



**Jersey Financial
Services Commission**

Guidance notes

Suitability of Advice under the Code of Practice for Investment Business

Issued: 31 October 2019

Glossary of terms

Defined terms are indicated throughout this document as follows:

Abbreviation	Full Name
FCA	Financial Conduct Authority (UK)
FSJL	Financial Services (Jersey) Law 1998
IB Code	Code of Practice for Investment Business
JFSC	Jersey Financial Services Commission
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 Introduction

- 1.1 The Jersey Financial Services Commission (**JFSC**) first published guidance in respect of Suitability of Advice in July 2008.
- 1.2 During the course of 2018, the JFSC consulted with the Investment Business sector on proposed enhancements to the Investment Business Regime, and issued its feedback paper on that consultation in December 2018.
- 1.3 The majority of respondents were in favour of the enhancements to the Code of Practice for Investment Business (**IB Code**), but some did request guidance from the JFSC in order to clarify its expectations in several areas.
- 1.4 As such the JFSC is producing a number of Guidance Notes in order to outline its expectations for those areas.

2 Scope

- 2.1 The guidance in respect of Suitability of Advice is now being refreshed to incorporate updated requirements, as set out in the IB Code, relating to Suitability Letters.

3 Code requirements

- 3.1 The regulatory requirements with regards to Suitability of Advice, as set out below, are addressed under Principle 2 of the IB Code which states that - A registered person must have the highest regard for the interests of its clients.
 - 2.6 A registered person must have conducted due diligence and assessed all of the relevant features of the products and/or providers in terms of suitability for its clients, before these can be recommended or invested in.
 - 2.7 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:
 - 2.7.1 The facts disclosed by that client;
 - 2.7.2 The terms of any agreement with that client;
 - 2.7.3 The risk tolerance, the willingness and ability to bear losses of that client; and
 - 2.7.4 Any other relevant facts about the client of which the registered person is, or reasonably should be, aware.
 - 2.8 Where a registered person is responsible for providing advice, it must:
 - 2.8.1 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;
 - 2.8.2 Explain to its client, in writing, details regarding relevant risk warnings;
 - 2.8.3 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;

- 2.8.4 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;
 - 2.8.5 Explain to its client, in writing, details regarding the cost breakdown as required by paragraph 4.6 of the Code; and
 - 2.8.6 Disclose to its client details of any cooling-off periods that may be a feature of investment products recommended.
- 2.9 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.
- 2.10 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.

4 Enhancements to IB Code effective 1 June 2019

- 4.1 Following the enhancements to the Code, which became effective on 1 June 2019, the JFSC also expects that registered persons should highlight to clients in Suitability Letters:
- › the client's risk tolerance and willingness and ability to bear losses;
 - › whether, in accepting advice or services provided by a registered person, the client has recourse to any form of investor compensation scheme which the client can turn to in the event of a claim against a registered person relating to advice or services provided;
 - › information as to the provisions of any such investor compensation scheme;
 - › clarification as to whether the advice or services provided by a registered person fall within the regulatory framework; and
 - › explain to its *client*, in writing, details regarding the cost breakdown as required by paragraph 4.6 of the IB Code.
- 4.2 With regards to whether the services fall within the regulatory framework, the JFSC has in the past identified instances whereby registered persons have, as part of their services, provided advice to clients in respect of investments/products which do not fall within the definition of an investment as defined in the FSJL, and which advice would therefore not be covered by the JFSC's remit.
- As a result of this, the JFSC issued, in June 2016, [a press statement warning about non-regulated investments](#).
- 4.3 The JFSC is of the view that it is imperative to make clear to clients in Suitability Letters that any products or services which are not captured within the current regulatory framework are not afforded the same regulatory protections as so called regulated products and services.
- 4.4 A further change was made to the IB Code with paragraph 2.10 of the IB Code requiring that "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”.

- 4.5 The JFSC would expect registered persons, as a result of the enhancements made to the IB Code, to undertake a full reassessment of the contents of Suitability Letters, and their policies and procedures in this regard, to ensure that the enhanced requirements are being met.

5 Suitability Letters

- 5.1 The JFSC expects a registered person to tailor a Suitability Letter to each individual client and for the content of the letter to be written using clear, jargon-free language.
- 5.2 A Suitability Letter should explain clearly to the client how, and why, any recommendations are suitable for them, having regard to the client’s personal and financial circumstances (Including willingness and ability to bear losses), their investment objectives, risk tolerance and time horizon (including any period for which they may be willing to accept restricted access to their money).
- 5.3 A Suitability Letter that fulfils the above requirements should not only result in the client being better informed about the appropriateness of an adviser’s recommendations for their needs, but should also give the client an opportunity to identify any areas where they may wish to seek further clarification prior to the investment transaction taking place.
- 5.4 During the course of its supervision of the investment business sector, the JFSC has identified examples of Suitability Letters which it considers are in compliance with regulatory requirements, and others which are not.
- 5.5 As a result, there is certain information that the JFSC believes should be provided within Suitability Letters where applicable:
- › the reasons for each recommendation, including explicit references to how these relate to the client’s objectives, risk tolerance and willingness and ability to bear losses;
 - › an explanation of each product that is being recommended, together with an outline of the main consequences (and any disadvantages) of each recommendation, i.e. a balanced view;
 - › any alternative products or providers that were considered by the adviser prior to the final recommendation being made, and why such products were not deemed suitable;
 - › all associated fees and charges including commissions (and relevant breakdown as per paragraph 4.6 of the IB Code) and any potential penalties associated with the investments recommended;
 - › details with regards to the client’s access to the money that is to be invested, together with details of any free switches that may be available;
 - › details of what remuneration the registered person may receive in respect of the recommended transaction;
 - › a conclusion as to why the investment is suitable for the client and their circumstances;
 - › reference to any other financial needs that were identified from the fact-finding process, and whether advice is being provided on these;

- › whether, in accepting advice or services provided by a registered person, the client has recourse to any form of investor compensation scheme which the client can turn to in the event of a claim against a registered person relating to advice or services provided;
- › information as to the provisions of any such investor compensation scheme;
- › clarification as to whether the advice or services provided by a registered person fall within the regulatory framework; and
- › whether the registered person will be undertaking any periodic reviews of the product or service that is being recommended and, if so, the frequency at which the client can expect these to occur.

6 General

- 6.1 Whilst this guidance note offers a range of actions that a registered person might take in respect of various investment scenarios where advice has been provided, it must be emphasised that this guidance is not prescriptive and that a registered person may adopt other appropriate measures to those set out in this note. Such measures may include policies and procedures that may already be in place or may, in the case of a registered person forming part of a wider group, have been established by group.
- 6.2 Registered persons should ensure that periodic reviews are undertaken of Suitability Letters to ensure that they remain fit for purpose.
- 6.3 The JFSC is aware that for some investment products that involve underwriting, such as long-term insurance contracts, it may not always be practicable for a registered person to provide a client with an accurate Suitability Letter at an early stage in the advice process, as certain details (such as the premium payable) may alter in the period between the recommendation being made and the policy going 'on risk'.
- 6.4 In such instances, the JFSC would find it acceptable for a Suitability Letter to be provided to the client at a later stage in the process, although this should be issued to the client promptly once any variable details have been confirmed.
- 6.5 For investments that do not require underwriting however, a registered person should provide a Suitability Letter to the client at the time, or as soon as possible after the advice has been given.

7 Suitability of Advice

- 7.1 All registered persons licensed to give investment advice (holders of Class C or D investment business registration) should be able to evidence why the advice that has been given to a client is suitable.
- 7.2 The JFSC acknowledges that investment businesses service a wide range of clients, from retail to institutional, with varying levels of investment experience. Registered persons should therefore identify an advisory process which is both compliant with the IB Code requirements, and appropriate to the business being undertaken.
- 7.3 The following scenarios are designed to provide examples of the JFSC's expectations with regards Suitability of Advice:

7.4 Scenario 1

Mrs A is a pensioner who has £200,000 to invest following the sale of her house and has contacted her IFA for advice. Mrs A has been a housewife for all of her life and has little knowledge or experience of investments.

As a pensioner, and an inexperienced Retail Client, Mrs A would not be expected to have a willingness to bear losses.

The registered person should conduct an initial review of the client's circumstances against its own vulnerable persons policy to consider whether this should be applied in this instance and additional protections afforded where appropriate.

Where investment advice has been provided to this client, the JFSC would expect the following documents (or similar) to be provided to the client:

- › A Suitability Letter which should be provided to the client prior to any transaction taking place and should ideally be countersigned by the client. It must include all the relevant information as per sections 2.7 and 2.8 of the IB Code. It should also explain the possible consequences and risks of investing in products and services that are either regulated or unregulated, or covered or not covered by a compensation scheme. It should also provide details of any purported guarantees and the limitations and risks associated with any such guarantees (such as counterparty risk).
- › A Key Features Document and explanatory material from the product provider. Such information should always be forwarded to the client promptly upon receipt, with a copy retained by the registered person.
- › A covering letter and/or personal illustration which should also highlight and explain, among other things:
 - › the charging structure (which should already have been disclosed) with a full "no surprises" breakdown of all costs;
 - › any penalties for early surrender;
- › A confirmation of the investment transaction, which should be sent to the client promptly after each transaction. 'Promptly' means no later than one business day following the transaction or within any period specified by the client.
- › A report should be provided to the client regarding the performance of products and services against relevant benchmarks.

7.5 Scenario 2

- › Mr B is a successful businessman who speaks regularly with his stockbroker in connection with his portfolio of investments and possible additions to the portfolio.
- › A full assessment of the client's circumstances should be completed at the outset of the relationship, in line with the registered person's suitability processes, and ensure key documentation has been issued to the client in this regard, including an initial suitability letter (or equivalent document) and service level agreement, setting out how the relationship will be managed.
- › Where additional investment advice has been provided to this client, the JFSC would expect (as a minimum) the following documents (or similar) to be issued, depending on the client's stated requirements:
 - › A record of the telephone conversation and/or a document retained on the client's file or the registered person's system, evidencing any recommendations made with reference to why they are appropriate for the client, having regard to the

information held by the registered person concerning the client's circumstances and investment objectives.

- › Confirmation of each investment transaction (e.g. contract note) which should be sent promptly after each transaction. 'Promptly' means no later than one business day following the transaction or within such period as has been agreed with the client. This should contain reference to the fact that the deal was undertaken on an advisory basis, if applicable.