



Jersey Financial
Services Commission

Consultation Paper No. 4 2018

Detailed Proposals

Code of Practice for Investment Business

In Principle Proposals

Guidelines

In Principle Proposals (further consultation to follow)

Financial Services (Investment Business (Client Assets))(Jersey) Order 2001; and

Financial Services (Jersey) Law 1998

A consultation on proposals regarding enhancements to the investment business regime.

Issued: June 2018



Consultation Paper

The Jersey Financial Services Commission (**JFSC**) invites comments on this consultation paper by 3rd September 2018. If you require any assistance, clarification or wish to discuss any aspect of the proposal prior to formulating a response, please 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 by the respondent).

It is the policy of JFL (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

Defined terms are indicated throughout this document as follows:

| Abbreviation | Full Name |
|-------------------|--|
| CAO | Financial Services (Investment Business (Client Assets)) (Jersey) Order 2001 |
| CIFO | Channel Islands Financial Ombudsman |
| Commission Law | Financial Services Commission (Jersey) Law 1998, as amended |
| CP | Consultation Paper |
| DPL | Data Protection (Jersey) Law 2018 |
| EMIR | European Market Infrastructure Regulation (EMIR – 648/2012/EU) |
| FCA | Financial Conduct Authority (UK) |
| FSJL | Financial Services (Jersey) Law 1998 |
| G20 | The Group of Twenty |
| IB | Investment Business |
| IB Code | Code of Practice for Investment Business |
| IOSCO | International Organisation of Securities Commissions |
| JFSC | Jersey Financial Services Commission |
| MiFID II | Markets in Financial Instruments Directive (MIFID - 2014/65/EU) and the Markets in Financial Instruments Regulation (MiFIR - 600/2014/EU) |
| registered person | a person who is registered by the JFSC under Article 9 of the FSJL to carry on Investment Business as defined in Article 2 (2) of the FSJL |

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1 Executive Summary

1.1 Overview

- 1.1.1 In June 2017 the JFSC committed to enhance the Investment Business (**IB**) regime.
- 1.1.2 There have been a number of changes to regulation both at European and international level and the JFSC is committed to maintaining international standards where applicable and proportionate for Jersey.
- 1.1.3 Some enhancements are proactive and others are reactive; raised from various industry and regulatory sources.
- 1.1.4 A number of internal and external working groups, with representatives from Industry, Government, Jersey Finance and the Jersey Consumer Council met in the latter half of 2017 and at the start of 2018, and debated on which items should be included for consultation. The Channel Islands Financial Ombudsman (**CIFO**) was also consulted on the proposals.
- 1.1.5 This consultation paper (**CP**) seeks feedback on those proposals.

1.2 What is proposed and why?

What

- 1.2.1 In Section 4 of the CP detailed Code of Practice for Investment Business (**IB code**) changes are proposed and where appropriate updated guidance is also proposed.
- 1.2.2 In Section 5 of the CP in-principle law change proposals are also included for consultation feedback; these will then be considered by Government prior to a subsequent detailed legislative CP being issued.

Why

- 1.2.1 The rationale for each proposal predominantly relates to enhancing the IB regime. Recommendations/regulatory practice from the International Organisation of Securities Commissions (**IOSCO**), Financial Conduct Authority (UK) (**FCA**), the Markets in Financial Instruments Directive (MIFID - 2014/65/EU) and the Markets in Financial Instruments Regulation (MiFIR - 600/2014/EU) (**MiFID II**), or responding to global commitments such as The Group of Twenty (**G20**) have been considered with the desired outcome being enhanced protection for the consumer and for the integrity of Jersey and its financial services industry.
- 1.2.2 The JFSC considers all of the changes to be regulatory enhancements/clarifications maintaining Jersey's IB regime alignment with international standards.
- 1.2.3 A number of proposed enhancements respond to facets of MiFID II but only where relevant and proportionate to the Jersey industry.
- 1.2.4 With the exception of a proposal to introduce protection for vulnerable investors, the JFSC considers none of the enhancements to exceed the requirements of equivalent and proximal regulatory regimes such as the FCA requirements or MiFID II.

1.3 Who would be affected?

- 1.3.1 The proposals in this consultation paper have the potential to affect:
 - 1.3.1.1 all registered persons licensed to carry on IB in accordance with the FSJL;

- 1.3.1.2 all registered persons within the scope of the Financial Services (Investment Business (Client Assets)) (Jersey) Order 2001 (**CAO**);
- 1.3.1.3 any business trading OTC derivatives with participants other than those under the scope of the European Market Infrastructure Regulation (**EMIR**) or recognised EMIR equivalent participants;
- 1.3.1.4 any business that arranges or brings about arrangements for another person to buy, sell, subscribe for or underwrite a particular investment; and
- 1.3.1.5 any business carrying out exchange business.

1.4 Summary of Proposals

| IB Code & Guidance Changes | |
|----------------------------|--|
| Vulnerability | Vulnerable investors to be identified and afforded appropriate protection. |
| Suitability | Enhancement to the assessment process, suitability letter and due diligence process. |
| Conflicts of Interest | Updated requirements for disclosure and responsibility. |
| Best Execution | Updated focus on outcomes, and transparency on costs and venues. |
| Benchmarking | Requirement to track performance to an appropriate benchmark. |
| Record Keeping | Amended retention periods and clarification on telephone records. |
| Transparency | Updates to transaction confirmations and retail client commission. |
| Derivative Reports | New requirements for OTC derivative reporting aligned to EMIR. |
| Legislative Changes | |
| Include Hold | Extend the provision of advice to include 'hold' as well as 'buy' and 'sell'. |
| Investments | Update the definition of investments to include more complex derivatives. |
| Arranging | Include the activity of arranging as an IB activity. |
| Exchange Business | Include the oversight of exchange business in the FSJL. |
| CAO | Enhance client asset protection in line with IOSCO recommendations. |

1.5 Costs & Benefits

- 1.5.1 The JFSC recognises the potential costs to industry when amending codes and legislation and has considered this in the scope and approach of the proposals. The proposals in this paper will, in aggregate, improve the clarity of the IB Code for registered persons, enhance consumer protection and contribute towards the Island meeting international regulatory standards.

2 Consultation

2.1 Basis for consultation

- 2.1.1 The JFSC has issued 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”. The JFSC has also issued this consultation paper in accordance with the provisions in the FSJL that require it, before revising any Code of Practice to, “[consult] with such persons or bodies as appear representative of the interests concerned”.

2.2 Responding to the consultation

- 2.2.1 The JFSC invites comments in writing from interested parties on the proposals included in this consultation paper. Where comments are made by an industry body or association, that body or association should also provide a summary of the type of individuals and/or institutions that it represents.
- 2.2.2 A response form has been published alongside this consultation, available at:
- 2.2.3 <http://www.jerseyfsc.org/the-commission/general-information/consultation-papers/consultation-papers/>.
- 2.2.4 Respondents are requested to use this form when providing feedback, either directly or via JFL. For the avoidance of doubt, all responses received, in whatever fashion, will be considered, with the response form intended only to ease processing by the JFSC.
- 2.2.5 Comments should be received by the JFSC no later than 3rd September 2018.

2.3 Next steps

- 2.3.1 Following this consultation, the JFSC will publish feedback by the fourth quarter of 2018.

3 The JFSC

3.1 Overview

- 3.1.1 The 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.

3.2 The JFSC's functions

- 3.2.1 Article 5 of the Commission Law prescribes that the JFSC shall be responsible for:
- 3.2.1.1 the supervision and development of financial services provided in or from within Jersey;
 - 3.2.1.2 providing the States of Jersey, any Minister of any other public body with reports, advice, assistance and information in relation to any matter connected with financial services;
 - 3.2.1.3 preparing and submitting to the Chief Minister recommendations for the introduction, amendment or replacement of legislation appertaining to financial services, companies and other forms of business structure;
 - 3.2.1.4 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 of Jersey may, by Regulations, transfer; and
 - 3.2.1.5 such other functions as are conferred on the JFSC by any other Law or enactment.

3.3 Guiding principles

- 3.3.1 Article 7 of the Commission Law sets out the JFSC's guiding principles which require the JFSC to have particular regard to:
- 3.3.1.1 the reduction of risk to the public of financial loss due to dishonesty, incompetence, malpractice, or the financial unsoundness of persons carrying on the business of financial services in or from within Jersey;
 - 3.3.1.2 the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;
 - 3.3.1.3 the best economic interests of Jersey; and
 - 3.3.1.4 the need to counter financial crime in both Jersey and elsewhere.

4 Proposals related to the IB Code

4.1 Principle 2 Proposals: A registered person must have the highest regard for the interests of its clients

Vulnerability

| 4.1.1 Vulnerable Investors | |
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| Requirement | Vulnerable investors to be identified and afforded appropriate protection. |
| Rationale | <p>This is an area that has been the focus of many organisations including IOSCO and the FCA. Vulnerable investors are more susceptible to misleading or fraudulent financial advice; this has been seen locally and overseas with the vulnerable being targeted in mis-selling incidents.</p> <p>As discussed in the external working group, the definition of vulnerability and what is appropriate protection is not detailed. It is therefore acknowledged that each registered person will be best placed to address the appropriate level of protection.</p> |
| Proposed Code | <p>[Between Knowledge of Client & Suitability]</p> <p><u>Vulnerability</u></p> <p><u>2.5 A registered person must identify and afford appropriate protection to a vulnerable client.</u></p> |
| Question 1 | <p>Do you have any observations on, or concerns about, the proposed inclusion of vulnerability to principle 2 of the IB Code?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |

Suitability

| 4.1.2 Suitability: Assessment – Risk Tolerance & Ability to Bear Losses | |
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| Requirement | Suitability assessment to include the client’s risk tolerance and the client’s ability to bear losses. |
| Rationale | This will provide better protection to investors by way of enhancing the suitability assessment criteria. Although already included in guidance and expected to be covered under Code 2.6.3 we are making it clear it is a requirement. These are key areas of enhancement for MiFID II. |
| Current Code | <p>2.6 Where a registered person is responsible for providing advice or exercising discretion for its clients, it must be able to demonstrate in writing that the advice or exercise of discretion is suitable for that client having regard to:</p> <p>2.6.1 the facts disclosed by that client;</p> <p>2.6.2 the terms of any agreement with that client; and</p> <p>2.6.3 any other relevant facts about the client of which the registered person is, or reasonably should be, aware.</p> |



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| Proposed Code | <p>2.6 Where a registered person is responsible for providing advice or exercising discretion for its clients, it must be able to demonstrate in writing that the advice or exercise of discretion is suitable for that client having regard to:</p> <p>2.6.1 the facts disclosed by that client;</p> <p>2.6.2 the terms of any agreement with that client;</p> <p><u>2.6.3 the risk tolerance and ability to bear losses of that client;</u> and</p> <p>2.6.34 any other relevant facts about the client of which the registered person is, or reasonably should be, aware.</p> |
| Question 2 | <p>Do you have any observations on, or concerns about, the proposed inclusion of a client’s risk tolerance and ability to bear losses to the suitability assessment?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |

| 4.1.3 Suitability: Letter | |
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| Requirement | <p>Suitability letter to:</p> <ul style="list-style-type: none"> › identify the investments covered by a compensation scheme › distinguish between regulated and unregulated advice, if providing a bundled service › include cost breakdown |
| Guideline | <p>Suitability letter to:</p> <ul style="list-style-type: none"> › include long-term and short-term horizon analysis › be tailored for retail and professional investors › be in a narrative format, demonstrating a conversation happened |
| Rationale | <p>By clarifying that these matters are explained in writing to a registered person’s client, this will provide better protection to investors by supplying relevant details using appropriate language.</p> |
| Current Code | <p>2.7 Where a registered person is responsible for providing advice, it must:</p> <p>2.7.1 make available to its client, in a comprehensible and timely manner, appropriate information so as to allow the client to make an informed investment decision;</p> <p>2.7.2 explain to its client, in writing, details regarding relevant risk warnings; and</p> <p>2.7.3 disclose to its client details of any cooling-off periods that may be a feature of investment products recommended.</p> |
| Proposed Code | <p>2.7 Where a registered person is responsible for providing advice, it must:</p> <p>2.7.1 make available to its client, in a comprehensible and timely manner, appropriate information so as to allow the client to make an informed investment decision;</p> <p>2.7.2 explain to its client, in writing, details regarding relevant risk warnings;</p> |

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| | <p><u>2.7.3 explain to its client, in writing, details regarding the investments that are covered by a compensation scheme;</u></p> <p><u>2.7.4 if providing a bundled service, explain to its client, in writing, which elements of the advice are regulated and which are unregulated;</u></p> <p><u>2.7.5 explain to its client, in writing, details regarding the cost breakdown;</u> and</p> <p>2.7.36 disclose to its client details of any cooling-off periods that may be a feature of investment products recommended.</p> |
| Proposed Guideline | Append IB guideline regarding suitability letter to: <ul style="list-style-type: none"> › include long-term and short-term horizon analysis › be tailored for retail and professional investors › be in a narrative format, demonstrating a conversation happened |
| Question 3 | Do you have any observations on, or concerns about, the proposed amendments to the IB Code with regard to requirements to be in writing with respect to suitability? If you do, please state in detail what your observation or concern is and the reason for it. |
| Question 4 | Do you have any observations on, or concerns about, including the proposed facets to the IB Suitability Guideline with regard to the suitability letter? If you do, please state in detail what your observation or concern is and the reason for it. |

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| 4.1.4 Suitability: Due Diligence | |
| Requirement | Due diligence suitability criteria of products and providers to: <ul style="list-style-type: none"> › be reviewed on a periodic basis (no less than annually) › be reassessed within 1 year for in-bound transfers as part of a take-over of a book of business. |
| Rationale | This will provide better protection to investors by way of ensuring the suitability criteria is regularly reviewed, and clients can't in the long term remain in unsuitable products. |
| Current Code | 2.8 A registered person must ensure that adequate procedures are implemented to ensure that the investment services that it provides are regularly reviewed at appropriate intervals. |
| Proposed Code | 2.8 A registered person must ensure that adequate procedures are implemented to ensure that the investment services that it provides are regularly reviewed at appropriate intervals. <u>In addition, a registered person must undertake annually or in the case of the acquisition of a new book of business within one year of the date of the transfer a review of the due diligence of the suitability criteria of the products and providers.</u> |
| Question 5 | Do you have any observations on, or concerns about, the proposed inclusions regarding suitability review and due diligence? |

If you do, please state in detail what your observation or concern is and the reason for it.

Conflicts of Interest

| 4.1.5 Conflicts of Interest | |
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| Requirement | <ul style="list-style-type: none"> › all conflicts are disclosed › disclosure is a last resort measure of management › responsibility for failure to properly avoid or effectively manage conflicts cannot be absolved by assessing investment suitability › the ultimate responsibility is to lie with the board of directors for the identification as well as the management |
| Rationale | <ul style="list-style-type: none"> › disclosure alone does not actually manage a conflict and where possible additional appropriate actions should be taken › instances of conflicted behaviour explained away on the basis that the investment allegedly met suitability requirements |
| Current Code | <p>Conflicts of Interest</p> <p>2.9 A registered person must endeavour to avoid any conflict of interest arising.</p> <p>2.10 Where conflicts do arise, a registered person must have effective procedures so as to address such conflicts by:</p> <p>2.10.1 disclosure;</p> <p>2.10.2 applying internal rules of confidentiality;</p> <p>2.10.3 declining to act; and/or</p> <p>2.10.4 otherwise as appropriate.</p> |
| Proposed Code | <p>Conflicts of Interest</p> <p>2.9 A registered person must endeavour to avoid any conflict of interest arising; <u>investment suitability does not absolve conflict management.</u></p> <p>2.10 Where conflicts do arise, a registered person must <u>disclose the conflicts to the relevant client(s) and</u> have effective procedures so as to address such conflicts by:</p> <p>2.10.1 disclosure;</p> <p>2.10.<u>21</u> applying internal rules of confidentiality;</p> <p>2.10.<u>32</u> declining to act; and/or</p> <p>2.10.<u>43</u> otherwise as appropriate.</p> <p><u>2.11 It is the responsibility of the board of the registered person (or an appropriate delegated sub-committee of the board) to identify as well as manage any conflicts of interest on the part of the registered person.</u></p> |
| Question 6 | Do you have any observations on, or concerns about, the proposed amendments to the handling of conflicts of interest? |

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| If you do, please state in detail what your observation or concern is and the reason for it. |
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| 4.1.6 | Best Execution |
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| Requirement | <ul style="list-style-type: none"> › the ‘best possible result’ for a client when a trade is executed includes total consideration; for example costs associated with trading on different venues › the onus is on the registered person to measure execution risks and costs (remove outdated provisions to equate trading on the LSE alone as satisfactory best execution) › Transaction cost analysis (TCA) is required › Top trading venues are reported for transparency. |
| Rationale | <p>Reliance purely on price can lead to poorer outcomes. This is another major area of focus in MiFID II. The proposed changes will lead to better execution results for clients, and increased transparency.</p> <p>For ease of compliance the definition of ‘best possible result’ is consistent with FCA requirements.</p> |
| Current Code | <p>Best Execution</p> <p>2.22 For investments other than units in a collective investment fund and long term insurance products, in dealing with or for a client, a registered person must take reasonable care to ascertain the price which is the best available at the time for transactions of the kind and size concerned and then, unless circumstances require it to do otherwise in the client’s interests, deal at a price no less advantageous to the client (excluding any of its disclosed charges).</p> <p>2.23 A registered person may rely on another person who executes the transaction to provide best execution, but only if it believes on reasonable grounds that the person will do so.</p> <p>2.24 Where a registered person executes an order through the London Stock Exchange’s Stock Exchange Trading System the “best execution” requirement will be deemed to have been satisfied.</p> <p>2.25 Where a registered person has access to a variety of price sources, it should compare those sources and give the client the best price.</p> |
| Proposed Code | <p>Best Execution</p> <p>2.22 For investments other than units in a collective investment fund and long term insurance products, in dealing with or for a client, a registered person must take reasonable care to ascertain the price-result which is the best available-possible at the time for transactions of the kind and size concerned and then, unless circumstances require it to do otherwise in the client’s interests, deal at a price no less advantageous to the client (excluding any of its disclosed charges).</p> <p>2.23 A registered person may rely on another person who executes the transaction to provide best execution, but only if it believes on reasonable grounds that the person will do so.</p> |



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| | <p>2.24 — Where a registered person executes an order through the London Stock Exchange’s Stock Exchange Trading System the “best execution” requirement will be deemed to have been satisfied.</p> <p>2.24⁵ Where a registered person has access to a variety of price sources, it should compare those sources and give the client the best <u>possible result</u> <u>price for that client</u>.</p> <p><u>Notes:</u></p> <p><u>1</u> Best possible result must be determined in terms of the total consideration, representing the price of the financial instrument and the costs related to execution, which must include all expenses incurred by the client which are directly related to the execution of the order, including execution venue fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.</p> <p><u>2</u> Implicit transaction costs such as likelihood of execution and settlement, the size and nature of the order, and market impact, may be given precedence over the immediate price and cost consideration only insofar as they are instrumental in delivering the best possible result in terms of the total consideration to the client.</p> <p><u>3</u> A registered person, or its delegates, must not structure or charge its commissions in such a way as to discriminate unfairly between execution venues.</p> <p><u>4</u> A registered person must have policies to ensure appropriate transactional cost analysis, including top trading venues, is reviewed at least annually.</p> |
| <p>Question 7</p> | <p>Do you have any observations on, or concerns about, the proposed amendments to the best execution requirements?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |

| <p>4.1.7 Benchmarking</p> | |
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| <p>Requirement</p> | <p>Performance to be measured to an appropriate and/or relevant benchmark; for advice and discretionary investment management.</p> |
| <p>Rationale</p> | <p>There is a current gap to international practices. This will assist investors to monitor the performance of their investments.</p> <p>As discussed in the external working group, a specific benchmark is not defined, acknowledging that each registered person will be best placed to address the requirement for an appropriate benchmark.</p> |
| <p>Proposed Code</p> | <p>[Post legacy Margin Payments final paragraph 2.27]</p> <p><u>Benchmarking</u></p> <p><u>2.27</u> A registered person must measure and report on performance to an appropriate benchmark; for advice and discretionary investment management for a client.</p> |

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| Question 8 | <p>Do you have any observations on, or concerns about, the proposed inclusion of benchmarking to principle 2 of the IB Code?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |
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4.2 Principle 3 Proposals: A registered person must organise and control its affairs effectively for the proper performance of its business activities, and be able to demonstrate the existence of adequate risk management systems

| 4.2.1 Client records: retention | |
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| Requirement | Client records relating to the IB Code are kept for ten years from the date of the record. |
| Rationale | The requirements in the IB Code have not been an issue to date, but they may be in conflict with the requirements of the recently introduced DPL. |
| Current Code | <p>Client records</p> <p>3.7.8 In addition to the records required by the Money Laundering Order, the following minimum retention periods must be applied:</p> <p>3.7.8.1 for any records relating to the requirements established by Principle 2 of the Code – ten years from the date of the record; and</p> <p>3.7.8.2 any other records relating to requirements established by the Code - at least five years from the date of the event to which the record relates.</p> |
| Proposed Code | <p>Client records</p> <p>3.7.8 In addition to the records required by the Money Laundering Order, the following<u>a</u> minimum retention periods s must be applied :</p> <p>3.7.8.1 for any records relating to the requirements established by Principle 2 of the Code, of – ten years from the date of the record; and</p> <p>3.7.8.2 any other records relating to requirements established by the Code at least five years from the date of the event to which the record relates.</p> |
| Proposed Code [no markup] | <p>Client records</p> <p>3.7.8 In addition to the records required by the Money Laundering Order, a minimum retention period must be applied for any records relating to the requirements established by the Code, of ten years from the date of the record.</p> |
| Question 9 | <p>Do you have any observations on, or concerns about, the proposed amendment to client record retention?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |

| 4.2.2 Client records: appropriate record keeping | |
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| Requirement | Appropriate record keeping, even if the origin is via a telephone call. |
| Rationale | Whilst there is no direct retention requirement for tape recordings of telephone conversations to be kept as a client record, some record must be kept irrespective of the origin of the record. For the avoidance of doubt the exempting note regarding the retention requirement of tape recordings of telephone conversations should be removed. |
| Current Code | <p>3.7 Record Keeping</p> <p>Notes:</p> <p>1 The Code does not establish any retention requirements for tape recordings of telephone conversations.</p> <p>2 With respect to 3.7.5, a change to the policies and procedures manual that necessitates communication to impacted staff is a material change.</p> |
| Proposed Code | <p>3.7 Record Keeping</p> <p>Notes:</p> <p>1 The Code does not establish any retention requirements for tape recordings of telephone conversations.</p> <p><u>2</u>1 With respect to 3.7.5, a change to the policies and procedures manual that necessitates communication to impacted staff is a material change.</p> |
| Proposed Code [no markup] | <p>3.7 Record Keeping</p> <p>Notes:</p> <p>1 With respect to 3.7.5, a change to the policies and procedures manual that necessitates communication to impacted staff is a material change.</p> |
| Question 10 | <p>Do you have any observations on, or concerns about, the proposed removal of the note on the retention period for tape recordings with respect to client records?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |

4.3 Principle 4 Proposals: A registered person must be transparent in its business arrangements

| 4.3.1 Transaction confirmations | |
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| Requirement | Transaction confirmations to be provided after each transaction or on a periodic basis determined by the registered person, with a minimum requirement of quarterly. |
| Rationale | This provides clarification on otherwise ambiguous required timeliness and sets an appropriate minimum reporting frequency. |

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| Current Code | 4.4 A registered person must provide confirmation, in legible form, of any transaction effected for a client. Such confirmation must set out all relevant matters in relation to the transaction. |
| Proposed Code | 4.4 A registered person must provide confirmation, in legible form, of after any transaction effected for a client, <u>or on a periodic basis determined by the registered person and communicated by the registered person to the client, no less frequently than quarterly</u> . Such confirmation must set out all relevant matters in relation to the transaction. |
| Question 11 | Do you have any observations on, or concerns about, the proposed amendments to the reporting frequency of transaction confirmations? If you do, please state in detail what your observation or concern is and the reason for it. |

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| 4.3.2 Transparent Retail Client Remuneration | |
| Requirement | Remuneration including commissions and non-monetary benefits, from product providers for investment advice services to Jersey retail clients are not permitted (except under current and de minimis exceptions). |
| Rationale | Enhancement to preclude soft commissions or non-monetary benefits. This is a major area of focus internationally. |
| Current Code | 4.8 A registered person carrying on Class C or Class D investment business is not permitted to receive remuneration by way of commission from product providers for investment advice services provided to Jersey resident Retail Clients, with the following exceptions: |
| Proposed Code | 4.8 A registered person carrying on Class C or Class D investment business is not permitted to receive remuneration by way of commission from product providers for investment advice services provided to Jersey resident Retail Clients, with the following exceptions: [Append to Principle 4 Notes] Notes: <u>3 For the purpose of 4.8 commission does not include de minimis activities such as refreshments during meetings, but does include monetary and/or non-monetary benefits such as incentives for discounts and/or preferred products.</u> |
| Question 12 | Do you have any observations on, or concerns about, the proposed amendments to commission? If you do, please state in detail what your observation or concern is and the reason for it. |

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| 4.3.1 Retail Client Commission by Region | |
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| Requirement | Permission for commission to be received according to the region of the residence of the retail client. |
| Rationale | Currently the IB Code does not permit commission to be received for Jersey retail clients; the change will afford non-Jersey resident retail clients the equivalent protection of their region. Different regions have evolved different products and as such different rules related to commission handling; this proposed solution ensures retail clients are not disadvantaged based on their residence. |
| Current Code | 4.8 A registered person carrying on Class C or Class D investment business is not permitted to receive remuneration by way of commission from product providers for investment advice services provided to Jersey resident Retail Clients, with the following exceptions: |
| Proposed Code | 4.8 A registered person carrying on Class C or Class D investment business is not permitted to receive remuneration by way of commission from product providers for investment advice services provided to Jersey resident Retail Clients, with the following exceptions: |
| | <u>4.8.4 the Retail Client that is resident in a region, other than Jersey, that permits commission to be received.</u> |
| | Notes: <u>4 For the purpose of 4.8.4 the regulations of the region must be applied, and the registered person must make a record on the client file how the regulations of the region at the time of the transaction permit commissions to be received.</u> |
| Question 13 | Do you have any observations on, or concerns about, the proposed amendments to retail commission? If you do, please state in detail what your observation or concern is and the reason for it. |

4.4 Principle 6 Proposals: A registered person must deal with the JFSC in an open and co-operative manner

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| 4.4.1 Notification on un-regulated activities | |
| Requirement | Notifying the JFSC should events or activities concerning non-regulated areas of business have adverse impacts on the registered person in Jersey. |
| Rationale | This is already in the IB Code as a note and the proposal is to provide a strengthened requirement by also bringing this section into the general notifications on the IB Code. |
| Current Code | 6 Notes: 2 The scope of Principle 6 is extended to the provision of information and the notification of events concerning non-regulated activities and other members of the corporate group, to the extent that such information or |

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| | <p>events might reasonably be expected to have a material impact on the registered person in Jersey.</p> |
| Proposed Code | <p>[Insert post 6.4 – last paragraph in General Notifications]</p> <p>General Notifications</p> <p>6.5 <u>A registered person must notify and provide all relevant information to the JFSC of any event concerning its non-regulated activities and other members of the corporate group to the extent that such information or events may reasonably be expected to have a material impact on the registered person.</u></p> |
| Question 14 | <p>Do you have any observations on, or concerns about, the proposed amendment to the general notifications of the IB Code?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |

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| 4.4.2 OTC Derivative Reporting | |
| Requirement | <p>Exposure reporting for all OTC derivative trading not compliant with EMIR or EMIR equivalent 3rd countries.</p> |
| Rationale | <p>There is a G20 commitment to manage the risk of derivatives more effectively – EMIR is the European standard. This proposed change to the IB Code will close in relation to registered persons any regulatory arbitrage risk in Jersey, with little impact expected for industry.</p> <p>Any amendment to the IB Code will only impact registered persons; future work on the exemptions in the FSJL will consider extending the scope to all counterparties trading in derivatives.</p> |
| Proposed Code | <p>[Post legacy 6.6 and pre legacy 6.7]</p> <p>6.7 <u>A registered person trading in OTC derivatives with counterparties other than EMIR or recognised EMIR equivalent counterparties, must provide information to the JFSC, in the form and content determined by the JFSC, on an annual basis regarding the maximum notional uncleared exposure.</u></p> |
| Question 15 | <p>Do you have any observations on, or concerns about, the proposed reporting requirements for OTC derivative exposure?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |

5 Proposals related to Legislative Changes

Subject to the responses that the JFSC receive in respect of the questions set out in this consultation paper, the JFSC will be seeking support from the Government to make changes to the FSJL and the CAO in the following areas:

5.1 FSJL

| 5.1.1 Advice on “holding” an investment | |
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| Requirement | The class of IB which relates to the provision of advice be extended so that a registered person must also give advice on the merits of “holding” an investment in addition to providing advice on the purchase or sale of such an investment. |
| Rationale | A decision to hold an investment can be just as important as a decision to either purchase or sell an investment. The JFSC considers that in the interests of investor protection and to ensure that Jersey meets international standards, such as MiFID II, Article 2(2)(c) of FSJL should be amended to include the provision of advice in respect of holding assets. The IB Code of Conduct would also be amended to reflect this amendment. |
| Question 16 | Do you have any observations on, or concerns relating to the proposal to regulate advice on the merits of holding an Investment? If you do, please state in detail what your observation or concern is and the reason for it. |

| 5.1.2 Financial derivatives | |
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| Requirement | An amendment to the definition of Investments in Schedule 1 so that it includes all financial derivatives (such as reverse repos and binary options). |
| Rationale | Schedule 1 defines what categories of Investments are caught for the purposes of regulated IB activity. Schedule 1 currently includes some financial derivatives, but not necessary all categories of financial derivatives. Financial derivatives are financial instruments that are linked to a specific financial instrument or indicator or commodity, and through which specific financial risks can be traded in financial markets in their own right. The more common forms of financial derivatives are currently included, but not all financial derivatives are included due to the evolution of the financial services industry. Financial derivatives can be complex securities and transactions in financial derivatives generally carry a higher risk for investors. As such it is proposed that the list of investments be expanded to include all types of financial derivatives and not just those that are currently listed. This will mean that all financial derivatives will be brought within the scope of regulated IB activity under the FSJL. |
| Question 17 | Do you have any observations on, or concerns about, the proposal to amend Schedule 1 of the FSJL to include all financial derivatives? If you do, please state in detail what your observation or concern is and the reason for it. |

| 5.1.3 Arranging | |
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| Requirement | The activity of “arranging” to be added as a new class of IB |
| Rationale | <p>The activity of “arranging deals in Investments” is not at present an IB activity. The JFSC is considering whether or not IB under the FSJL should be extended to include the activity of “arranging deals in Investments” as a separate class of IB. This would mean that arranging deals in Investments would be regulated as financial service business.</p> <p>In considering this question, the JFSC must consider whether the arranging activities relating to deals in Investments pose any regulatory risks that justify their regulation and whether doing so is consistent with the international standards and practices in similar jurisdictions.</p> <p>After considering the position in other jurisdictions, the JFSC is of the view that the activity of arranging deals in Investments does pose a number of risks. For example, the arranger may, for personal gain (e.g. commissions or fees paid to him by the provider of the financial service or product), facilitate a customer to obtain a financial service or product which is not needed or appropriate for the customer. If the arranger handles customers’ money or Investments, without regulation of that activity, there will be no systems and controls to mitigate loss of such assets in the hands of the ‘arranger’. An Arranger’s fitness and propriety (which includes integrity) will also not be subject to any scrutiny.</p> <p>To address the above risks, consistent with MiFID II and the practices in comparable jurisdictions benchmarked such as the UK and Australia, the JFSC proposes recommending to Government that the FSJL should be amended to include “arranging deals in Investments” as a separate class of IB within Article 2(2) of the FSJL.</p> <p>The IB Code would accordingly thereafter need to be updated to include an appropriateness requirement; a proportionate version of suitability for the facilitation of complex products for retail investors.</p> |
| Question 18 | <p>Do you have any observations on, or concerns about, the proposal to amend Article 2(2) of the FSJL to include the activity of “arranging deals in Investments”?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |

| 5.1.1 Exchange business | |
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| Requirement | Legislation for a supervisory regime and powers to write codes of practice regarding exchange business |
| Rationale | IOSCO has set out its objectives and principles for securities regulation. As a matter of policy, Jersey looks to ensure that it complies with international standards, including the IOSCO principles. One of IOSCO principles is that the establishment and operation of trading systems including securities exchanges should be subject to regulatory authorisation and oversight to ensure that exchanges and markets are fair, efficient and transparent. Currently the FSJL does |

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| | <p>not provide the legislative framework to support the regulation and oversight of trading systems.</p> <p>Therefore the JFSC proposes to recommend to Government that the FSJL be amended so that the framework to permit the regulatory authorisation and oversight of trading systems is incorporated into that law and that the JFSC may issue relevant Code of Practice for this activity.</p> |
| Question 19 | <p>Do you have any observations on, or concerns in relation to the introduction of legislation to support the regulatory authorisation and oversight of trading systems?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |

5.2 CAO

It is proposed that this Order be updated in response to IOSCO’s 2017 thematic review of client asset protection recommendations.

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| 5.2.1 | 3 rd party due diligence and transparency on disclosure of protection in overseas regimes |
| Requirements | <ul style="list-style-type: none"> › apply appropriate due diligence on selection of 3rd parties on behalf of registered person; and › ensure that there is clarity and transparency in the disclosure of the relevant client asset protection regime(s) and arrangements and the consequent risks involved. |
| Rationale | <p>Jersey is committed to meeting international standards – including the recommendations of IOSCO. Following a review of the CAO, the JFSC has determined that there is a need for minor enhancements to the Order to achieve full compliance with the IOSCO recommendations; Jersey was specifically noted to not have fully adopted measures with respect to due diligence on 3rd party selection and regarding disclosing the protection regime afforded for investments in overseas jurisdictions.</p> |
| Question 20 | <p>Do you have any observations on, or concerns about, the proposal to update the CAO?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |

6 Summary of Questions

| Page | Question |
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| 9 | <p>Question 1:</p> <p>Do you have any observations on, or concerns about, the proposed inclusion of vulnerability to principle 2 of the IB Code?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |
| 9 | <p>Question 2:</p> <p>Do you have any observations on, or concerns about, the proposed inclusion of a client's risk tolerance and ability to bear losses to the suitability assessment?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |
| 10 | <p>Question 3:</p> <p>Do you have any observations on, or concerns about, the proposed amendments to the IB Code with regard to requirements to be in writing with respect to suitability?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |
| 10 | <p>Question 4:</p> <p>Do you have any observations on, or concerns about, including the proposed facets to the IB Suitability Guideline with regard to the suitability letter?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |
| 11 | <p>Question 5:</p> <p>Do you have any observations on, or concerns about, the proposed inclusions regarding suitability review and due diligence?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |
| 12 | <p>Question 6:</p> <p>Do you have any observations on, or concerns about, the proposed amendments to the handling of conflicts of interest?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |
| 13 | <p>Question 7:</p> <p>Do you have any observations on, or concerns about, the proposed amendments to the best execution requirements?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |



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| 14 | <p>Question 8:</p> <p>Do you have any observations on, or concerns about, the proposed inclusion of benchmarking to principle 2 of the IB Code?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |
| 15 | <p>Question 9:</p> <p>Do you have any observations on, or concerns about, the proposed amendment to client record retention?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |
| 16 | <p>Question 10:</p> <p>Do you have any observations on, or concerns about, the proposed removal of the note on the retention period for tape recordings with respect to client records?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |
| 16 | <p>Question 11:</p> <p>Do you have any observations on, or concerns about, the proposed amendments to the reporting frequency of transaction confirmations?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |
| 17 | <p>Question 12:</p> <p>Do you have any observations on, or concerns about, the proposed amendments to commission?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |
| 17 | <p>Question 13:</p> <p>Do you have any observations on, or concerns about, the proposed amendments to retail commission?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |
| 18 | <p>Question 14:</p> <p>Do you have any observations on, or concerns about, the proposed amendment to the general notifications of the IB Code?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |

| Page | Question |
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| 19 | <p>Question 15:</p> <p>Do you have any observations on, or concerns about, the proposed reporting requirements for OTC derivative exposure?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |
| 20 | <p>Question 16:</p> <p>Do you have any observations on, or concerns relating to the proposal to regulate advice on the merits of holding an Investment?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |
| 20 | <p>Question 17:</p> <p>Do you have any observations on, or concerns about, the proposal to amend Schedule 1 of the FSJL to include all financial derivatives?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |
| 21 | <p>Question 18:</p> <p>Do you have any observations on, or concerns about, the proposal to amend Article 2(2) of the FSJL to include the activity of “arranging deals in investments”?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |
| 21 | <p>Question 19:</p> <p>Do you have any observations on, or concerns in relation to the introduction of legislation to support the regulatory authorisation and oversight of trading systems?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |
| 22 | <p>Question 20:</p> <p>Do you have any observations on, or concerns about, the proposal to update the CAO?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p> |

Appendix A: Target Code with visible changes

The proposed changes are applied here to the current IB Code en masse; as a result any insertions/deletions to numbering may have a consequential impact on otherwise un-edited text. The code changes in the CP body reflect changes in isolation.