



Jersey Financial
Services Commission

Feedback on 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 feedback paper on Consultation Paper No. 4 2018 relating to proposals to enhance the investment business regime.

Issued: December 2018

Feedback to Consultation Paper No. 4 2018

This paper reports on responses received by the Jersey Financial Services Commission (**JFSC**) and Jersey Finance Limited (**JFL**) to Consultation Paper No.4 2018: a consultation on the proposal to enhance Jersey's Investment Business regime.

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
Commission Law	Financial Services Commission (Jersey) Law 1998, as amended
CP	Consultation Paper No. 4 2018
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

Overview

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- 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 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. The groups debated which items should be included for consultation. The Channel Islands Financial Ombudsman was also consulted on the proposals.
- 1.1.4 Consultation Paper No.4 2018 (**CP**) was published in June 2018 with responses due in September 2018.
- 1.1.5 Further discussion with Industry was available and in a number of instances respondents took the opportunity to discuss their feedback in more detail.
- 1.1.6 This paper provides feedback on the proposals set out in the CP. Feedback is provided below in three parts: the amendments to the Code of Practice for Investment Business (**IB Code**), proposed guidance, and proposed legislative changes.

1.2

Next steps

- 1.2.1 On 7 January 2019, Feedback to Consultation Paper No.10 2018, Amendments to Codes of Practice (**CP10 2018**), will fall due. The proposals in CP10 2018 are distinct from the proposals within this consultation paper. The final outcome of CP10 2018 will be communicated as soon as possible in Q1 2019. While the consultation papers are discrete it is expected that the amendments to the IB Code from this CP will come into force simultaneously in Q2 2019 so that two new iterations of the IB Code are not issued in short order.
- 1.2.2 It is the intention of the JFSC to prepare and publish further guidance in relation to certain areas of the amended IB Code in 2019.

1.3

- 1.2.3 Legislative changes will be proposed to Government and a consultation process will follow in 2019.

Who would be affected?

1.4

The amendments in this feedback paper have the potential to affect all registered persons licensed to carry on IB in accordance with the FSJL. The future legislative changes could have a broader impact.

Costs & Benefits

The JFSC recognises the potential costs to industry when amending codes and legislation and has considered this in the scope and approach of the amendments. Having listened to feedback some proposals have been adjusted and the amendments 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 European and international regulatory standards.

Summary of Amendments

IB Code & Guidance Changes			
1.5	Vulnerability	Vulnerable investors to be identified and afforded appropriate protection	Code change as per CP Guidance to follow
	Suitability	Assessment – Risk Tolerance & Ability to Bear Losses	Code change as per CP with minor edits
		Enhancing the Suitability Letter	Code change, amended from CP Guidance to follow
		Enhancing the due diligence process	Code change, amended from CP
	Conflicts of Interest	Updated requirements for disclosure and responsibility	Code change, amended from CP Guidance to follow
	Best Execution	Updated focus on outcomes, and transparency on costs and venues	Code change as per CP with minor edits
	Benchmarking	Requirement to track performance to an appropriate benchmark	Code change, amended from CP Guidance to follow
	Record Keeping	Amended retention periods	Code change as per CP
		Taping of telephone records	No change to existing Code
	Transparency	Updates to transaction confirmations	Code change, amended from CP
Updates to retail client remuneration		Code change, amended from CP	
Retail Client Commission by Region		Code change to Notes only	
Notification on un-regulated activities		Code change as per CP with minor edits	
Derivative Reports	New requirements for OTC derivative reporting aligned to EMIR	Proposed Code change on hold	
Legislative Changes			
Include Advice on Holding	Extend the provision of advice to include ‘hold’ as well as ‘buy’ and ‘sell’	The intention is to proceed with all of the proposals and make legislative suggestions to Government that will then follow the usual consultation process. Further research and consideration to the feedback received will help determine the precise nature and scope of the proposals that we take forward to Government.	
Financial Derivatives	Update the definition of investments to include more complex derivatives		
Arranging	Include the activity of arranging		
Exchange Business	Include the oversight of exchange business in the FSJL		
CAO	Enhance client asset protection in line with IOSCO recommendations.		

2 Consultation Feedback Summary

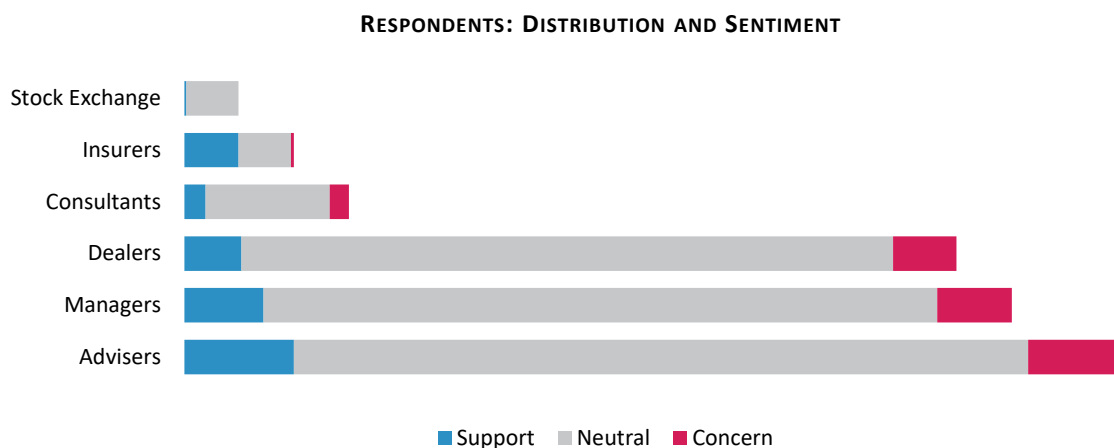
Summary of feedback received

2.1

- 2.1.1 Below are two charts illustrating our interpretation of the feedback sentiment by type of respondent (2.1.5) and by proposal (2.1.6).
- 2.1.2 Supporting, or neutral responses, in many cases, provided helpful feedback.
- 2.1.3 Overall, the charts illustrate support or neutrality regarding the majority of the proposals from the CP. Each of the proposals are analysed in section 3 of this feedback paper.
- 2.1.4 Also within the section 3 analyses are scales indicating where each proposal falls in respect of overall concern, as illustrated in this example of a “sentiment scale”. The location of the star indicates the level of concern expressed by comparison to other proposals in the CP.

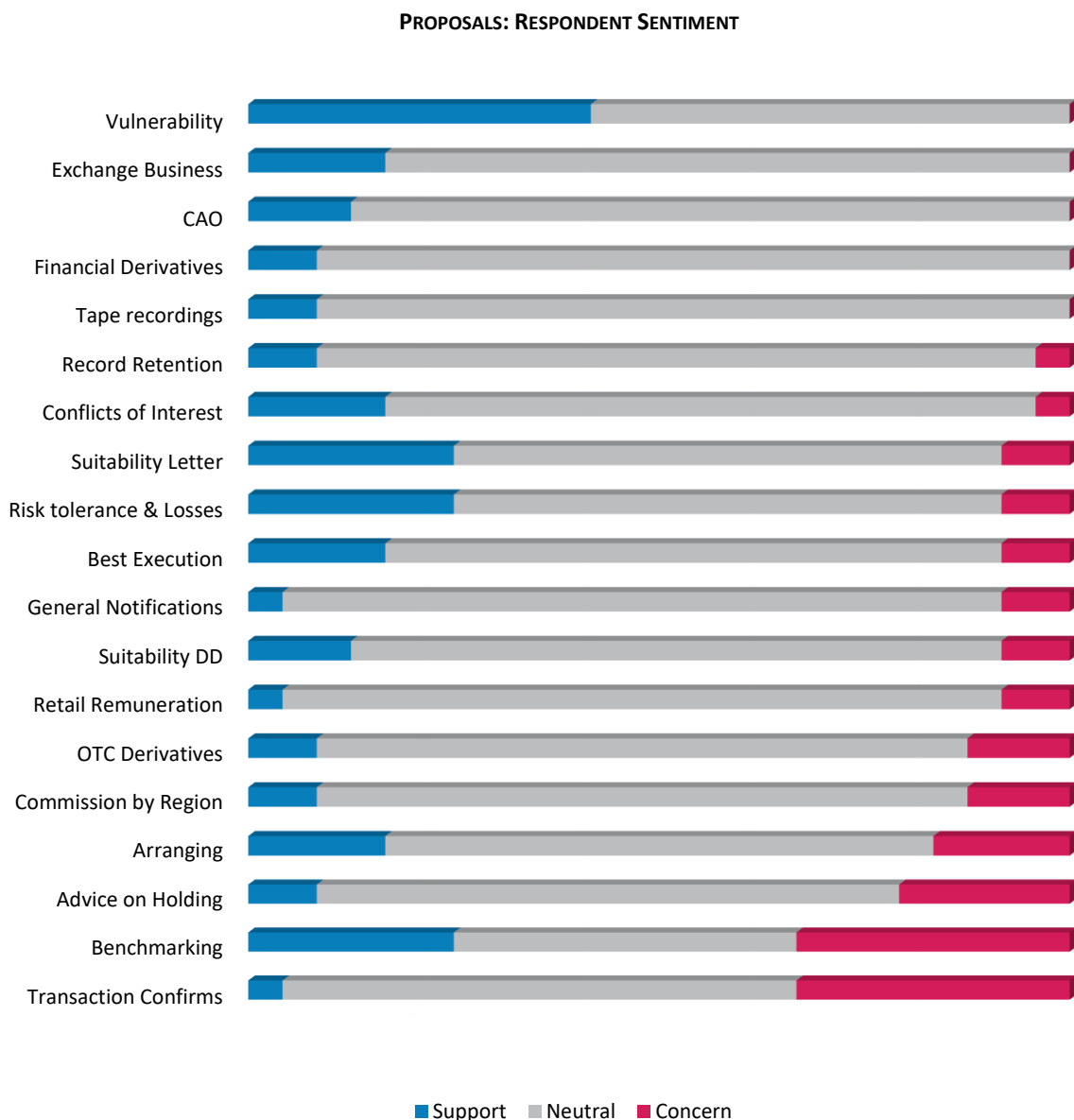


2.1.5 Chart 1



- 2.1.6 Chart 1 demonstrates that the majority of respondents were dealers, managers and advisers with an approximately even split between support and concern.
- 2.1.7 Among all respondents, the most common feedback was neutrality to the proposals.
- 2.1.8 While the JFSC remains sensitive to the respondents who expressed concerns and provides its responses to these in section 3 it is important to note that through support and neutrality, respondents to the CP, in the main, do not object to the overall objective of enhancing the IB regime.

2.1.9 Chart 2



2.1.10 It can be seen in the above chart that responses to the majority of specific proposals were supportive, however, also clear that responses to the proposals around Advice on Holding, Benchmarking and Transaction Confirmations expressed particular concern.

2.1.11 Perhaps unsurprisingly, there was unanimous support (or neutrality) regarding the proposals to enhance the IB regime for vulnerable investors.



2.1.12 It should also be noted that often the JFSC consults on proposals which would not be acceptable to all. Objections or concerns are not exclusively a reason for the JFSC to alter its position.

3 Feedback on Proposals related to the IB Code



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

Vulnerability



3.1

3.1.1 Vulnerable Investors	
Requirement	Vulnerable investors to be identified and afforded appropriate protection.
Support Distribution	 <p>Most supported (Rank 1). 42% of respondents actively supported the initiative and the remainder had no concerns.</p>
Concern Level	<p>Least contested. No concerns raised.</p> 
Comments	<ul style="list-style-type: none"> › A number of requests for some additional guidance › Three respondents indicated they already applied such a measure
	<p>JFSC Response: Guidance will be provided.</p>
Outcome	The code will be implemented as per the original CP.
Code to be Implemented	<p>[Between Knowledge of Client & Suitability]</p> <p>Vulnerability</p> <p>2.5 A registered person must identify and afford appropriate protection to a vulnerable client.</p>

Suitability

3.1.2 Suitability: Assessment – Risk Tolerance & Ability to Bear Losses	
Requirement	Suitability assessment to include the client’s risk tolerance and the client’s ability to bear losses.
Support Distribution	 <p>Very well supported (Rank 2⁼). 25% responded with specific support and just under 70% had no concerns with the proposal.</p>
Concern Level	<p>Two respondents had concerns with the proposal, one of which was available for further discussion on their concerns.</p> 

<p>Comments</p>	<ul style="list-style-type: none"> › General supporting comments and an indication that these measures are already being applied. › Five responded with suggested amendments to the proposal regarding: <ul style="list-style-type: none"> › ambiguity of wording › context when a client does not follow advice › guidance towards an industry standardisation of the quantification of the measures › GDPR <p>JFSC Response:</p> <ul style="list-style-type: none"> › the balance of comments received proposed little or no change to the wording › please note the wording in paragraph 2.6 (of the IB Code) “a registered person is responsible for providing advice or exercising discretion for its clients” › as a principles based regulator we do not think it necessary to prescribe standardisation of how industry quantifies these measures at this time › we do not consider there to be a GDPR concern
<p>Outcome</p>	<p>The proposed code will be implemented as per the CP, with the edits based on the feedback.</p>
<p>Code to be Implemented</p>	<p>2.6.3 the risk tolerance, the willingness and ability to bear losses of that client; and</p> <p>[tracked changes show the difference from the CP proposal to the Code to be implemented]</p>


<p>3.1.3 Suitability: Letter</p>	
<p>Requirement</p>	<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
<p>Support Distribution</p>	 <p>Very well supported (Rank 2⁼). 25% responded with specific support and just under 70% had no concerns with the proposal.</p>
<p>Concern Level</p>	<p>Two respondents had concerns with the proposal.</p> 
<p>Comments</p>	<ul style="list-style-type: none"> › Conceptually there was a great deal of support for the proposals; suggestions and concerns were primarily related to improving the wording around what was meant by a compensation scheme and a bundled service › One respondent asked if the requirement around compensation schemes was retrospective for advice already given


	<ul style="list-style-type: none"> › One respondent advised that the proposal for cost breakdowns was repetitive as this was already present and covered in paragraph 4.6 of the IB Code › An update to the guidance was supported with some comments requesting clarifications or edit suggestions
	<p>JFSC Response:</p> <ul style="list-style-type: none"> › Edited wording in accordance with feedback › The requirement regarding compensation schemes would only apply for advice given after the effective date of the amended IB Code › In relation to the cost breakdown, as this was already covered by paragraph 4.6 of the IB Code, we have accordingly made a cross reference › Guidance will be written in accordance with the feedback received
Outcome	<ul style="list-style-type: none"> › The proposed code will be implemented as per the CP, with the edits based on the feedback › The guidance will be updated taking into consideration the feedback
Code to be Implemented	<p>2.7.3 explain to its client, in writing, which products and services are covered by an investor compensation scheme, including the nature and extent of the scheme, and any which are not;</p> <p>2.7.4 if providing advice comprising of regulated and unregulated services, explain to its client, in writing, which elements of the advice are regulated and which are unregulated;</p> <p>2.7.5 explain to its client, in writing, details regarding the cost breakdown as required by paragraph 4.6 of the Code; and</p> <p>[tracked changes show the difference from the CP proposal to the Code to be implemented]</p>

3.1.4 Suitability: Due Diligence	
Requirement	<p>Due diligence suitability criteria of products and providers to:</p> <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.
Support Distribution	<p>Reasonable support (Rank 10⁺). 13% responded with specific support and just under 80% had no concerns with the proposal.</p>
Concern Level	<p>Two respondents had concerns with the proposal.</p>
Comments	<ul style="list-style-type: none"> › One respondent commented that their organisation already applies the proposal › Concern was raised over the prescriptive nature of the review period, not taking into account the relative risks of products and providers

	<ul style="list-style-type: none"> › Concern was raised over the wording and the possible need for a long transition period <p>There were a number of comments from respondents who didn't have concerns with the principle of the proposal but suggested edits and asked for clarification on some of the terms, as well as comments on:</p> <ul style="list-style-type: none"> › Applicability to execution only and custody services with no advice given › Impact on providers of one-off advice <p>JFSC Response:</p> <ul style="list-style-type: none"> › The IB Code revision will be modified to address the concerns and requests for edits › The JFSC considers an annual review to be reasonable, however, recognises there may be circumstances where this time frame will need to be varied; a variance to the requirements of the Code may be requested where appropriate › One-off advice would not be relevant if the registered person is no longer providing services to the client
Outcome	The amendments in the CP to Paragraph 2.8 will no longer be amended but a new paragraph will be appended after it.
Code to be Implemented	<p>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.</p> <p>2.9 On an annual basis, a registered person must review the due diligence and suitability criteria of the products and their investment service providers, in relation to the investment services provided to its clients. When taking on multiple clients from an existing service provider, this review must be undertaken within one year of the date of the transfer.</p> <p>[tracked changes show the difference from the CP proposal to the Code to be implemented]</p>


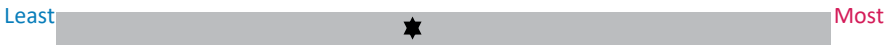
Conflicts of Interest

3.1.5	Conflicts of Interest
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 of the registered person for the identification as well as the management
Support Distribution	 <p>Well supported (Rank 5⁼). 17% responded with specific support and just under 80% had no concerns with the proposal.</p>

<p>Concern Level</p>	<p>One respondent had concerns with the proposal.</p> <p>Least  Most</p>
<p>Comments</p>	<ul style="list-style-type: none"> › One respondent commented that their organisation already applies the proposal › One respondent requested examples of conflicts that had caused the JFSC concern › One respondent requested expanded wording to apply to Branches › Two respondents questioned whether the proposals related to 2.9 & 2.11 were better suited to guidance rather than codes › One respondent was concerned that the requirement for disclosure in all cases might not always be appropriate <p>JFSC Response:</p> <ul style="list-style-type: none"> › We agree that the proposals related to disclosure as a last resort (the proposal actually surpassed MiFID II requirements) and the relation between suitability and a conflict are better suited to guidance, and guidance will be written accordingly › We have acknowledged the concern related to Branches and revised the wording
<p>Outcome</p>	<p>The CP proposals have been amended to only edit paragraph 2.9 as shown below. All other changes will be considered in guidance.</p>
<p>Code to be Implemented</p>	<p>Conflicts of Interest</p> <p>2.9 A registered person (or through an appropriate delegated sub-committee) is required to identify as well as manage any conflicts of interest and 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> <ul style="list-style-type: none"> 2.10.1 disclosure; 2.10.2 applying internal rules of confidentiality; 2.10.3 declining to act; and/or 2.10.4 otherwise as appropriate. <p>[in this instance the tracked changes show the difference from the current IB Code to the Code to be implemented, as the tracked change version against the CP proposal would not be helpful to the reader]</p>

Best Execution


<p>3.1.6</p>	<p>Best Execution</p>
<p>Requirement</p>	<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


	<ul style="list-style-type: none"> › 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.
<p>Support Distribution</p>	 <p>Well supported (Rank 5⁼). 17% responded with specific support and 75% had no concerns with the proposal.</p>
<p>Concern Level</p>	<p>2 respondents had concerns with the proposal.</p> 
<p>Comments</p>	<p>There were a large number of responses for this proposal; to aid the reader linking feedback and the responses by the JFSC, the comments and responses are labelled with identifiers:</p> <ol style="list-style-type: none"> a. One respondent commented that their organisation already applies the proposal b. Of the supportive responses the support was often very strong, an example being “We think these changes represent a significant, and overdue, enhancement of the best execution regime and are strongly supportive of them.” c. The quoted respondent above further suggested that the collective investment exemption should only apply to those not traded on exchange d. One respondent raised concerns that elements of MiFID II “have been heavily criticised by industry because they result in misleading outcomes” e. One respondent was concerned that the emphasis had shifted from speed of execution to fees f. The same respondent suggested deleting the words ‘for that client’ from proposal 2.24, concerned that “The effect of the additional wording appears to suggest something other than best execution may be appropriate for that client” g. The same respondent made a number of suggestions with respect to the notes summarised where possible as follows: <ol style="list-style-type: none"> i. regarding Note 1, the term ‘should’ is more appropriate than ‘must’ in notes ii. regarding Note 2, “we find this note somewhat unclear. We are not clear why implicit transaction costs may be given over immediate price. Perhaps this is intended to suggest that transaction costs should be taken into account, however, we do not agree that this should necessarily give precedence over the immediate price. We suggest this proposed note is deleted.” iii. regarding Note 3, “This note is unclear. The registered person is to act in the best interest of its customer not necessarily to act in the best interest of any exchange. We suggest this is another note concerning fees and charges and its particular relevance to investment business clients is not apparent. We suggest this proposed note is deleted.”

	<ul style="list-style-type: none"> iv. note 4 could be amended to language more consistent with a note rather than a code h. One respondent questioned if the notes were applicable to activity where best execution did not apply i. One respondent asked “if the JFSC would provide more detail on what ‘best possible result’ means in practice, ideally including a worked example”, and asked for guidance on the TCA details required j. One respondent asked that the legacy terminology “price sources” be updated to align with MiFID II terminology
	<p>JFSC Response:</p> <p>No response required for comments a and b.</p> <ul style="list-style-type: none"> c. The JFSC agrees that units in collective investment funds traded on an exchange should not be exempt and has amended the IB Code change accordingly d. The JFSC is aware of some concerns that industry has raised with respect to MiFID II; we do not consider the best execution enhancement towards a ‘best possible result’ to be the area that has concerned industry – it is the international standard e. The focus has not shifted from ‘speed’, and by association price, to fees; the emphasis is towards a best result and a better price does not always result in a better outcome f. The wording ‘for that client’ is beneficial; by way of an example, two orders for different clients for the same security at the same time may result in a best result being achieved by one client being executed on one venue and the other on a different venue – this could be due the size of the orders and the volume available at each venue g. Responses related to comment g: <ul style="list-style-type: none"> i. The JFSC agrees that ‘should’ is more appropriate than ‘must’ in Note 1 ii. The example given above demonstrates why Note 2 is beneficial iii. Note 3 is beneficial to customers as it ensures that venues are not side-lined by discriminative charges; it aides the outcome of a best result by virtue of preventing the available venues from being unfairly limited iv. The JFSC agrees with the Note 4 suggestion and has edited it accordingly h. The notes do only apply to best execution i. There are multiple factors that determine the best result outcome; notes 1 & 2 refer to these <p>At this time the JFSC would prefer to maintain a principles based approach to the TCA requirements; this approach is consistent with how we have introduced other new proposals</p> j. The JFSC agrees that that the term ‘price sources’ could be aligned with MiFID II, and will edit this to execution venues in line with the FCA

Outcome	The proposed code will be implemented as per the CP, with amendments based on the feedback.
Code to be Implemented	<p>Best Execution</p> <p>2.22 For investments (other than units in a collective investment fund that are not traded on an exchange and long term insurance products), in dealing with or for a client, a registered person must take reasonable care to ascertain the result which is the best 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> <p>2.24 Where a registered person has access to a variety of execution venues, it should compare those venues and give the client the best possible result for that client.</p> <p>Notes:</p> <p>1 Best possible result should 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>2 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>3 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>4 A registered person should have policies to ensure appropriate transaction cost analysis, including top trading venues, is reviewed at least annually.</p> <p>[tracked changes show the difference from the CP proposal to the Code to be implemented]</p>

Benchmarking

3.1.7	Benchmarking
Requirement	Performance to be measured to an appropriate and/or relevant benchmark; for advice and discretionary investment management.
Support Distribution	



	Well supported (Rank 2 ⁼). 25% responded with specific support ~40% had no concerns with the proposal.
Concern Level	<p>Eight respondents had concerns with this proposal, the equal most of any of the proposals.</p> 
Comments	<p>This question elicited the most divergent comments with strong support and significant concern; one constant even with supportive comments was that edits and clarification were required.</p> <p>There was largely support for accountability of performance but concern centred around five main points:</p> <ul style="list-style-type: none"> › An issue with the potential repercussions of benchmarking particularly in bear markets › What is an appropriate benchmark and at what level to apply it › Misleading wording in the proposal creating uncertainty around whether the application was to all products that are advised upon, or just where an advisory or discretionary mandate is entered into with a client › Who the reporting should be made to › The cost of benchmarking
	<p>JFSC Response:</p> <ul style="list-style-type: none"> i. Regarding the first point, we acknowledge the concerns of the respondent but to meet international standards some form of performance accountability to a client is required; guidance will be produced that addresses these concerns where possible j. Regarding the remaining comments we agree with the feedback and have revised the IB Code proposal to reflect this; guidance will also be issued that will address the uncertainty further
Outcome	A new section after Margin Payments will be added as per below reflecting the comments.
Code to be Implemented	<p><u>Benchmarking</u></p> <p>2.27 Where a registered person provides advisory or discretionary services to a client it must report to each such client on the performance of its products and services against a relevant and applicable benchmark, where such benchmark exists or is reasonably available.</p> <p>[tracked changes show the difference from the CP proposal to the Code to be implemented]</p>



3.2

Principle 3 Feedback: 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

Record Keeping


3.2.1 Client records: retention	
Requirement	Client records relating to the IB Code are kept for ten years from the date of the record.
Support Distribution	 <p>There was some support but the overwhelming response was neutral with either no concerns or comments. Two responded with specific support and nearly 90% had no concerns with the proposal.</p>
Concern Level	<p>Only one respondent had concerns with this proposal.</p> 
Comments	<ul style="list-style-type: none"> › One respondent commented that their organisation already applies the proposal › One respondent supported the proposal and suggested that the JFSC should consider extending the retention period for pension transfer records owing to their “high risk nature and long term nature” › One respondent requested clarification “In instances where the client record retention rules appear to conflict with the Data Protection (Jersey) Law 2018 / GDPR”; two other respondents had similar comments
	<p>JFSC Response:</p> <ul style="list-style-type: none"> k. There is currently a Government consultation on pension regulation in Jersey, as a result the JFSC will be considering what changes will be required to the IB Code l. GDPR, and its Jersey equivalent, the Data Protection (Jersey) Law, 2018 do not have prescribed retention periods that dictate how long personal data should be retained. Instead, they provide that personal data should not be held for longer than is necessary for the legitimate purposes for which it was collected. Accordingly, where there is an IB Code requirement for personal data to be held for a certain period this will amount to a legitimate purpose, and holding the data for the period required under the IB Code will not be a breach of GDPR or its Jersey equivalent m. A review of all the Codes of Practice is being considered by the JFSC and in such an event standardised wording would be used were possible, please refer to CP10 2018 for further detail.
Outcome	The code will be implemented as per the original CP.
Code to be Implemented	<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>

3.2.2 Client records: appropriate record keeping	
Requirement	Appropriate record keeping, even if the origin is via a telephone call.
Support Distribution	 <p>There was some support but the overwhelming response was neutral with either no concerns or comments. Two responded with specific support and over 90% had no concerns with the proposal.</p>
Concern Level	<p>No respondents had concerns with this proposal.</p> 
Comments	There were four respondents who sought clarification regarding the proposal, and the implications for telephone record keeping.
	<p>JFSC Response:</p> <ul style="list-style-type: none"> › The proposed amendment related only to the record retention period in respect of telephone calls under 3.7.8 of the IB Code › The proposed removal of the note has created more confusion rather than clarifying the IB Code › It should be noted that 3.7.7 of the IB Code refers to all client records › Some record must be kept irrespective of the origin of the record, the removal or presence of Note 1 does not impact this requirement
Outcome	The proposed CP amendment to Note 1, related to Record Keeping retention period for tape recordings of telephone conversations, will not take place. The IB Code will remain unchanged in this regard.
Code to be Implemented	<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>

3.3

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


Transparency


3.3.1 Transaction confirmations	
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.
Support Distribution	

	There was one response with specific support and a little over 60% had no concerns with the proposal.
Concern Level	<p>Eight respondents had concerns with this proposal, the equal most of any of the proposals, and this is combined with the skew of only one supporting comment.</p> <p>Least Most</p>
Comments	<ul style="list-style-type: none"> › One respondent gave their support for the proposal with no further comments › There were eight responses with concern for the proposal and all of them centred on the quarterly periodicity requirement as overly burdensome for some clients and businesses › One respondent further suggested that the proposal was potentially in conflict with the Financial Services (Investment Business (Client Assets)) (Jersey) Order 2001 › One respondent requested clarification on how to apply the proposal <p>JFSC Response:</p> <ul style="list-style-type: none"> › The JFSC understands and agrees with the concerns raised, and is no longer proposing to set a minimum reporting period › We note the requirements in the CAO and have included a waiver if the client requests to allow for confirmations not to be provided
Outcome	The CP proposal will not be implemented as originally proposed; we have added a waiver if the client requests to allow for confirmations not to be provided.
Code to be Implemented	<p>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. No confirmation needs to be provided where the client has consented in writing to not receive such confirmation.</p> <p>[in this instance the tracked changes show the difference from the current IB Code to the Code to be implemented, as the tracked change version against the CP proposal would not be helpful to the reader]</p>

3.3.2 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).
Support Distribution	<p></p> <p>There was one response with specific support and nearly 90% had no concerns with the proposal.</p>
Concern Level	<p>2 respondents had concerns with the proposal.</p> <p>Least Most</p>



<p>Comments</p>	<ul style="list-style-type: none"> › One respondent gave their support for the proposal with no further comments › One respondent was concerned that “Advisers should not be precluded from negotiating/agreeing preferred products and discounts for their clients.” › One concern was raised but referred to a proposal from a different question › One respondent recommend the addition of "or unacceptable levels of gifts or entertainment" after "... non monetary benefits such as incentives for discounts and/or preferred products" to Note 3 › Three respondents requested guidance on Note 3 › One respondent suggested “that soft commissions are expressly referred to in the Note to Code 4.8” › One respondent stated “[that we] are not clear what might be meant by “preferred” and suggest this word is removed as it should related to all products.” <p>JFSC Response:</p> <ul style="list-style-type: none"> › The JFSC agrees that advisers should be able to negotiate preferred products and discounts for their clients; we consider that the proposal allows this to occur but without inducements or soft-commission influencing that process › The requests for clarification or guidance are noted and the JFSC recognises that the wording can be simplified
<p>Outcome</p>	<ul style="list-style-type: none"> › The code will be implemented as per the CP which removes the reference to ‘remuneration by way of’ and as further adapted by proposal 3.3.3 below › The Principle 4 Note 3 proposal will be altered as per below in response to the feedback
<p>Code to be Implemented</p>	<p>[Append to Principle 4 Notes]</p> <p>Notes:</p> <p>3 For the purpose of 4.8 commission includes monetary and/or non-monetary benefits that may influence a registered person’s decisions.</p> <p>[in this instance the tracked changes show the difference from the current IB Code to the Code to be implemented, as the tracked change version against the CP proposal would not be helpful to the reader]</p>

<p>3.3.3 Retail Client Commission by Region</p>	
<p>Requirement</p>	<p>Permission for commission to be received according to the region of the residence of the retail client.</p>
<p>Support Distribution</p>	 <p>There were two responses with specific support and nearly 80% had no concerns with the proposal.</p>



<p>Concern Level</p>	<p>3 respondents had concerns with the proposal.</p> <p>Least  Most</p>
<p>Comments</p>	<ul style="list-style-type: none"> › One respondent was concerned that the record requirement in Note 4 would be onerous if required at the client level and suggested that this could be better fulfilled via a central record for each region › One respondent was concerned that the proposal would increase complexity for their organisation › One respondent asked if the JFSC would apply any grandfathering to minimise any potential “administrative burden of transferring all existing client holdings to the ‘non trail commission’ class of a fund” › One respondent was “unclear why the residency of a retail investor should entitle a Jersey regulated company to receive commission” and was further concerned that “accepting commissions in respect of a particular customer may result in inequitable treatment” <p>JFSC Response:</p> <ul style="list-style-type: none"> › Firstly the JFSC agrees with a number of the concerns and has decided not to make the proposed code change, but rather to provide a modified note relating to regulations of the respective jurisdictions of non-Jersey resident Retail Clients › Regarding the acceptance of commissions at all; Industry gave us feedback in the working groups that as a result of different regions evolving different products and different rules related to commission handling, a solution was required that ensures retail clients are not disadvantaged based on their residence
<p>Outcome</p>	<p>With the exception of the addition of a Note 4, the original code will remain unchanged. Note 4 states that the regulations of the respective jurisdictions of non-Jersey resident Retail Clients should be considered carefully.</p>
<p>Code to be Implemented</p>	<p>4.8 A registered person carrying on Class C or Class D investment business is not permitted to receive commission from product providers for investment advice services provided to Jersey resident Retail Clients, with the following exceptions:</p> <p>[...]</p> <p>Notes:</p> <p>4 For the purpose of 4.8, in respect of non-Jersey resident Retail Clients, the regulations of the respective jurisdictions should be considered carefully.</p> <p>[in this instance the tracked changes show the difference from the current IB Code to the Code to be implemented, as the tracked change version against the CP proposal would not be helpful to the reader; a further clarification is that the deletion of the wording “remuneration by way of” is related to the proposal 3.3.2 and not this proposal 3.3.3]</p>

3.4

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

3.4.1 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.
Support Distribution	 <p>There was one response with specific support and nearly 90% had no concerns with the proposal.</p>
Concern Level	<p>Two respondents had concerns with this proposal.</p> 
Comments	<ul style="list-style-type: none"> › One respondent gave their support for the proposal with no further comments › Two respondents indicated that they already apply the principle but one requested clarity on some of the terms in the wording › One respondent did “not consider that repetition strengthens the requirement” and that “it only serves to unnecessarily increase the length of the IB Code.” › Two respondents were concerned that the broad scope of the proposal could be challenging for large groups and multi-licensed businesses to adhere to
	<p>JFSC Response:</p> <ul style="list-style-type: none"> › The JFSC agrees with the majority of the comments › In response to the comment that this raises complexity for larger organisations we have amended the proposal to narrow the scope to refer to the impact on Jersey regulated activities of the registered person › The addition of a requirement as opposed to just a note strengthens the status
Outcome	The proposed code will be implemented as per the CP, with amendments based on the feedback.
Code to be Implemented	<p>[Insert post 6.4 – last paragraph in General Notifications]</p> <p>General Notifications</p> <p>6.5 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 Jersey regulated activities of the registered person.</p> <p>[tracked changes show the difference from the CP proposal to the Code to be implemented]</p>



3.4.2 OTC Derivative Reporting



Requirement	Exposure reporting for all OTC derivative trading not compliant with EMIR or EMIR equivalent 3rd countries.
Support Distribution	 <p>There were two responses with specific support and nearly 80% had no concerns with the proposal.</p>
Concern Level	<p>Three respondents had concerns with this proposal.</p> 
Comments	<ul style="list-style-type: none"> › There were a number of requests for clarification and concerns raised with regard to the nature of the reporting that would be required › One respondent was concerned that the reporting would require systems development to implement › One respondent was concerned that if the UK leaves the European Union there is uncertainty over its equivalence <p>JFSC Response:</p> <ul style="list-style-type: none"> › In light of the feedback we do not consider there is a need to amend the wording of the proposed IB Code requirement, however we agree that further detail would need to be provided in the form of JFSC guidance with regard to the nature and format of the reporting › The JFSC understands the concern related to the reporting; the intention is for only a very limited number of registered persons to have to fulfil this requirement and even then for the reporting to be very simple › This JFSC agrees that the current proposal may be problematic if the UK leaves the European Union and its EMIR-equivalence is affected
Outcome	<p>Given the Brexit uncertainty we propose not implementing this proposal until there is longer-term clarity on the UK’s EMIR-equivalence. The JFSC will review this position in the second half of 2019. If the UK’s EMIR equivalence status remains unchanged this proposal will be implemented with JFSC guidance and the JFSC will provide a reasonable implementation period; the wording of the proposed IB Code as per the CP is provided below:</p> <p>6.7 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.</p>
Code to be Implemented	The proposed code will not be implemented at this stage.



4 Feedback on Proposals related to Legislative Changes

The JFSC thanks the respondents for their feedback in respect of the in-principle proposals related to legislative changes. This feedback will be incorporated into any proposals that we recommend to Government for changes to the FSJL and the CAO. The intention is to proceed with all of the proposals and make legislative suggestions to Government that will then follow the usual consultation process. Further research and consideration to the feedback received will help determine the precise nature and scope of the proposals that we take forward to Government.



FSJL

4.1.1 Advice on “holding” an investment	
4.1	<p>Requirement</p> <p>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.</p>
	<p>Support Distribution</p>  <p>There were two responses with specific support and roughly 70% had no concerns with the proposal.</p>
	<p>Concern Level</p> <p>5 respondents had concerns with this proposal; the 3rd most.</p> 
	<p>Comments</p> <ul style="list-style-type: none"> › Clarification was requested as to the frequency and duration of fulfilling the requirement and whether guidance would be provided › Concern was raised as to whether the proposal was in line with MiFID II and UK FCA requirements › One respondent commented that advising a customer to hold or continue to hold an investment is advising a customer not to sell and is therefore already caught within the Law, and held the view that the FCA regulates “holding” similarly (e.g. it is caught within the activity of selling) <p>JFSC Response:</p> <ul style="list-style-type: none"> › This proposal relates to the class of IB in respect of the provision of advice, and its extension such 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. This proposal does not relate to the custodial activities of a registered person › We will be further reviewing the equivalent positions under MiFID II and UK FCA requirements
	<p>Outcome</p> <p>The intention is to proceed with the proposal and make legislative suggestions to Government, that would then follow the usual consultation process.</p> <p>Further research and consideration to the feedback received will help determine the precise nature and scope of the proposal that we take forward to Government.</p>

4.1.2 Financial derivatives	
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).
Support Distribution	 <p>There were two responses with specific support and over 90% had no concerns with the proposal.</p>
Concern Level	<p>No respondents had concerns with this proposal.</p> 
Comments	<ul style="list-style-type: none"> › A question was raised as to whether forward FX trades would fall within the scope of financial derivatives under the revised Schedule 1 › A respondent had no concerns in respect of the proposal to amend Schedule 1 of the FSJL to future-proof the breadth of the definition of financial derivatives
	<p>JFSC Response:</p> <ul style="list-style-type: none"> › Forward FX trades will be reviewed and may fall into scope; we recognise the requirement to consider the settlement period
Outcome	<p>The intention is to proceed with the proposal and make legislative suggestions to Government, that would then follow the usual consultation process.</p> <p>Further research and consideration to the feedback received will help determine the precise nature and scope of the proposal that we take forward to Government.</p>

4.1.3 Arranging	
Requirement	The activity of “arranging” to be added as a new class of IB
Support Distribution	 <p>There were four responses with specific support and 67% had no concerns with the proposal.</p>
Concern Level	<p>4 respondents had concerns with this proposal; the 4th most</p> 
Comments	<ul style="list-style-type: none"> › Comments were received in respect of the definitions of dealing and arranging and whether guidance would be provided in relation to an appropriateness test › Concern was raised as to whether the proposal was in line with MiFID II and UK FCA requirements › Clarification was requested in respect of the interaction with TCB and FSB activities



	<ul style="list-style-type: none"> › There was a request to consider the impact on existing licence holders and as to whether “grandfathering”/a transitional period would apply › Clarification was requested on the scope of exemptions, such as for professional investors and other regulated activities
	JFSC Response: the above comments will be carefully reviewed by the JFSC as part of the further consultation
Outcome	<p>The intention is to proceed with the proposal and make legislative suggestions to Government, that would then follow the usual consultation process.</p> <p>Further research and consideration to the feedback received will help determine the precise nature and scope of the proposal that we take forward to Government.</p>

4.1.4 Exchange business	
Requirement	Legislation for a supervisory regime and powers to write codes of practice regarding exchange business
Support Distribution	 <p>There were four responses with specific support and over 80% had no concerns with the proposal.</p>
Concern Level	<p>No respondents had concerns with this proposal.</p> 
Comments	<ul style="list-style-type: none"> › Clarity on the scope for the proposal was requested › It was queried which international standards would be considered when setting the parameters › A question was raised as to the interaction with arranging <p>JFSC Response: the above comments will be carefully reviewed by the JFSC as part of the further consultation</p>
Outcome	<p>The intention is to proceed with the proposal and make legislative suggestions to Government, that would then follow the usual consultation process.</p> <p>Further research and consideration to the feedback received will help determine the precise nature and scope of the proposal that we take forward to Government.</p>

4.2

CAO

4.2.1 3 rd party due diligence and transparency on disclosure of protection in overseas regimes (20)	
Requirement	<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.

<p>Support Distribution</p>	 <p>There were three responses with specific support and just under 90% had no concerns with the proposal.</p>
<p>Concern Level</p>	<p>No respondents had concerns with this proposal.</p> 
<p>Comments</p>	<ul style="list-style-type: none"> › Clarification was requested in respect of the definition of “third party” if this was to be included within any amended version of the Client Asset Order › It was queried whether the word “selection” was too narrow and consideration should be given to include an “ongoing” requirement › Clarification in respect of the disclosure of the applicability of any financial compensation scheme was requested › A transitional period was requested <p>JFSC Response:</p> <ul style="list-style-type: none"> › This proposal relates to the application of appropriate due diligence on the selection of 3rd parties by a registered person › The comments will be carefully reviewed by the JFSC as part of the further consultation
<p>Outcome</p>	<p>The intention is to proceed with the proposal and make legislative suggestions to Government, that would then follow the usual consultation process.</p> <p>Further research and consideration to the feedback received will help determine the precise nature and scope of the proposal that we take forward to Government.</p>

Appendix A: List of Respondents

- › APW Investors Limited
- › Barclays Bank Plc Jersey Branch
- › Envestors (C.I.) Limited
- › HSBC Bank Plc
- › Lloyds Bank International Limited
- › Ravenscroft Limited
- › Standard Bank Jersey Limited
- › Standard Chartered Bank, Jersey Branch
- › SWM Limited
- › TISE - The International Stock Exchange Group Limited
- › Vantage Limited
- › Five Advisor, Manager, Dealer Entities
- › A Bank (via Jersey Finance)
- › An Insurance Company (via Jersey Finance)
- › An Investment Manager (via Jersey Finance)
- › A Law Firm (via Jersey Finance)
- › A Regulatory Consultant (via Jersey Finance)
- › 3 other respondents (via Jersey Finance)

Appendix B: Code to be implemented

The proposed changes are applied here and this is the IB Code to be implemented.

[Code to be implemented](#)

Appendix C: Target Code with visible changes

The differences with respect to the current IB Code and the IB Code to be implemented.

[Target Code with visible changes](#)