trust companies.</p>
5.1.6.6	<p>A person may be carrying on financial services business and therefore subject to the AML/CFT regime but is exempt from registration with the <i>JFSC</i> e.g. a person carrying on lending that is administered by a <i>TCB</i> and has no established place of business in Jersey other than a place of business provided by a <i>TCB</i>.</p>
5.1.6.7	<p>In addition, there are a very few limited exemptions where no registration is required under a <i>regulatory law</i> but the person is within the scope of the AML/CFT regime. These persons may or may not need to register with the <i>JFSC</i> under the <i>Supervisory Bodies Law</i> depending on their individual circumstances.</p>
5.1.7	<p>In 2017, the <i>JFSC</i> launched a project to consider the regulatory framework exemptions with the objective of clarifying and streamlining the regime wherever possible. A consultation paper on exemptions will be published later this year.</p>
5.1.8	<p>With respect to data collection, the <i>JFSC</i> will initially collect data primarily from persons registered with the <i>JFSC</i> either under a <i>regulatory law</i> and or the <i>Supervisory Bodies Law</i>. Some of this data will be about persons that would be required to comply with the <i>Money Laundering Order</i>, e.g. private trust companies and functionaries of professional investor regulated schemes, or register with the <i>JFSC</i>, e.g. lenders, were it not for the fact that they are administered by a <i>TCB</i> or fund services business.</p>
5.1.9	<p>The <i>JFSC</i> recognises that, in addition to carrying on financial services business, an <i>Affected Business</i> may carry on other activities which are not regulated, such as the provision of mortgage advice or some legal services. The <i>JFSC</i> is only seeking to collect data in respect of regulated activities, with the exception of organisational/footprint data where the data provided should cover the whole <i>Affected Business</i>⁵.</p>

5.2 Lack of detailed definitions

- 5.2.1 Many respondents expressed significant concern regarding the level of clarity regarding the proposed data items as set out in *CP7*, and commented that they were unable to fully respond to *CP7* due to much of the consultation language being at a high level. Without clarity they were uncomfortable commenting on whether the proposed data could be delivered within the suggested timeframes as they were unable to ascertain whether the relevant data was held in a reportable format.

⁵ The exception to this statement being data in respect of customers and beneficial owners and controllers where data is limited to regulated activities.

- 5.2.2 A substantial number of respondents supplied their understanding of a particular term and sought confirmation that their interpretation was correct however, there were also a significant number of respondents seeking clarity with respect to matters such as:
- 5.2.2.1 For the purpose of supplying data what is the definition of a customer, business relationship, and one-off transaction?
 - 5.2.2.2 Are the following terms synonymous: value of business, customer value, assets under management? How should the value be calculated?
 - 5.2.2.3 What is an activity? Is this a licence type?
 - 5.2.2.4 For the purpose of supplying data how does the *JFSC* define total income?
 - 5.2.2.5 How should number of staff be calculated? Is the required staff number the same as that provided for fee calculation purposes (relevant for *TCB*, *IB* and specified schedule 2 businesses)?
 - 5.2.2.6 What does the *JFSC* mean by compliance staff, does this include those involved with on-boarding new customers?
 - 5.2.2.7 How is residence defined?
- 5.2.3 Additionally, respondents were concerned that without detailed definitions the *JFSC* may not receive consistent data upon which to base decisions regarding its risk based supervisory activities.

JFSC response

- 5.2.4 The *JFSC* fully appreciates and understands respondents' comments that *CP7* did not contain detailed information regarding the definition of the proposed data items.
- 5.2.5 The *JFSC* always envisaged that further work would need to be undertaken on defining the data items. Paragraph 2.3.2 of *CP7* (Next Steps) refers to addressing the proposed data set out in sections 6 and 7 of the consultation through the development of systems and consultation with Industry. Additionally, paragraph 5.1.1 refers to developing detailed proposals taking into account responses to *CP7*.
- 5.2.6 Whenever the *JFSC* requests data be submitted it must provide clarity of terms such that *Affected Businesses* understand how to compile their data for submission.
- 5.2.7 Since September 2017, the *JFSC* has been undertaking ongoing consultation with Industry as described in section 2 of this paper. This work has allowed the *JFSC*, in conjunction with government, to:
- 5.2.7.1 narrow the initial data collection to organisational/footprint data and the data which is relevant for assessing an *Affected Business's* vulnerability to being abused for money laundering or the financing of terrorism; and
 - 5.2.7.2 develop guidance associated with this data, including defining what is meant by specific terms.

5.3 Cost versus benefit

- 5.3.1 Respondents noted that the cost and amount of work to implement the proposed data collection should not be underestimated. It was noted by many respondents that *Affected Businesses* may have to update systems, develop reports or may be reliant on external providers all of which have a time and cost component. Additionally, respondents noted that relevant data may not be maintained electronically in a reportable form, manual intervention may be required to access the data from paper files or more than one system – all of which they considered to be time consuming/labour intensive/costly.
- 5.3.2 Respondents were concerned that *Affected Businesses* will spend too much unproductive time on the data gathering exercise. In their view there is no or little benefit to the *Affected Businesses* from these proposals which is contrary to the *JFSC* view put forward in *CP7*.
- 5.3.3 Respondents also questioned the impact on the *JFSC* regarding the cost of data collection and queried if the proposed approach would be more cost efficient than that historically adopted.

JFSC response

- 5.3.4 As an International Finance Centre the Island is often required to demonstrate compliance with International Standards. Increasingly international standard setters expect supervisors to demonstrate compliance evidentially which requires the *JFSC* to collect and use relevant data. The *JFSC* has to demonstrate, using data, that it is focusing its supervisory efforts and be able to show the effect of supervision. Compliance with International Standards, as well as mitigating the risk of money laundering and terrorist financing, provides the Island with as a means of defending itself against those that look to damage its reputation and assists with maintaining access to markets.
- 5.3.5 The *JFSC* has focussed the initial data collection on data relevant for assessing an *Affected Business's* vulnerability to being abused for money laundering or the financing of terrorism.
- 5.3.6 By focussing the initial data collection, the *JFSC* has combined the data for risk-based AML/CFT supervision with the *NRA* data needs, thereby seeking to alleviate concerns and costs associated with two sets of data being required in a short timeframe.
- 5.3.7 During its discussions with representatives of the Industry trade associations the *JFSC* has worked hard to focus on requesting data which an *Affected Business* will have captured in complying with the AML regime. However, the *JFSC* accepts that having the data and having the data in a reportable form are quite different matters, in this regard please see paragraph 4.5.
- 5.3.8 The initial collection process will make use of the Portal, currently utilised to collect data relevant for fee calculations, which is being developed for other data collections. Similarly processing of data internally will make use of processes and systems developed for general use. This avoids additional costs seen historically where independent systems were developed.

5.3.9 The *JFSC* considers that, with respect to the initial data, Industry will benefit from collecting the data for submission to the *JFSC* as the data collection exercise should assist each *Affected Business* in generally demonstrating compliance with the AML regime and specifically assist with completion of their business risk assessment, and consideration of the aggregated effect of their customer risk assessments. Consequently, the *JFSC* considers the costs incurred will result in benefits for the future.

5.4 Relevance of the data including historic and projected data

- 5.4.1 Respondents expressed concern regarding the relevance of the proposed data for all sectors and were of the view that the *JFSC* was trying to implement a “one size fits all” approach to data collection, and they did not consider that all proposed data would assist in understanding the prudential, conduct and AML risks faced by *Affected Businesses*.
- 5.4.2 They further commented that the *JFSC* should appreciate that *Affected Businesses* operate different business models and management information differs depending on a number of factors, including nature of activities undertaken and the scale of operations. Respondents urged the *JFSC* to consider the wealth of data it already holds and to tailor its data requests to the different sectors with a view to lessening the burdensome proposals.
- 5.4.3 Specifically, respondents were very concerned about the relevance of collecting historic data and the ability of *Affected Businesses* to provide this data, having never been on notice that they would need to provide the data to the *JFSC*. Their concern was elevated due to the difficulty of extracting the proposed data combined with the potential for regulatory action to be taken if the requested data was not supplied.
- 5.4.4 Additionally, respondents expressed concerns around the proposal to collect projections for certain footprint data. The collection of projected data was considered irrelevant as a measure for risk based supervision and not proportionate. Respondents highlighted that for many *Affected Businesses* any projection would be a “best guess” based on the data for the previous year. Also, many *Affected Businesses* are already required to notify the *JFSC* of any change which will have a material impact (requirement of the Codes of Practice issued under the *regulatory laws*) – this existing requirement was noted as being proportionate.

JFSC response

- 5.4.5 The *JFSC* has taken notice of respondents’ concerns regarding the relevance of all proposed data and under the revised approach it intends to limit the initial collection of data to that which provides:
- 5.4.5.1 a base understanding of the scale and structure of *Affected Businesses* (organisational/footprint data);
 - 5.4.5.2 some financial crime compliance data, including details relating to financial sanctions and use of concessions in the *Money Laundering Order*; and
 - 5.4.5.3 key information about an *Affected Business’s* customers to assess their vulnerability to being abused for money laundering or the financing of terrorism.

- 5.4.6 The *JFSC* does recognise that “one size does not fit all” and believes the initial data collection exercise will highlight to respondents that their concerns have been noted. Specifically, the key information about an *Affected Business’s* customers will be tailored to specific activities of *Affected Businesses*.
- 5.4.7 With respect to projected data, the initial data collection exercise does not require the provision of any projected data.
- 5.4.8 Whilst *CP7* consulted on the *JFSC’s* proposed data collection in relation to its developing approach to risk-based supervision, as highlighted in paragraph 2.1.3 mutually beneficial interactions and synergies have been identified between *NRA* data requirements and data to support risk-based supervision. For the Island to complete a credible *NRA* there is a need for data to cover a minimum period of three years. The three-year period has been determined as 2016, 2017, and 2018.
- 5.4.9 Consequently, the initial data collection exercise includes a request for historic data, though this has been minimised by shifting the data collection period one year along such this it now covers 2016 to 2018. It is recognised that this position is far from ideal and with respect to historic data, please also consider paragraphs 4.3 to 4.5 of this feedback paper.
- 5.4.10 The questionnaire and guidance documentation for the initial data collection will be available shortly, however at a high level:
- 5.4.10.1 Organisational/footprint data is to be requested as at 31 December 2017. This data will then be collected again during Q1 2019 in respect of 2018.
- 5.4.10.2 Financial crime compliance data is to be requested for 2016 and/or 2017. This data will then be collected again during Q1 2019 in respect of 2018.
- 5.4.10.3 Key information about an *Affected Businesses* customers to assess their vulnerability to being abused for money laundering or the financing of terrorism is to be requested for 2016 and 2017⁶. This data will then be collected again during Q1 2019 in respect of 2018.
- 5.4.11 The *JFSC* understands that as far as possible data should not be requested more than once and will seek to utilise existing data wherever possible. However, data received by the *JFSC*: (i) has been collected on an ad-hoc basis; (ii) has been collected at different points in the year, dependent upon the regulated activity of the *Affected Business*; and (iii) in common with other organisations, is held in a number of disparate systems, including paper files. This is a position the *JFSC* wishes to move away from and is now seeking to align data requests such that broadly consistent data is received from all *Affected Businesses* using a common reference date.
- 5.4.12 Notwithstanding paragraph 5.4.11, there will always be instances where the *JFSC* has to collect specific data from specified *Affected Businesses* sometimes to a very tight timeframe. Examples of this type of data request are:

⁶ Note this is a general high level statement and the position for some *Affected Businesses* will be slightly different as the *JFSC* seeks to leverage existing data collection mechanisms.

- 5.4.12.1 data requests issued by the Supervision Examination Unit in advance of conducting examinations, either thematic or an entity risk examination; and
- 5.4.12.2 data requests to support a particular position being taken in international negotiations.

5.5 Integration with other data collection processes

- 5.5.1 Respondents expressed concern that CP7 did not take account of information that is already collected by other government agencies, nor other data collection activities that may well run concurrently with the collection of data for risk based supervision. Specific reference was made to data for the Island’s NRA, and the data requirements of the Common Reporting Standard and Foreign Account Tax Compliance Act.
- 5.5.2 Specifically respondents urged the JFSC to work as closely as possible with the government to identify synergies between data required for the NRA and that proposed for risk based supervision. The Jersey Finance working group suggested that data collected for AML/CFT supervision and fed into the NRA should be analysed first and consideration then given to how the results will inform an effective supervisory framework.
- 5.5.3 Respondents noted many calls for data are converging and each is expected to be resource intensive.

JFSC response

- 5.5.4 The JFSC understands respondents’ concerns regarding the convergence of data requests, however increasingly financial services and financial services regulation is becoming data driven and as a result there is a need for data to be stored in a manner which facilitates ready access, analysis and sharing.
- 5.5.5 As set out in Section 2 of this paper synergies with the data required for the Island’s NRA have been identified and the initial data collection will focus on organisational/footprint data and data relevant to assessing *Affected Businesses’* vulnerability to being abused for money laundering or the financing of terrorism.
- 5.5.6 The ability to conduct a sound and robust analysis and develop a thorough understanding of the AML/CFT risks that Jersey faces will heavily rely on the collection and analysis of an extensive amount of data, including data collected by the JFSC for the purpose of risk based supervision.
- 5.5.7 A review of the data collected and the NRA output will inform consideration of any need for revisions to future data collection, both to improve the assessment of risk and make the collection process more efficient for *Affected Businesses* and the JFSC including, for example, by limiting data requests on those in the NRA as presenting a lower risk.
- 5.5.8 The JFSC is aware of data collected by other government agencies however due to legislative restrictions, including data protection, the JFSC does not have access to this information at the *Affected Business* level. Consequently, the JFSC is unable to utilise this data as an input to its risk based supervision program.

5.6 Data security and privacy

- 5.6.1 Respondents noted that the *JFSC* is already responsible for holding a large volume of sensitive data (beneficial ownership information held by Companies Registry) and the implementation of the data collection strategy as proposed by *CP7* would put the *JFSC* in possession of data that may make the *JFSC* an even greater target for individuals seeking to damage the Island's reputation. The ability of the *JFSC* to keep the data secure was a major concern of respondents and clarification was sought on what systems, processes and procedures are in place to safely transmit and hold data. Respondents commented that as far as possible, they would like the data to be segregated, anonymised, encrypted, access-limited and secured.
- 5.6.2 Paragraph 7.2.7 of *CP7* states "*Transmission would be via the internet, with the transmitted data then being processed within the JFSC, which would include limited verification.*" Respondents raised concern regarding use of "the internet" noting the inherent insecurity of data flowing across the internet and encouraged the collection of data either through the *JFSC* portal or development of an application program interface as utilised in the collection of beneficial ownership information in 2017.
- 5.6.3 In addition, respondents expressed concern that the proposed data has an element of commercial sensitivity which goes beyond that of the data historically held by the *JFSC*. Specific concern was raised regarding data access by *JFSC* staff as individuals working at the *JFSC* (whether at the time they are staff or subsequently) could be party to information which they could misuse.
- 5.6.4 Finally, clarity was requested regarding whether information collected would be passed to, for example, off-island enforcement agencies.

- 5.6.5 The *JFSC* recognises the specific concern but has collected business sensitive and confidential data over many years and, as noted, has recent experience of collecting sensitive data in volume, specifically the 2017 beneficial ownership exercise. The *JFSC's* data security arrangements are well established and subject to ongoing monitoring, testing and improvement.
- 5.6.6 The *JFSC* takes data security very seriously and as part of its ongoing data security improvement programme will draw on recent experience to place appropriate safeguards around sensitive data held and continue to develop secure, automated portals for receipt of information from Industry.
- 5.6.7 Specifically, the data to be collected in 2018 will be delivered to the *JFSC*, via excel spreadsheets loaded through the portal.
- 5.6.8 Any data which the *JFSC* receives from *Affected Businesses* in the pursuance of its functions, such as the proposed data for risk based supervision data, is, by law, restricted information and the *JFSC* may only share that data in ways permitted by law. *JFSC* staff regularly deal with restricted information and the risk of data misuse by staff is actively managed. The *JFSC* will restrict internal access to the full dataset and ensure that only relevant reports are available to staff.
- 5.6.9 As noted, *Affected Business* specific data is restricted information under the relevant laws and hence may only be provided under the various gateways where it is requested by a relevant agency for a relevant purpose. No requests for 'fishing expeditions' are entertained.

5.6.10 The *JFSC* will make Industry data available on a sector by sector basis to those working on the Island's *NRA* however this data will be made available in aggregated form such that no individual *Affected Business* should be identifiable.

Appendix A: List of respondents

- › Advisa
- › Affinity businesses:
 - › Affinity Trust Limited
 - › APW Investors Limited
- › the Association of Investment Companies
- › Alexander Forbes Channel Islands Limited
- › Altair Partners Limited
- › Alter Domus (Jersey) Limited
- › Aqua Trust Company Limited
- › Asset Risk Consultants (Jersey)
- › Aztec Financial Services (Jersey) Limited
- › Bank of India Jersey Branch
- › Barclays Bank PLC Jersey Branch
- › BNP Paribas Securities Services
- › Citibank
- › Computershare
- › Crestbridge Limited
- › CVC Capital Partners Jersey Limited
- › Dominion Fiduciary Services Limited
- › EFG Wealth Solutions
- › Equiom (Jersey) Limited
- › Ernst & Young LLP
- › Estera Trust (Jersey) Limited
- › European Insurance Brokers Ltd
- › Fairway businesses:
 - › Fairway Fund Services Limited
 - › Fairway Trust Limited
- › First Names (Jersey) Limited
- › Grant Thornton Limited
- › a group of Compliance Officers
- › Hawksford
- › Helm Trust Limited
- › Highvern Trustees Limited
- › HSBC
- › Intertrust

- › Investec Bank (CI) Ltd Jersey Branch
- › Ipes (Jersey) Limited
- › JSCCA
- › Jersey Finance Limited, based on a working group and taking account of responses received from their members
- › KPMG
- › La Ville Formations Limited
- › LGL Trustees Limited
- › Lloyds Bank International
- › Manx Insurance Association
- › Meridian Asset Management (C.I.) Limited
- › Minerva Trust & Corporate Services Limited
- › Maurant Ozannes businesses:
 - › Maurant Ozannes
 - › Maurant Ozannes Corporate Services (Jersey) Limited
- › Ogier businesses:
 - › Ogier
 - › Ogier Global (Jersey) Limited
- › Osiris Management Services Limited
- › Pavilion Fiduciary Limited
- › Pershing (Chanel Islands) Limited
- › Plectron Trust Company Limited
- › PraxisIFM Trust Limited
- › R&H Trust Co (Jersey) Ltd
- › Rathbone Investment Management International
- › Ravenscroft Limited
- › ReAssure Limited
- › RL360
- › Rosscot businesses:
 - › Rosscot Secretaries Limited
 - › Rosscot Limited
- › Royal Bank of Canada
- › Saga Services Ltd
- › Santander International
- › Smith & Williamson International Limited
- › Standard Bank Offshore Group - Jersey regulated entities, namely:
 - › Standard Bank Jersey Limited;
 - › Standard Bank International Investments Limited; and

- › Standard Bank Offshore Trust Company Jersey Limited.
- › Standard Chartered
- › SWM Limited
- › The Royal Bank of Scotland International Limited
- › Triton
- › Vantage businesses:
 - › Vantage Limited;
 - › Vantage Pension Trustees Limited;
 - › Vantage Insurance Brokers Limited; and
 - › Advantage Underwriting Limited.
- › Viberts
- › Volaw Trust and Corporate Services Limited
- › Whitmill Trust Company Limited