



Jersey Financial  
Services Commission

# **Consultation on proposals to provide additional guidance on the application of AML/CFT requirements to funds and fund operators (regulated and non-regulated)**

Issued: 23 September 2016

Consultation Paper no.8 2016

## › Consultation Paper

Please note that terms in *italics* are defined in the Glossary of Terms.

The *Commission* invites comments on this consultation paper. Responses may be sent using the Response Template directly to **Kate Berry** at the *Commission* by **25 November 2016**. If you require any assistance, clarification or wish to discuss any aspect of the proposal prior to formulating a response, it is of course appropriate to contact the *Commission*.

The *Commission* contacts are:

**Kate Berry**  
Senior Adviser, Policy

Telephone: +44 (0) 1534 822162  
Email: [k.berry@jerseyfsc.org](mailto:k.berry@jerseyfsc.org)

**Hamish Armstrong**  
Senior Adviser, Financial Crime Policy

Telephone: +44 (0) 1534 822045  
Email: [h.armstrong@jerseyfsc.org](mailto:h.armstrong@jerseyfsc.org)

Jersey Financial Services Commission  
PO Box 267  
14-18 Castle Street  
St Helier  
Jersey  
JE4 8TP

Alternatively, **Thomas Cowsill** at *Jersey Finance* is co-ordinating an Industry response that will incorporate any matters raised by local businesses. Comments should reach *Jersey Finance* by **25 November 2016**.

Responses should be sent to:

**Thomas Cowsill**  
Head of Technical  
Jersey Finance Limited  
4<sup>th</sup> Floor, Sir Walter Raleigh House  
48-50 Esplanade  
St Helier  
Jersey  
JE2 3QB

Telephone: +44 (0) 1534 836000  
Facsimile: +44 (0) 1534 836001  
Email: [thomas.cowsill@jerseyfinance.je](mailto:thomas.cowsill@jerseyfinance.je)

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

**It is the policy of *Jersey Finance* (unless otherwise requested or agreed) to collate all responses and share them verbatim with the *Commission* 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 *Jersey Finance*'s permanent electronic archive which is**

Consultation Paper

**currently open to all *Jersey Finance* members.**

## › Glossary of Terms

|   |   |
|---|---|
| AIF Regulations                           | means the Alternative Investment Funds (Jersey) Regulations 2012  |
| AML/CFT                                   | means anti-money laundering and countering the financing of terrorism   |
| AML/CFT Handbook                          | means the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Regulated Financial Services Business (as may be amended by the <i>Commission</i> , from time to time) <sup>1</sup>  |
| BB(J)L                                    | means the Banking Business (Jersey) Law 1991  |
| Business Risk Assessment                  | means the assessment of a <i>Relevant Person's</i> exposure to money laundering and financing of terrorism risk that <i>Relevant Persons</i> are required to carry out on their business pursuant to the <i>Money Laundering Order</i> at Article 11(1)(f)  |
| CDD Measures                              | means customer due diligence measures as set out in Article 3 of the <i>Money Laundering Order</i>  |
| Certified Fund                            | means a fund issued with a certificate pursuant to the <i>CIF(J) Law</i>  |
| Codes of Practice (or Codes) <sup>2</sup> | means, collectively, the <ul style="list-style-type: none"> <li>• Code of Practice for Alternative Investment Funds and AIF Services Business</li> <li>• Code of Practice for Certified Funds</li> <li>• Code of Practice for Deposit-taking Business</li> <li>• Code of Practice for Fund Services Business</li> <li>• Code of Practice for General Insurance Mediation Business</li> <li>• Code of Practice for Insurance Business</li> <li>• Code of Practice for Investment Business</li> <li>• Code of Practice for Money Service Business</li> <li>• Code of Practice for Trust Company Business</li> </ul> |
| CIF(J) Law                                | means the Collective Investment Funds (Jersey) Law, 1988  |
| Commission                                | means the Jersey Financial Services Commission  |
| Commission Law                            | means the Financial Services Commission (Jersey) Law 1998   |
| Companies Law                             | means the Companies (Jersey) Law, 1991  |

<sup>1</sup> [http://www.jerseyfsc.org/anti-money\\_laundering/Regulated\\_financial\\_services\\_businesses/aml\\_cft\\_handbook.asp](http://www.jerseyfsc.org/anti-money_laundering/Regulated_financial_services_businesses/aml_cft_handbook.asp)

<sup>2</sup> A code of practice may be prepared and issued; or revised by the *Commission* pursuant to, the *Regulatory Laws*, the *AIF Regulations* and the *Supervisory Bodies Law* (in respect of *AML/CFT* requirements). The Codes are available from the *Commission* Website:

[http://www.jerseyfsc.org/the\\_commission/codes\\_of\\_practice/index.asp](http://www.jerseyfsc.org/the_commission/codes_of_practice/index.asp)

|  |  |
|--|--|
| Customer Risk Assessment                 | means the assessment of the risk that a business relationship or one-off transaction will involve money laundering or financing of terrorism, including obtaining appropriate information for assessing that risk, that <i>Relevant Persons</i> are required to carry out on their <i>Customer</i> pursuant to the <i>Money Laundering Order</i> at Articles 13 and 3(5) |
| Enhanced Customer Due Diligence Measures | means those measures described in the <i>Money Laundering Order</i> at Article 15 Enhanced Customer due diligence  |
| FS(J) Law                                | means the Financial Services (Jersey) Law 1998   |
| Fund Operators                           | means all types of entities as set out in Section 14.1 paragraph 4 of the <i>Funds Section</i> providing services to funds   |
| Fund Services Business                   | means the <i>Regulated Activity</i> , involving the provision of services in relation to certain types of <i>Funds</i> , which is described in Article 2(10) of the Financial Services (Jersey) Law 1998   |
| Funds                                    | means all types of funds as set out in Section 14.1 paragraph 3 of the <i>Funds Section</i>  |
| Funds Section                            | means the draft Section 14 of the <i>AML/CFT Handbook</i> in relation to <i>Funds</i> and <i>Fund Operators</i>  |
| Group                                    | means a body corporate that would be defined as a “subsidiary”, “wholly-owned subsidiary” or “holding body” of another body corporate, under the <i>Companies Law</i>  |
| IB(J)L                                   | means the Insurance Business (Jersey) Law 1996   |
| Jersey Finance                           | means Jersey Finance Limited   |
| Money Laundering Order                   | means the Money Laundering (Jersey) Order, 2008  |
| Obligated Person                         | means a person referred to as the obliged person in the <i>Money Laundering Order</i> at Article 16(1)   |
| Person                                   | means any natural or legal person (including a body of persons corporate or unincorporated)  |
| Proceeds of Crime Law                    | means the Proceeds of Crime (Jersey) Law, 1999   |
| Registered Person                        | means a <i>Person</i> who is registered, or holds a permit or certificate, as applicable, under one or more of the <i>Regulatory Laws</i>  |
| Regulated Activity                       | means activity conducted pursuant to the <i>Regulatory Laws</i> , in respect of which a <i>Person</i> must be Licensed   |
| Regulatory Laws                          | means the <i>AIF Regulations</i> , the <i>BBJL</i> , the <i>CIF(J) Law</i> , the <i>FS(J) Law</i> , and the <i>IB(J)L</i>  |
| Relevant Person                          | means a <i>Person</i> carrying on a financial services business in or from within Jersey, and a Jersey body corporate or other legal person  |

|                                    |   |
|------------------------------------|---|
|                                    | registered in Jersey carrying on a financial services business anywhere in the world  |
| Reliance                           | means the arrangements described in the <i>Money Laundering Order</i> at Article 16 Reliance on <i>Relevant Person</i> or <i>Person</i> carrying on equivalent business and Article 16A Reliance upon persons in same financial <i>Group</i> as <i>Relevant Persons</i> |
| Simplified Identification Measures | means those measures described in the <i>Money Laundering Order</i> at Article 17 – Simplified identification measures in circumstances where the <i>Customer</i> is a <i>Relevant Person</i> and Article 18-Simplified Customer due diligence                          |
| Supervisory Bodies Law             | means the Proceeds of Crime (Supervisory Bodies) (Jersey) Law, 2008   |
| Three Tier Test                    | means the Three Tier Test as set described in footnote 13 on page 14 of the <i>Funds Section</i>  |

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# 1 Executive Summary

## 1.1 Overview

- 1.1.1 The consultation paper seeks feedback on a proposal to add a new *Funds Section* to the *AML/CFT Handbook*.
- 1.1.2 While the statutory and regulatory *AML/CFT* requirements that *Funds* and *Fund Operators* are subject to have not changed the *Commission* considers that additional guidance may be useful. This section will apply to *Registered Persons* and those *Funds* and *Fund Operators* that are not regulated pursuant to the *Regulatory Laws*.

## 1.2 What is proposed and why?

- 1.2.1 It is proposed to add a new *Funds Section* to the *AML/CFT Handbook*.
- 1.2.2 A draft of the proposed new *Funds Section* is attached as Appendix B.

## 1.3 Who would be affected?

- 1.3.1 The proposals in this consultation paper have the potential to affect all *Funds* and *Fund Operators*.

## 2 Consultation

### 2.1 Basis for consultation

- 2.1.1 The *Commission* has issued this consultation paper in accordance with Article 8(3) of the *Commission Law*, as amended, under which the *Commission* “*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*”.

### 2.2 Responding to the consultation

- 2.2.1 The *Commission* 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 To assist in analysing responses to the consultation paper, respondents are asked to:
- 2.2.2.1 prioritise comments and to indicate their relative importance; and
  - 2.2.2.2 respond as specifically as possible and, where they refer to costs, to quantify those costs.
- 2.2.3 To assist in analysing responses to the consultation paper, respondents are strongly encouraged to respond by completing the response template, issued with this consultation. Please send your responses using the Response Template by email to [k.berry@jerseyfsc.org](mailto:k.berry@jerseyfsc.org)

### 2.3 Next steps

- 2.3.1 The intention is that the *Funds Section* in the form shown in Appendix B (subject to the making of any revisions considered necessary as a result of responses to this consultation) will be issued in Q1 2017.

## 3 The Commission

### 3.1 Overview

- 3.1.1 The *Commission* 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 Commission's functions

- 3.2.1 The *Commission Law* prescribes that the *Commission* 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 or 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 Ministers 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 *Commission* by any other Law or enactment.

### 3.3 Guiding principles

- 3.3.1 The *Commission's* guiding principles require it 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.

### 3.4 Commission's role with respect to AML/CFT

- 3.4.1 With respect to the need to counter financial crime in both Jersey and elsewhere, the *Commission* is the supervisory body that exercises supervisory functions in respect of:
- 3.4.1.1 regulated persons<sup>3</sup>; and
  - 3.4.1.2 persons carrying on specified Schedule 2 business<sup>3</sup>.

- 3.4.2 The supervisory functions to be exercised by the *Commission* are defined in Article 2 of the *Supervisory Bodies Law*, namely:
  - 3.4.2.1 Monitoring compliance by a supervised person<sup>3</sup> with, inter alia:
    - ›
    - ›
    - ›
    - ›
  - 3.4.2.2 carrying out the functions, powers and duties conferred under the *Supervisory Bodies Law* for the purpose of compliance by a supervised person with the requirements described in paragraph 3.4.2.1
- 3.4.3 In accordance with Article 22 of the *Supervisory Bodies Law*, the *Commission*, as the supervisory body, has prepared and issued a number of codes of practice. In each case, the Code of Practice comprises of a number of individual codes of practice which may be found in the relevant Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism<sup>4</sup>.

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<sup>4</sup> Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for:  
Regulated Financial Services Business  
The Legal Sector  
The Accountancy Sector  
Estate Agents and High Value Dealers

## 4 New Funds Section

### 4.1 Introduction

- 4.1.1 The proposed *Funds Section* does not amend any existing statutory or regulatory *AML/CFT* obligations for *Funds* or *Fund Operators*. The Section does not contain any new codes of practice. The existing statutory and regulatory *AML/CFT* obligations are not the subject of this consultation paper. Therefore, responses should be limited to feedback on the proposed guidance.
- 4.1.2 All guidance in the *AML/CFT Handbook* applies to *relevant persons* whether they are carrying on *regulated business* or not. See section 1.3, particularly paragraph 27.
- 4.1.3 Industry has requested additional clarification and guidance on certain aspects of the *AML/CFT* regime. The aim of the proposed *Funds Section* is to:
- 4.1.3.1 Supplement the guidance in the other sections of the *AML/CFT Handbook*.
  - 4.1.3.2 Reiterate that all *Funds* and *Fund Operators* have statutory *AML/CFT* obligations in relation to their *Customer(s)*;
  - 4.1.3.3 Provide guidance on who is the *Customer* with respect to a *Relevant Person* who is either a *Fund Operator* or a *Fund*;
  - 4.1.3.4 Provide practical guidance on conducting Risk Assessments, by:
    - › providing Risk Factors in relation to a *Business Risk Assessment*
    - › detailing potential Risk Indicators for *Customer Risk Assessments*
    - › suggesting an approach to risk assessments for SPV Governing Bodies
    - › reiterating that Risk Assessments must be documented
  - 4.1.3.5 Provide Guidance on how Article 3 of the *Money Laundering Order* applies to *Funds* and *Fund Operators* particularly focusing on beneficial ownership and control and the “*Three Tier Test*”;
  - 4.1.3.6 In response to specific areas of complexity highlighted by industry, provide guidance in the following areas:
    - › Unit Trusts
    - › Passive Investors
    - › Multiple Layered Entities
    - › Nominees/Investment Managers
    - › Deferred Verification
    - › Failure to Complete Identification Measures
    - › Trigger Events
    - › *Enhanced Customer Due Diligence Measures*
  - 4.1.3.7 Provide guidance on the circumstances where, although the CDD obligations remain, a *Relevant Person* may not undertake all *CDD Measures* themselves, such as by:

- › Applying *Simplified Identification Measures*
  - › Relying on an *Obligated Person*
  - › Appointing a delegate
- 4.1.4 The proposed *Fund Section* restates some basic principles as this provides the foundation (in conjunction with the other sections of the *AML/CFT Handbook*) of how *AML/CFT* requirements apply to *Funds* and *Fund Operators*.
- 4.1.5 **The *Funds Section* must be read in conjunction with and supplements the other sections of the *AML/CFT Handbook*.**

## 4.2 Scope of the Funds Section

- 4.2.1 The proposed *Funds Section* will confirm the general applicability of *AML/CFT* statutory obligations to all *Funds* and *Fund Operators*.
- 4.2.2 At the time of Consultation some statutory exemptions exist in relation to activities that would otherwise be *Fund Operators*. However, see the *AML/CFT Handbook* [Part 4: Section 1 Proceeds of Crime \(Jersey\) Law 1999 - Schedule 2](#)
- 4.2.3 **Question: Do you consider the guidance provided in Section 14.1, in particular the explanations and diagrams setting out the *Funds* and the *Fund Operators* subject to existing statutory obligations, are clear? If not, please state in detail what your observation or concern is and explain the reason for it.**

## 4.3 Risk Assessments

- 4.3.1 The proposed *Funds Section* (Section 14.2) focuses on the obligations to conduct *Business Risk Assessments* and *Customer Risk Assessments*.
- 4.3.2 As a result of requests from industry potential risk factors and higher risk indicators are provided in non-exhaustive lists. Guidance is also given on risk assessments conducted by SPV governing bodies and the requirement to document risk assessments.
- 4.3.3 The Risk Factors listed at Section 14.2.2 relate to a *Fund's Business Risk Assessment* and emphasise the links between operational risk factors and *AML/CFT* Risks. In Section 14.2.3 potential higher risk indicators have been provided.
- 4.3.4 **Question: Do you consider the guidance provided in Section 14.2, in particular the risk factors to consider and potential risk indicators, is clear? If not, please identify which guidance (by paragraph) and explain why?**

## 4.4 Customer Due Diligence and Article 3 of the Money Laundering Order.

- 4.4.1 Article 3 sets out the *CDD Measures* that must be applied. The guidance at Sections 14.3.1 and 14.3.2 provide examples of how *Identification Measures* apply where a *Fund* and *Fund Operator* is the *Relevant Person* and the differences where the *Fund* is a legal person or legal arrangement.
- 4.4.2 Further guidance to *Fund Operators* is provided, following requests from industry, in areas where it may be beneficial, such as:
- 4.4.2.1 Section 14.3.3 Unit Trusts.
  - 4.4.2.2 Section 14.3.4 Passive Investors.
  - 4.4.2.3 Section 14.3.5 Promoters, an example of where control of a customer may be exercised directly through ownership or by other means.
  - 4.4.2.4 Section 14.3.6 Multiple Layers, where multiple entities may create layers between the ultimate investor(s) and their investment.
  - 4.4.2.5 Section 14.3.7 Nominees / Investment Managers.
  - 4.4.2.6 Section 14.3.8 Residual Assets, where a *Fund* may cease to exist and a *Fund Operator* holds assets on behalf of investors.
- 4.4.3 **Question: Do you consider the guidance provided in Section 14.3 of the *Funds Section* to be clear? If not, please identify which guidance (by paragraph) and explain why?**
- 4.4.4 **Question: Are there any additional areas of *CDD Measures* in relation to *Funds* or *Fund Operators* where guidance would be helpful? If yes, please detail those areas providing illustrative examples if possible.**

## 4.5 Timing of Identification Measures.

- 4.5.1 Guidance is provided on delayed verification (Article 13(4) of the *Money Laundering Order*) at Section 14.4.
- 4.5.2 **Question: Do you consider the guidance provided in Section 14.4 of the *Funds Section* to be clear? If not, please identify which guidance (by paragraph) and explain why?**

## 4.6 Failure to Complete Identification Measures.

- 4.6.1 Guidance is provided on failure to complete identification measures at Section 14.5.
- 4.6.2 **Question: Do you consider the guidance provided in Section 14.5 of the *Funds Section* to be clear? If not, please identify which guidance and explain why?**

## 4.7 Updating Identification Information.

- 4.7.1 Guidance is provided on trigger events at Section 14.6.
- 4.7.2 **Question: Do you consider the guidance provided in Section 14.6 of the *Funds Section* to be clear? If not, please identify which guidance (by paragraph) and explain why?**

## 4.8 On-going Monitoring

- 4.8.1 Guidance is provided regarding on-going monitoring at Section 14.7.
- 4.8.2 **Question: Do you consider the guidance provided in Section 14.7 of the *Funds Section* to be clear? If not, please identify which guidance (by paragraph) and explain why?**

## 4.9 Collation of Customer Due Diligence

- 4.9.1 Every *Fund* and *Fund Operator* has statutory customer due diligence obligations. There are, however, various mechanisms which may be employed to avoid unnecessary duplication of effort, where *Funds* and *Fund Operators* are required to apply identification measures to the same *Group* of entities or individuals. Section 14.8 provides guidance on provisions that a *Relevant Person* may apply, such as:
  - 4.9.1.1 Section 14.8.1 *Simplified Identification Measures*
  - 4.9.1.2 Section 14.8.2 *Reliance on Obligated Persons*
  - 4.9.1.3 Section 14.8.3 Obtaining Copy documentation from a regulated trust and company service provider in the Crown Dependencies
  - 4.9.1.4 Section 14.8.4 Outsourcing.
- 4.9.2 **Question: Do you consider the guidance provided in Section 14.8 of the *Funds Section* to be clear? If not, please identify which guidance (by paragraph) and explain why?**

## 4.10 Enhanced Customer Due Diligence Measures

- 4.10.1 Most investors in *Funds* will not be Jersey residents and they are often not present in Jersey for identification purposes which means they will be subject to *Enhanced Customer Due Diligence Measures*. Section 14.9 provides guidance.
- 4.10.2 **Question: Do you consider the guidance provided in Section 14.9 of the *Funds Section* to be clear? If not, please identify which guidance (by paragraph) and explain why?**

## 4.11 Guidance Generally

- 4.11.1 **Question: Are there additional areas where guidance would be beneficial in relation to *AML/CFT* for *Funds* and *Fund Operators*? If yes, please detail those areas providing illustrative examples if possible.**



## 5 Cost Benefit Analysis

### 5.1 Costs to Industry

- 5.1.1 It is not expected that there will be any costs to industry arising from the publication of this guidance in the *Funds Section* save where their established policies and procedures do not accurately reflect the *AML/CFT* statutory obligations.

### 5.2 Costs to the Commission

- 5.2.1 Save for staff costs incurred in carrying out this consultation and the publication of the final *Funds Section* in due course, no other substantive expenses are expected to be incurred by the *Commission*.

### 5.3 Benefits

- 5.3.1 The proposals in this paper will provide guidance to assist industry in meeting their *AML/CFT* statutory obligations and clarify the *Commission's* expectations.

## 6 Summary of Questions

| Reference | Question  |
|-----------|---|
| 4.2.3     | Question: Do you consider the guidance provided in Section 14.1, in particular the explanations and diagrams setting out the <i>Funds</i> and the <i>Fund Operators</i> subject to existing statutory obligations, are clear? If not, please state in detail what your observation or concern is and explain the reason for it. |
| 4.3.4     | Question: Do you consider the guidance provided in Section 14.2, in particular the risk factors to consider and potential risk indicators, is clear? If not, please identify which guidance (by paragraph) and explain why?   |
| 4.4.3     | Question: Do you consider the guidance provided in Section 14.3 of the <i>Funds Section</i> to be clear? If not, please identify which guidance (by paragraph) and explain why?   |
| 4.4.4     | Question: Are there any additional areas of <i>CDD Measures</i> in relation to <i>Funds</i> or <i>Fund Operators</i> where guidance would be helpful? If yes, please detail those areas providing illustrative examples if possible.  |
| 4.5.2     | Question: Do you consider the guidance provided in Section 14.4 of the <i>Funds Section</i> to be clear? If not, please identify which guidance (by paragraph) and explain why?   |
| 4.6.2     | Question: Do you consider the guidance provided in Section 14.5 of the <i>Funds Section</i> to be clear? If not, please identify which guidance and explain why?  |
| 4.7.2     | Question: Do you consider the guidance provided in Section 14.6 of the <i>Funds Section</i> to be clear? If not, please identify which guidance (by paragraph) and explain why?   |
| 4.8.2     | Question: Do you consider the guidance provided in Section 14.7 of the <i>Funds Section</i> to be clear? If not, please identify which guidance (by paragraph) and explain why?   |
| 4.9.2     | Question: Do you consider the guidance provided in Section 14.8 of the <i>Funds Section</i> to be clear? If not, please identify which guidance (by paragraph) and explain why?   |
| 4.10.2    | Question: Do you consider the guidance provided in Section 14.9 of the <i>Funds Section</i> to be clear? If not, please identify which guidance (by paragraph) and explain why?   |
| 4.11.1    | Question: Are there additional areas where guidance would be beneficial in relation to <i>AML/CFT</i> for <i>Funds</i> and <i>Fund Operators</i> ? If yes, please detail those areas providing illustrative examples if possible.   |

## Appendix A

### List of representative bodies and other persons who will be sent this consultation paper

- Association of English Solicitors Practising in Jersey
- Chartered Institute for Securities & Investment, Jersey branch
- Institute of Chartered Secretaries and Administrators, Jersey branch
- Institute of Directors – Jersey branch
- Jersey Association of Directors and Officers
- Jersey Association of Trust Companies
- Jersey Bankers' Association
- Jersey Chamber of Commerce and Industry Incorporated
- Jersey Compliance Officers Association
- Jersey Finance Limited
- Jersey Funds Association
- Jersey International Insurance Association
- Jersey Society of Chartered and Certified Accountants
- Law Society of Jersey
- Society of Trust and Estates Practitioners (STEP), Jersey branch
- The Chartered Institute of Taxation (Jersey Branch)

## Appendix B

### Proposed Funds Section

(The *Funds Section* has discrete page numbering)

Please click here to view the proposed *Funds Section*.