Jersey Financial Services Commission

Consultation paper on disclosure requirements related to Sustainable Investments

- Certified Funds Code of Practice
- Investment Business Code of Practice
- Fund Services Business Code of Practice and
- Jersey Private Fund Guide

Consultation No. 1 2021

Includes Feedback on Consultation No. 4 2020

Issued: March 2021

Consultation Paper

The Jersey Financial Services Commission (**JFSC**) invites comments on this consultation paper by the 23 April 2021. If you require any assistance, clarification or wish to discuss any aspect of the proposal prior to formulating a response, contact the JFSC.

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Alternatively, Lisa Springate at Jersey Finance Limited (**JFL**) is coordinating an Industry response that will incorporate any matters raised by local businesses.

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It is the policy of the JFSC to summarise or make the content of responses available for public inspection (unless specifically requested otherwise by the respondent).

It is the policy of JFL (unless otherwise requested or agreed) to collate all responses and share them verbatim with the JFSC on an anonymised basis (with reference made only to the type of respondent, e.g. individual, law firm, trust company etc.). This collated, anonymised response will, typically, be placed in JFL's permanent electronic archive which is currently open to all JFL members.

Glossary of Terms

Defined terms are indicated throughout this document as follows:

Abbreviation	Full Name
Commission Law	Financial Services Commission (Jersey) Law 1998, as amended
Code	Code of Practice
CP	Consultation Paper
CP4 2020	Consultation No. 4 2020
Sustainable Investments	An investment which contributes to either an environmental or social objective.
FSJL	Financial Services (Jersey) Law 1998
IB	Investment Business
IB Code	Investment Business Code of Practice
CIF Code	Certified Funds Code of Practice
FSB	Fund Services Business
FSB Code	Fund Services Business Code of Practice
JPF	Jersey Private Fund
JPF Guide	Jersey Private Fund Guide
JFSC	Jersey Financial Services Commission
Registered person	a person who is registered by the JFSC under Article 9 of the FSJL

Contents

1 Executive Summary 5

1.1 Overview 5

1.2 Who would be affected? 5

1.3 Costs & Benefits 5

2 Consultation 6

2.1 Basis for consultation 6

2.2 Responding to the consultation 6

2.3 Next steps 6

3 The JFSC 7

3.1 Overview 7

3.2 The JFSC's functions 7

3.3 Guiding principles 7

4 Summary of Proposed Amendments 8

5 Questions 9

6 Appendices 10

6.1 Specific Code and Guide Changes 10

6.2 Feedback 11

1 Executive summary

1.1 Overview

The JFSC recently consulted on proposals to address the risk of Sustainable Investments being mislabelled, a phenomenon commonly known as greenwashing. This was in response to growing international concern about firms marketing investments that appear more environmentally and socially focused than they really are, and changes to international regulation.

In late 2020 and early 2021, the JFSC engaged with all of the respondents to Consultation No. 4 2020 (**CP4 2020**) and several other parties. This allowed the JFSC to find ways to introduce regulation that is commercially viable, proportionate to Jersey, and of the highest international standard. Feedback from CP4 2020 and the engagement process is summarised in Appendix 6.2.

This consultation paper (**CP**) seeks feedback on new proposals to enhance various codes of practice (**Codes**) and the Jersey Private Fund Guide.

1.2 Who would be affected?

The proposals in this CP may affect:

- Certified Funds by way of the Certified Funds Code of Practice (**CIF Code**)
- Fund Services Businesses (**FSB**) by way of the FSB Code of Practice (**FSB Code**)
- Jersey Private Funds (**JPF**) and their service providers by way of the JPF Guide (**JPF Guide**)
- Investment Businesses (**IB**), that provide investment advice, by way of the IB Code of Practice (**IB Code**)

1.3 Costs and benefits

The JFSC recognises the potential costs to Industry when amending Codes and guidance, and has considered this carefully. The proposals in this paper will, in aggregate, improve the clarity of Sustainable Investment requirements, enhance consumer protection and contribute towards the Island continuing to meet international standards. The intention isn't to limit investment in Sustainable Investments, but rather to guard against greenwashing and as such ensure the funding goes where it is intended.

2 Consultation

2.1 Basis for consultation

The JFSC has issued this CP in accordance with Article 8(3) of the Financial Services Commission (Jersey) Law 1998, as amended (**Commission Law**) under which the JFSC "may, in connection with the carrying out of its functions …consult and seek the advice of such persons or bodies whether inside or outside Jersey as it considers appropriate".

2.2 Responding to the consultation

- The JFSC invites comments in writing from interested parties on the proposals.
- A response form has been published alongside this consultation. Respondents should use this form when providing feedback.
- Comments should be received no later than 23 April 2021.

2.3 Next steps

- The JFSC aims to publish feedback in Q2 2021.
- The JFSC will join the steering committee of Jersey Finance's *Vision for Sustainable Finance*.
- This is a fast moving sector and we will continue to seek enhancements to Jersey's regulatory regime where and when appropriate.
- The JFSC is a member of a number of local and international groups focussed on sustainable finance. We will consider membership of other networks and groups to best represent Jersey.

3 The JFSC

3.1 Overview

The JFSC is a statutory body corporate established under the Commission Law. It is responsible for the supervision and development of financial services provided in or from within Jersey.

3.2 The JFSC's functions

Article 5 of the Commission Law prescribes that the JFSC shall be responsible for:

- the supervision and development of financial services provided in or from within Jersey;
- providing the States of Jersey, any Minister of any other public body with reports, advice, assistance and information in relation to any matter connected with financial services;
- preparing and submitting to the Minister recommendations for the introduction, amendment or replacement of legislation appertaining to financial services, companies and other forms of business structure;
- 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
    - such other functions as are conferred on the JFSC by any other Law or enactment.

3.3 Guiding principles

Article 7 of the Commission Law sets out the JFSC's guiding principles which require the JFSC to have particular regard to:

- 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;
- the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;
- the best economic interests of Jersey; and
- the need to counter financial crime in both Jersey and elsewhere.

4 Summary of proposed amendments

Definition of Sustainable Investment
An investment which contributes to either an environmental or social objective.

Requirements related to Funds	
When a Fund/JPF/Registered person has a Sustainable Investment as part of its investment objective, that is marketed in accordance with that objective, it must disclose (via website or pre contractual document/prospectus or documents in which the terms of investing in the Fund/JPF are contained such as a subscription agreement) all material information in relation to the Sustainable Investment strategy and objectives; including but not limited to: › alignment with any specific taxonomy or where there is no alignment to a specific taxonomy a statement to that effect; › the proportion of investments that are sustainable; › the basis on which due diligence, benchmarking, and performance measurement and reporting, are likely to be conducted; and › any limitations to methodologies and data.	
Transition Period	Upon effective date for new funds, with a six month transition for legacy funds.

Requirements related to Investment Advice	
When a Registered person provides investment advice to its Client, in relation to Sustainable Investments that are marketed in accordance with that objective, through a fund, the Registered person must inform and make available to the Client, the appropriate disclosure information in relation to the Sustainable Investment strategy and objectives of the fund. If no such information is available the Client must be informed of that fact.	
Transition Period	Six months transition from effective date.

Please refer to Appendix 6.1 for the exact wording for each code of practice and the JPF Guide.

5 Questions

Question 1	Funds Do you have any observations on, or concerns about, the proposed changes to the CIF Code, FSB Code or JPF Guide? If you do, please state in detail what your observation or concern is and the reason for it.

Question 2	Investment Business Do you have any observations on, or concerns about, the proposed changes to the IB Code? If you do, please state in detail what your observation or concern is and the reason for it.

6 Appendices

6.1 Specific Code and guide changes

CIF Code
[Inserted in Glossary] Sustainable Investment: An investment which contributes to either an environmental or social objective.
[Inserted 2.12] When a Fund has a Sustainable Investment as part of its investment objective, that is marketed in accordance with that objective, it must disclose (via website, or pre-contractual document, prospectus, or documents in which the terms of investing in the Fund are contained such as a subscription agreement) all material information in relation to the Sustainable Investment strategy and objectives; including but not limited to: › alignment with any specific taxonomy, or where there is no alignment to a specific taxonomy a statement to that effect; › the proportion of investments that are sustainable; › the basis on which due diligence, benchmarking, and performance measurement and reporting, are likely to be conducted; and › any limitations to methodologies and data.

FSB Code
[Inserted in Glossary] Sustainable Investment: An investment which contributes to either an environmental or social objective.
[Inserted 2.10] When a Registered person provides services in relation to a Fund which has a Sustainable Investment as part of its investment objective, that is marketed in accordance with that objective, the Registered person must disclose (via website, or pre-contractual document, prospectus, or documents in which the terms of investing in the Fund are contained such as a subscription agreement) all material information in relation to the Sustainable Investment strategy and objectives; including but not limited to: › alignment with any specific taxonomy, or where there is no alignment to a specific taxonomy a statement to that effect; › the proportion of investments that are sustainable; › the basis on which due diligence, benchmarking, and performance measurement and reporting, are likely to be conducted; and › any limitations to methodologies and data. With reference to paragraph 2.10, where a Certified Fund is subject to the equivalent requirement contained in the Code of Practice for Certified Funds, the Registered person will need to comply with the paragraph [above] only in the circumstance that Registered person cannot evidence that the

Certified Fund has complied with the equivalent requirement in the Code of Practice for Certified Funds.

JPF Guide
[Inserted: new part L] A Sustainable Investment is an investment which contributes to either an environmental or social objective. When a JPF has a Sustainable Investment as part of its investment objective, that is marketed in accordance with that objective, it must disclose (via website, or pre-contractual document, prospectus, or documents in which the terms of investing in the JPF are contained such as a subscription agreement) all material information in relation to the Sustainable Investment strategy and objectives; including but not limited to: › alignment with any specific taxonomy, or where there is no alignment to a specific taxonomy a statement to that effect; › the proportion of investments that are sustainable; › the basis on which due diligence, benchmarking, and performance measurement and reporting, are likely to be conducted; and › any limitations to methodologies and data.

IB Code
[Inserted in Glossary] Sustainable Investment: An investment which contributes to either an environmental or social objective.
[Inserted 2.30] When a Registered person, provides investment advice to its Client, in relation to Sustainable Investments that are marketed in accordance with that objective, through a fund, the Registered person must inform and make available to the Client, the appropriate disclosure information in relation to the Sustainable Investment strategy and objectives of the fund. If no such disclosure information is available the Client must be informed of that fact.

6.2 Feedback

CP4 2020 Feedback

CP4 2020 feedback highlighted that there is universal support to address the risk of greenwashing and some form of disclosure was an appropriate step in mitigating this risk.

The most consistent theme was that the principle of mitigating the risk of greenwashing was sound but at this point in time, implementation beyond disclosure was impractical (over 75% of the fund respondents had this sentiment). There was also an initial concern that the JFSC wished these proposals to apply to any fund that contained an element of Sustainable Investment, even if not marketed as such. We quickly updated the consultation to mediate this concern, so that requirements would apply only when a fund is specifically marketing on that premise.

Other notable feedback included:

› the requirement for bespoke taxonomy and verification is just not viable yet (costs, goes further than other regimes), and could lead to only carbon based strategies being able to be compliant.
› recommendation to go no further than the EU regime, and indeed tailor that more simply to Jersey.
› concern that the JFSC saw sustainable finance as *"a problem to be solved, rather than a positive opportunity and trend that Jersey wants to participate in and promote*".

The two charts below illustrate the feedback sentiment by type of respondent (Chart 1) and by proposal (Chart 2).

Overall, the charts illustrate the conceptual support for mitigating the risk of greenwashing, but with the concern on how this is applied.

Chart 1: Respondents: Distribution and sentiment

The Fund industry represented the majority of respondents.

Chart 2: Proposals: Respondent sentiment

Working Groups - Industry engagement

The JFSC often consults on proposals which are not supported by all respondents. Objections or concerns are not exclusively a reason for the JFSC to alter its position. That being said the feedback provided in CP4 2020 was invaluable and prompted us to engage further with Industry, to collaborate on finding a mechanism to introduce requirements that are commercially viable, proportionate, and of the highest international standard. Participants included the majority of respondents to CP4 2020

and a number of other relevant parties, including local and off-island funds, advisors and asset owners, and a number of independent expert organisations.

These discussions often prompted multiple amendments and tracking back to confirm agreement. The proposal iteratively improved until broad support for the proposal was achieved. Elements of the modified proposal fell into two categories of either support or advising against taking an action, and the sentiment of participants was broadly consistent.

Supported elements

- High level definitions aligned with international terminology
- Scope – the marketing requirement and the contribution towards a sustainable objective
- Method of disclosure
- Content of the disclosure
- Ultimately, a more accessible yet equally effective solution as Europe

Advised against

- Governance requirements – this is not yet agreed internationally and is very hard to measure
- Overly prescriptive definitions – again these are still being agreed upon internationally
- Does No Harm requirement
    - EU Taxonomy still being worked on
    - Our disclosure requirement on any aligned taxonomy will mitigate transparency risk here
- Applying Funds Strategy directly to IB – the international approach is quite different
- Jersey Green Fund – no support for this whilst risks were raised for the operational requirements

The engagement outreach was instrumental in progressing this initiative and the JFSC would like to extend its appreciation to all the parties that played a role in this process.