Jersey Financial Services Commission

Financial Services (Jersey) Law 1998

Code of Practice

For Investment Business

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Glossary

Unless otherwise defined, the following terms when used in the *Code* shall have the meanings set out below. If not defined below or elsewhere in the *Code*, terms, where relevant, have the same meanings as are ascribed to them in the *FS(J)L*.

All terms which appear in this Glossary are reflected in the *Code* utilising *italic* text. Guidance to the *Code* in the form of "Notes" has been placed in a box to highlight its status.

Advertisement(s)	Means financial service advertisement (which is defined in Article 1 of the *FS(J)L).*
ANLA	Means Adjusted Net Liquid Assets.
Anti-money laundering legislation	Includes the Proceeds of Crime (Jersey) Law 1999, the Money Laundering (Jersey) Order 2008 (the **Money Laundering Order**), and the Terrorism (Jersey) Law 2002, as well as any other applicable Laws, all as amended from time to time. It also includes the international sanctions regimes implemented through the Sanctions and Asset-Freezing (Implementation of EU Regulations) (Jersey) Order 2020 and equivalent legislation relating to the implementation of UK sanctions. The legislation must be observed in conjunction with the requirements of the relevant Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism, issued by the JFSC.
Client money	Has the same meaning as provided by Article 1 of the Financial Services (Investment Business (Client Assets)) (Jersey) Order 2001, as amended.
Code	Means the Code of Practice for Investment Business.
Complaint	Means any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a service that relates to investment business carried on by the *registered person,* which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience.
CPD	Means Continuing Professional Development.
Exceptions Regulations	Means the Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002, as amended.
FS(J)L	Means the Financial Services (Jersey) Law 1998, as amended.
Investment employee	Has the same meaning as provided in the investment business fees notice.
JFSC	Means Jersey Financial Services Commission.
Key person	Has the same meaning as provided by Article 1 of the *FS(J)L.*
Money Laundering Order	Means the Money Laundering (Jersey) Order 2008, as amended.

Net assets	Means total assets less total liabilities.
PII	Means Professional Indemnity Insurance.
Principal person	Has the same meaning as provided by Article 1 of the *FS(J)L.*
Registered person	Means a person registered by the *JFSC* under Article 9 of the *FS(J)L* to carry on investment business as defined under Article 2(2) of the *FS(J)L.*
Regulatory framework	Means the legislative and regulatory requirements established in a jurisdiction that are relevant to a *registered person's* class(s) of investment business.
Relevant AML/CFT Handbook	Means the relevant Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism, issued by the *JFSC.*
Sustainable Investment	An investment or investments which contribute to either an environmental or social objective.

Glossary terms relating to client classification

Client	Has the same meaning as provided by Article 1 of the *FS(J)L*, namely: "client", in relation to a *registered person*, means a person, whether resident on or off Jersey, with or for whom the *registered person* transacts or has transacted financial service business (other than trust company business) or gives or has given advice about financial service business (other than trust company business)".
Retail Client	Means a *client* that is not a *Professional Client*.
Professional Client	Means a *client* that is a *per se Professional Client* or an *Elective Professional Client*.
Per se Professional client	Means either a *Large Undertaking* or *Professional Investor*.
Large Undertaking	Means a *client* in relation to which at least two of the following three criteria are satisfied: › Balance sheet total assets of not less than £13,000,000; › Net turnover of "£26,000,000 or greater; or › *Net assets* of £1,300,000 or greater.
Professional Investor	Means, › A government, local authority, public authority or supra-national body (wherever established); or › A person, partnership, unincorporated association or body corporate whose ordinary business or professional activity includes or it is reasonable to expect that it includes acquiring, underwriting,

	managing, holding or disposing of investments whether as principal or agent or the giving of advice on investments.
Elective Professional Client	Means a *Retail Client* who has requested to be, and been reclassified by the *registered person*, in accordance with paragraph 3.8, as a *Professional Client*.

Introduction

Power exercised and scope

The Code of Practice for Investment Business (the **Code**) is issued by the Jersey Financial Services Commission (the **JFSC**) under powers granted to it by Article 19 of the Financial Services (Jersey) Law 1998, as amended (the **FS(J)L**). The Code has been prepared and issued for the purpose of setting out the principles and detailed requirements that must be complied with in the conduct of investment business.

The Code applies to all persons registered by the JFSC under Article 9 of the FS(J)L to carry on investment business as defined under Article 2(2) of the FS(J)L (a **registered person**).

Article 9 of the FS(J)L establishes threshold conditions that apply on an on-going basis – the fit and proper assessment – to registered persons, principal persons and key persons. This assessment process includes consideration of integrity, competence, financial standing, structure and organisation.

The JFSC has published a Policy Statement: Licensing Policy in respect of those that require registration under the FS(J)L Part 2 of which provides further information on the JFSC's "fit and proper" assessment and paragraph 4.5 of which highlights the continuing nature of the fit and proper assessment. The Code assists the JFSC with its on-going consideration of the fitness and propriety of a registered person by setting out actions that the registered person must or must not undertake, which it can then be assessed against.

Persons registered to conduct Class E investment business are permitted to enjoy amended requirements in respect of certain sections of the Code, as set out in the Second Schedule.

Where the Code requires the registered person to provide information to the JFSC, such requirement is established in accordance with the powers provided by Article 8 of the Financial Services Commission (Jersey) Law 1998.

A registered person is reminded that the conduct of investment business involves the carrying on of any of the activities listed in Article 2(2) of the FS(J)L, by way of business in or from within Jersey or, if by a company incorporated in Jersey, in any part of the world; and of the provisions of Article 7 of the FS(J)L in respect of the prohibition of carrying out unauthorised investment business.

Arrangement of the Code

The Code provides enforceable requirements in the form of high level principles supported by detailed rules in the areas of corporate governance, conduct of business and prudential matters and are arranged under seven principles as described below:

The Principles

1. A registered person must conduct its business with integrity.
2. A registered person must have the highest regard for the interests of its clients.
3. A registered person must organise and control its affairs effectively for the proper performance of its business activities, and be able to demonstrate the existence of adequate risk management systems.
4. A registered person must be transparent in its business arrangements.
5. A registered person must maintain, and be able to demonstrate the existence of, adequate financial resources and adequate insurance.
6. A registered person must deal with the JFSC in an open and co-operative manner.

A registered person must not make statements that are misleading, false or deceptive.

Each section of the Code is designed to be understood by reference to its full text including any notes.

Compliance with the Code

The Code should be read by registered persons in conjunction with the FS(J)L and its subordinate legislation, together with any conditions attached to a registration held under the FS(J)L, and the relevant Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism, issued by the JFSC (the **relevant AML/CFT Handbook**).

It is the responsibility of the registered person not only to comply with the Code, but also to implement such additional practices as it considers necessary for the proper management and control of its business. Where a registered person considers that it may not be able to achieve full compliance with the Code for a temporary period (for example, for a short period after first being licensed) it should, in advance, agree a plan of action (to include timescales) with the JFSC to bring itself into full compliance with the Code. In exceptional circumstances where strict adherence to the Code would produce an anomalous result, registered persons may apply to the JFSC for a variation from a Code requirement; this is in addition to those areas where the Code specifically provide for a registered person to apply for a variance to the Code.

Methods of compliance with the provisions of the Code will vary depending on whether Jersey is the home or host jurisdiction of the registered person and the extent of the registered person's physical presence in the Island or elsewhere:

1. A registered person whose home jurisdiction is Jersey shall be subject to the Jersey regulatory framework, including the requirements of the Code. Where such a registered person has subsidiaries or branches outside Jersey, or makes services or products available outside Jersey through brokers or other intermediaries, it must ensure, as far as possible, that the Jersey regulatory framework is applied to those subsidiaries or branches or observed by the brokers and other intermediaries. Where significant differences exist between the host jurisdiction and that of Jersey which would result in non-compliance with
2. the Code; they must be brought to the attention of the JFSC for discussion and resolution.

   A registered person whose home jurisdiction is outside Jersey will be subject to the regulatory framework prescribed in its home jurisdiction and that of Jersey, including the Code. It must therefore satisfy itself that its conduct, procedures, controls and risk management systems comply with the regulatory framework in its home jurisdiction and that of Jersey. Compliance with the home regulatory framework will usually be sufficient to meet a registered person's obligations in Jersey. Should any significant differences emerge between the regulatory framework of the home jurisdiction and that of Jersey, which would result in non-compliance with the Code; they must be brought to the attention of the JFSC for discussion and resolution.

Failure by a registered person to comply with the Code represents grounds for the JFSC to take regulatory action. Where the JFSC has reason to believe that at any time there has been a failure on the part of a registered person to comply with the Code, it may consider making use of its regulatory powers which, in serious cases, could include the revocation of the registration to conduct investment business.

In addition, failure to comply with the Code may support a decision by the JFSC that, for example, continued non-compliance or other failure to remedy the circumstances giving rise to the breach may be addressed by the issue of a written direction under Article 23 of the FS(J)L. Such a direction might impose requirements on a registered person to do or not to do specified things, including the removal of specified individuals or the cessation of business. In appropriate circumstances a direction

can be made public by virtue of Article 25(a) of the FS(J)L. The JFSC also has the power under Article 21A of the Financial Services Commission (Jersey) Law 1998 to impose financial penalties for significant and material contraventions of the Code.

When considering a registered person's failure to comply with the Codes the JFSC places emphasis on whether or not a registered person conducts its business with integrity and deals with the JFSC in an open and co-operative manner.

Whilst Article 19(3) of the FS(J)L provides that the contravention of the Code shall not of itself render any person liable to proceedings of any kind (excluding regulatory action that may be taken by the JFSC in response to a contravention) or invalidate any transaction, Article 19(4) provides that, subject to a condition of registration indicating that any part or parts of the Code are to be wholly or partly disregarded by a registered person, the Code shall be admissible in evidence in any proceedings if it appears to the court, conducting the proceedings, to be relevant to any questions arising in the proceedings and shall be taken into account in determining any such questions.

Where it appears to the JFSC that a person has failed to comply with the Code, it may issue a public statement under Article 25(b) of the FS(J)L.

In a number of places the Code requires the JFSC to be advised of a matter "in writing". For the avoidance of doubt, a notification given by email, or by means of the online portal, will be considered by the JFSC to meet that requirement (unless the particular Code requirement specifies otherwise how a notification "in writing" must be given).

Revision of the Code

In accordance with Article 19(1)(b) of the FS(J)L, the JFSC may, after consultation with such persons or bodies as appear to be representative of the interests concerned, revise the Code by revoking, varying, amending or adding to its provisions.

- In June 2018 the JFSC published Consultation Paper No. 4 (enhancements to the investment business regime) proposing a number of amendments to the Code and, in December 2018, published a feedback paper summarising respondents' comments and the JFSC's responses.
- In November 2019, the JFSC published Consultation Paper No. 10 proposing a number of miscellaneous amendments to the Code and, in March 2019, published a feedback paper summarising respondents' comments and the JFSC's responses.
- In June 2021 the JFSC published the feedback paper to Consultation Paper No.1 2021 regarding disclosure requirements related to Sustainable Investments, including the amendments made to this Code.

Rather than detail the amendments here, the JFSC has published a version of the Code that highlights the amendments applied.

Effective Date

This revised Code is effective from 17 January 2022 for all registered persons.

Any person that has made an application to the JFSC which is currently under consideration, should review the Code and contact the JFSC to discuss any areas where compliance on grant of registration may be an issue.

The Principles

1 A registered person must conduct its business with integrity.

Without limiting the scope of the above principle, a *registered person* must not:

1.1.1 Act or refrain from acting; or

1.1.2 Contract or have any other arrangement,

1.1 So as to avoid, or seek to avoid, any regulatory responsibilities it may have under the *Code* and the full consequences of not following them unless the *Code* expressly permits any such avoidance.

2 A registered person must have the highest regard for the interests of its clients.

A *registered person* must act with due skill, care and diligence to fulfil the responsibilities that it has undertaken.

In determining the means by which it will comply with the requirements under principles 2, 3 and 4 of the *Code*, a *registered person* must take into account any relevant guidance issued by the *JFSC*.

2.1

Knowledge of Client

2.2

Where a *registered person* is responsible for providing advice to or exercising discretion for its *clients*, it must obtain, document and maintain any information about the circumstances (both financial and otherwise) and investment objectives of the *client* that are relevant to the services to be provided.

2.3

Where a *client* declines to provide information concerning their circumstances and investment objectives, a *registered person* must not provide advice to or exercise discretion on behalf of the *client* unless it has first disclosed to the *client* that the lack of such information may adversely affect the service that it can provide.

2.4

Vulnerability

A *registered person* must identify and afford appropriate protection to a vulnerable *client*.

2.5

Suitability

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

2.8

2.7.4 Any other relevant facts about the *client* of which the *registered person* is, or reasonably should be, aware.

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.

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.

2.9 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.

2.10

Conflicts of Interest

2.11 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.

2.12 Where conflicts do arise, a *registered person* must have effective procedures so as to address such conflicts by:

2.12.1 Disclosure;

2.12.2 Applying internal rules of confidentiality;

2.12.3 Declining to act; and/or

2.12.4 Otherwise as appropriate.

2.13

Switching & Churning

2.14 A *registered person* must not advise a *client* to switch nor, in the exercise of its discretion, effect a switch of, long term insurance products, or switch within or between collective investment schemes, unless it is in the *client's* interest to do so.

2.15 With respect to 2.13, the *registered person* must retain written evidence detailing why it is in the *client's* interest to make the switch.

2.16 A *registered person* must not advise a *client* to, nor in the exercise of discretion, enter into transactions with unnecessary frequency, having regard to the *client's* agreed investment objectives.

Front Running

Where a *registered person* or its associate, as defined in Article 1 of the *FS(J)L*, intends to publish to *clients* a recommendation, or a piece of research or analysis, in relation to a particular investment, it must not:

2.16.1 Deal in the investment, or any related investment, on its own account;

2.16.2 Deal in the investment, or any related investment on behalf of an associate; or

2.16.3 Deal ahead of the *clients* for whom the recommendation, research or analysis was intended if those *clients* ought to have priority.

A *registered person* shall not be deemed to have breached 2.16 of the *Code* if it can demonstrate that:

2.17.1 The publication could not reasonably be considered price sensitive;

2.17.2 The *registered person* is a market maker in the investment concerned and the deal was executed or arranged in good faith;

2.17 2.17.3 The *registered person* was dealing in order to fulfil an unsolicited *client's* order; or

2.17.4 The *registered person* has reasonable grounds for believing that it needs to deal in the investment concerned in order to fulfil *client* orders which are likely to result from the publication and that to do so will not cause the price of the investment to move against *clients'* interests by a material amount.

Client Order Priority

A *registered person* must deal with *client* and own account orders fairly and in due turn.

Aggregation

2.18 A *registered person* may only aggregate an order of a *client* with the order of another *client* or of the *registered person*, where it is in the overall best interests of all the *clients*

2.19 concerned, or any possible disadvantage has been disclosed to each *client*.

Fair and Timely Allocation

When allocating orders, a *registered person* must not give unfair preference to itself or to

2.20 any *client* for whom it has dealt.

2.21 Where a *registered person* has aggregated a *client* order with its own or other *clients*' orders it must allocate back to the *client* within 24 hours.

2.22 Where an aggregated order is not completed in full (i.e. A partial fill) a *registered person* must give priority to the *clients*' orders unless it can demonstrate that the transaction would not have happened on such favourable terms without the *registered person's* involvement.

2.23 Timely Execution

Once a *registered person* has agreed with a *client* or decided in its discretion to effect or arrange a *client* order, it must effect or arrange the execution of the order as soon as reasonably practicable in the circumstances, unless postponement is in the best interests of

2.24 the *client*.

Best Execution

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*

2.25 *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

2.26 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).

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.

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.

Notes:

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.*

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.*

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.*

4 *A registered person should have policies to ensure appropriate transactional cost analysis, including top trading venues, is reviewed at least annually.*

Margin Payments

2.27 Where an investment features margin payments a *registered person* must provide a *client* with a written description of such payments and the associated risks.

2.28 A *registered person* must advise a *client* who enters into an investment, which features a margin payment, of the consequences of failing to meet a margin call.

Benchmarking

2.29 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.

2.30 Sustainable Investment

When a registered person provides investment advice to its Client in relation to a fund that is marketed on the basis of investing in a Sustainable Investment as part of its investment objective, 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.

3 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.

Corporate Governance

3.1.1 A *registered person* must operate an effective corporate governance system that must include the following key elements:

3.1

3.1.1.1 Satisfies the *JFSC* it has an adequate regulatory span of control at all times, appropriate to the nature of its business;

3.1.1.2 Responsibilities apportioned in such a way that individual responsibilities and accountabilities are clear and there is separation of critical functions, so as to guard against fraud and market abuse; and

3.1.1.3 The business and affairs of the *registered person* are adequately monitored and controlled at senior management and board level, as appropriate.

3.1.2 Specifically with respect to 3.1.1.1:

3.1.2.1 A *registered person* that is not permitted to control *clients'* assets should effectively be directed by at least two appropriately qualified and experienced individuals (otherwise known as the 'Four Eyes' principle).

3.1.2.2 A *registered person* that is permitted to control *clients'* assets should effectively be directed by at least three appropriately qualified and experienced individuals (otherwise known as the 'Six Eyes' principle).

3.1.2.3 The relationship between the individuals must be such as to ensure that they can all exercise independent judgement without duress or undue influence from one another.

3.1.2.4 The regulatory span of control of a *registered person* must not comprise solely of close family members. Where close family members are eligible to form part of the regulatory span of control, only one member may be counted.

3.1.2.5 Those individuals comprising the regulatory span of control must be actively involved in the day to day management of the business and be able to exercise executive powers on behalf of the *registered person*. As such, any directors that are not actively involved (non-executives), or those who are not locally based, may not form part of the regulatory span of control of a *registered person*.

3.1.2.6 As soon as a *registered person* becomes aware that the regulatory span of control requirement will not be maintained it must notify the *JFSC* in writing. In this respect where a *registered person* has the minimum individuals comprising the regulatory span of control and one of those individuals is absent from the business for a substantial period of time, the *registered person* must contact the *JFSC* to discuss its proposed arrangements such that during this period, the business is

managed and controlled by the appropriate number of locally based individuals.

3.1.3 Clearly defined procedures must be in place so that there is appropriate oversight by the board of directors and senior management in order to address the principles of risk management:

3.1.3.1 An assessment of the risks present in the *registered person's* business must be made, and those risks must be documented, as must the ways in which they are to be monitored and controlled;

3.1.3.2 The *registered person* must maintain accurate and reliable information systems; and

3.1.3.3 The *registered person* must complete timely and appropriate management reporting.

3.1.4 All aspects of corporate governance arrangements must be subject to appropriately regular review to ensure their continuing adequacy in light of the *registered person's* business activities and risk profiles, and include a periodic self-assessment, or external assessment, of the board's effectiveness.

Notes:

1 Corporate governance is the system by which an organisation is directed and controlled. A corporate governance framework specifies the distribution of rights and responsibilities among different participants in the organisation and sets out the rules and procedures for making decisions. Risk management is an integral part of the corporate governance framework. In the context of Principle 3, "risk" refers to ***all*** *the risks that a registered person faces, or may face, as a business enterprise.*

2 Article 74(1) of the Companies (Jersey) Law 1991 states:

"A director, in exercising the director's powers and discharging the director's duties, shall –

(a) Act honestly and in good faith with a view to the best interests of the company; and

(b) Exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances."

3 Depending on the circumstances of the registered person, the JFSC may permit the inclusion of an individual who is actively involved in the day to day management of the business (a senior manager) when considering the regulatory span of control. In this scenario, the JFSC will consider the fitness and propriety of senior managers using the procedure established for considering principal persons and key persons.

4 For the purpose of 3.1.1.2, all individuals having up to date job descriptions may best evidence apportionment of responsibilities. However, the terms of reference relating to particular offices or committees, or Board resolutions, may also demonstrate apportionment of responsibilities.

5 The requirements set out under paragraph 3.1.1 deal with both prudential and conduct of business issues referring as they do, to the ***direction of the business of the registered person itself.*** *As such, this is not a provision that directly governs, for instance, appropriate signatory arrangements for the execution of a specific transaction or exercise of a particular discretion.*

6	*For the purposes of 3.1.2.4, "close family" comprises spouses (including co-habitees), civil partners, children, dependants, parents, brothers, and sisters.*
7	*With respect to 3.1.2.6, the JFSC considers a period in excess of four weeks to constitute a substantial absence from the registered person.*

Internal systems and controls

3.2.1 A *registered person* must:

3.2.1.1 Operate robust arrangements for meeting the standards and requirements of the *regulatory framework*, including:

3.2

3.2.1.1.1 Maintaining, and testing adherence to, a policies and procedures manual covering the operation of the business,

3.2.1.1.2 Establishing effective *complaints* handling systems,

3.2.1.1.3 Ensuring adequate supervision of direct and indirect employees,

3.2.1.1.4 Maintaining procedures governing sole, dual or multiple authorisations for handling both the *registered person's* and *client* assets, and for reconciling movements in *client* assets, and for guarding against involvement in financial crime (including the detection and prevention of money laundering), and

3.2.1.1.5 Ensuring that all transactions or decisions are appropriately authorised by persons with the requisite knowledge and experience to effect such transactions or make such decisions;

3.2.1.2 Undertake a periodic review of the internal control systems to ensure that they continue to work effectively;

3.2.1.3 Keep adequate, orderly and up-to-date records which must include but are not limited to:

3.2.1.3.1 Its business transactions,

3.2.1.3.2 Its financial position,

3.2.1.3.3 Its internal organisation,

3.2.1.3.4 Directors' and staff own account dealings,

3.2.1.3.5 Its risk management systems,

3.2.1.3.6 Its board or management minutes, and

3.2.1.3.7 The relationship between the legal persons/ arrangements forming part of the group subject to registration under the *FS(J)L*;

3.2.1.4 Ensure that adequate business resumption, disaster recovery and other contingency arrangements are in place and tested at appropriate intervals;

3.2.1.5 Ensure that systems are in place to enable management to guard properly against involvement in financial crime, including fraud, market abuse, money laundering and the financing of terrorism;

3.2.1.6 Comply with all relevant legislation, requirements and guidance to counter financial crime including fraud, market abuse, money laundering and the financing of terrorism;

3.2.1.7 Have due regard to the principles of the sound business practice policy[i] document issued by the *JFSC*, irrespective of the jurisdiction in which the entity that it is providing services to was incorporated; and

3.2.1.8 Comply with the *JFSC's* policy on outsourcing as may be updated from time to time.

3.2.2 Where a *registered person* controls *client money* it should implement an independent review of the controls over *client money* on, at least, an annual basis:

3.2.2.1 The review shall verify the effectiveness of the *registered person's* relevant controls over *client money* with particular regard to those controls that prevent the:

3.2.2.1.1 Loss;

3.2.2.1.2 Misuse; and

3.2.2.1.3 Misappropriation of *client money.*

3.2.2.2 The review should be performed by an appropriately qualified independent person who may be an internal or external party:

3.2.2.2.1 Where an internal party performs such review they shall be operationally independent from the individuals or functions within the *registered person* responsible for the operation of the controls under review.

Notes:

1 There is no specific requirement for a registered person to be subject to an internal audit review. However, the JFSC will recognise and take comfort from those registered persons that have effective internal audit controls, or where such functions are provided from elsewhere within a group.

2 Failure to comply with legislation to counter money laundering and the financing of terrorism or the relevant AML/CFT Handbook may form the basis for regulatory action by the JFSC. This is in addition to any legal action that may be taken by the judicial authorities for failure to comply with legislation to counter money laundering and the financing of terrorism.

3 With respect to 3.2.1.8, the JFSC's policy on outsourcing is available from the JFSC's website.

4 With respect to the various risk management provisions under principle 3 of the Code, particularly 3.1, 3.2 and 3.7, it is expected that a registered person will have specifically considered, amongst other risks, the risk of a cyber security incident, and have in place a corresponding documented policy to identify assets and risks, to protect them, to quickly detect potential cyber security incidents, to respond to contain the impact of an incident and to recover from it.

3.3

Integrity and Competence

3.3.1 A *registered person* must:

3.3.1.1 Ensure its directors, senior managers and all other employees are fit and proper for their roles;

3.3.1.2 Assess and monitor the working practices, competence and probity of its directors, partners, senior managers and other employees;

3.3.1.3 Obtain and retain documentary evidence, which is used by the *registered person* to assess, both initially and on an on-going basis, the competence of its employees. Evidence should include, but not be limited to:

3.3.1.3.1 Employer references, and

3.3.1.3.2 Copies of documentary evidence of qualifications held by *investment employees*;

3.3.1.4 Ensure that its employees comply with the following competency requirements:

3.3.1.4.1 All *investment employees* must have obtained a professional qualification appropriate to their role (an up-to-date table of professional qualifications acceptable to the *JFSC* is provided in the Guidance Note: Professional Qualifications (Investment Business) available from the *JFSC's* website, *www.jerseyfsc.org*),

3.3.1.4.2 All *investment employees* must be sufficiently experienced to discharge properly their duties. Where an individual has recently qualified as an *investment employee,* or is new to their role, the *registered person* must take steps to monitor their working practices over and above the ordinary employee monitoring requirements required by 3.3.1.2 of the *Code*, and

3.3.1.4.3 All employees, including directors and senior managers, who do not meet the definition of an *investment employee* will be expected to possess professional qualifications and/or experience appropriate to their role.

3.3.2 With respect to:

3.3.2.1 All *investment employees* (apart from those that meet the exemption criteria of 3.3.2.2) providing investment advice to *Retail Clients* must hold a professional qualification at Qualifications and Credit Framework level 4 or above, or level 3 with gap-fill where relevant.

3.3.2.2 Paragraph 3.3.2.1 does not apply to *investment employees* providing investment advice to *Retail Clients* on long term insurance contracts which fall within classes I, II or IV of Part 1 of Schedule 1 to the Insurance Business (Jersey) Law 1996, where the amount paid out does not depend on investment performance.

3.3.3 Where complex transactions are undertaken or complex investments are advised upon, the *registered person* must consider requiring more specialised qualifications, experience and other competencies such that it can demonstrate that *investment employees* are competent and adequately supervised.

3.3.4 On submission of a written request by the *registered person*, the *JFSC* will consider, on a case-by-case basis, the acceptability or otherwise of any other qualifications held by an *investment employee*. Such a request must:

3.3.4.1 Include a written explanation as to why the *registered person* considers the alternative qualification to be appropriate for that employee; and

3.3.4.2 Must be accompanied by a copy of the syllabus studied or equivalent where practical.

3.3.5 The *JFSC* will accept as relevant qualifications those that it considers to be equal to, or higher than, those listed in the respective Table.

3.3.6 The *JFSC* may, on written application by the *registered person*, grant exemptions from the requirement to hold qualifications referred to in 3.3.1.4.1 and 3.3.2 of the *Code*. In doing so, the *JFSC* will pay regard to any previous exemption granted in respect of the *investment employee* on whose behalf the exemption is being sought, as well as the nature of the role being performed and the *registered person's* systems and controls.

Notes:

1 The definition of what constitutes an "investment employee" is given in the Investment Business Fees Notice published by the JFSC and amended from time to time.

*2 Paragraphs 3.3.1.1 and 3.3.1.2 above are subject to the Rehabilitation of Offenders (Jersey) Law 2001 which prohibits an employer requesting information from its employees and prospective employees about convictions that are "spent". This general prohibition is subject to exception provided by the Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002, as amended (the **Exceptions Regulations**).*

3 Regulation 21 of the Exceptions Regulations permits a registered person, applicants and those intending to apply for registration to request information about all "relevant offences", whether "spent" or not, from employees holding certain positions and applicants for such positions. To be consistent with the Code, it is necessary for employers to make use of such exceptions when screening employees who are subject to these exceptions.

4 "Employees" as identified in this section includes not only direct employees, but also indirect employees, such as temporary and contracted employees, self-employed representatives and other contracted service providers.

5 The table of acceptable qualifications as set out in the Guidance Note on Professional Qualifications published on the JFSC's website forms an integral part of the Code. So as to ensure that this table is properly maintained, the JFSC will review and update the table on a periodic basis.

3.4

Continuing professional development (CPD)

3.4.1 *CPD* is a compulsory requirement for all *investment employees* and the compliance officer. A *registered person* is required to maintain *CPD* records for all such employees although it is permissible for a *registered person* to require its employees to keep their own records and account to a *registered person* on a regular basis.

3.4.2 A minimum of 35 hours per year of *CPD* must be undertaken by *investment employees* and 25 hours per year by the compliance officer. In both cases, a maximum of five hours may be achieved through relevant reading.

3.4.3 A *registered person* is responsible for ensuring that the *CPD* undertaken by its *investment employees* and the compliance officer is appropriate to their role. This consideration must take into account the employee's job description and current duties and may include future development needs.

3.4.4 The onus is on each *registered person* to demonstrate the adequacy of its *CPD* regime.

Notes:

1 It is recognised that some investment employees may be members of professional bodies that have their own CPD requirements as a condition of continued membership. In these circumstances, it is a matter for a registered person:

(a) Firstly, to ensure that the necessary opportunity is given to such investment employees to enable them to comply with these professional requirements; and,

(b) Secondly, to take a view on the extent to which such professional CPD is relevant to the registered person's business and may therefore be counted towards the employees' work-related CPD.

2 It is expected that investment employees will achieve their CPD targets by adhering to the requirements of their own relevant professional body. However, where the relevant professional body does not prescribe how CPD should be achieved, there are a number of acceptable ways to attain the minimum CPD requirement, including, but not restricted to:

(a) Studying for further qualifications;

(b) In-house training, seminars, conferences and product presentations;

(c) Computer-based training;

(d) One-to-one tuition;

(e) Reading relevant professional and trade magazines;

(f) Personal structured study; and

(g) Attending external training courses.

3.5

Compliance function, Compliance Officer, Money Laundering Reporting Officer and Money Laundering Compliance Officer

3.5.1 The senior management (most often the board of directors) of the *registered person* is responsible for ensuring that it has robust arrangements for compliance with the *regulatory framework*. These must include:

3.5.1.1 Approval of a compliance policy;

3.5.1.2 Establishment of a permanent and effective compliance function, whose responsibilities are formally documented;

3.5.1.3 Assessment, on at least an annual basis, of the extent to which compliance risk is managed effectively; and

3.5.1.4 Appointment of an appropriately skilled and experienced person as its Compliance Officer.

3.5.2 The compliance function must:

3.5.2.1 Have appropriate independence;

3.5.2.2 Have direct access to the senior management and Jersey board of directors or equivalent;

3.5.2.3 Have unfettered access to all business lines and support departments and information necessary to properly discharge the responsibilities of the function;

3.5.2.4 Act as the principal point of contact for employees on day-to-day regulatory matters; and

3.5.2.5 Be able to devote sufficient time, and have sufficient resources to discharge properly the responsibilities of the function, including implementation of the compliance policy.

3.5.3 The *registered person* must ensure that the Compliance Officer is responsible for:

3.5.3.1 Ensuring appropriate monitoring of operational performance and managing regulatory and compliance risk within the *registered person* which includes:

3.5.3.1.1 Monitoring that the internal policies and procedures are being consistently and effectively adhered to;

3.5.3.1.2 Assessing, and recommending amendments to, internal systems and controls as well as policies and procedures to facilitate compliance with the *regulatory framework*; and

3.5.3.1.3 Where appropriate, promptly instigating action to remedy any deficiencies in such arrangements;

3.5.3.2 Providing senior management and the board of directors of the *registered person* with regular written reports in respect of the *registered person's* compliance with the requirements of the *FS(J)L*, Orders (issued under the *FS(J)L*) and the *Code*; and

3.5.3.3 Acting as the principal point of contact with the *JFSC* on day-to-day regulatory matters unless otherwise agreed with the *JFSC*.

3.5.4 The Compliance Officer must:

3.5.4.1 Be an individual operating under a contract of employment directly with the *registered person* or another company within the same group;

3.5.4.2 Be based in Jersey;

3.5.4.3 Have sufficient experience and skills, which includes holding an appropriate compliance or other qualification or be studying towards such a qualification; and

3.5.4.4 Have appropriate status within the *registered person* to ensure that senior management and the board of directors of the *registered person* react to and determine whether to act upon his or her recommendations.

3.5.5 In exceptional circumstances the *JFSC* may, on written application from a *registered person*, grant an exemption from the requirement under 3.5.4.2 of the *Code* where, for example, the *registered person* operates in Jersey as a branch and therefore relies

upon a Compliance department based outside of Jersey. In considering such a request, the *JFSC* will pay particular regard to the extent to which the Jersey operation is subject to compliance monitoring and who has been nominated as the Jersey based compliance contact.

3.5.6 In the event that a Compliance Officer is temporarily unable to fulfil his or her responsibilities the *registered person* must:

3.5.6.1 Notify the *JFSC*; **and**

3.5.6.2 Designate an appropriately skilled and experienced alternate.

3.5.7 With respect to 3.5.6, notification to the *JFSC* must be made, in writing, as soon as the *registered person* becomes aware that the compliance officer will be temporarily unable to fulfil their responsibilities.

Notes:

*1 It is a requirement of the Money Laundering (Jersey) Order 2008 (the **Money Laundering Order**) that a registered person must appoint a Money Laundering Reporting Officer and a Money Laundering Compliance Officer. The relevant AML/CFT Handbook sets out additional requirements for registered persons.*

2 The roles of Compliance Officer, Money Laundering Reporting Officer and Money Laundering Compliance Officer meet the definition of a key person as defined by Article 1 of the FS(J)L; consequently, Article 14 of the FS(J)L applies.

3 Where operating volumes are at a level for it to be appropriate, the Compliance Officer, the Money Laundering Reporting Officer and the Money Laundering Compliance Officer may be the same person. It is also recognised that there may be registered persons where the compliance function is the Compliance Officer.

4 When considering a key person application, the JFSC will not only look at the suitability of the qualifications and experience of the applicant, but will also consider this in the context of the qualification and experience of the balance of the board and/or other key persons employed by the registered person.

5 With respect to 3.5.6, the JFSC considers a period in excess of four weeks to constitute being temporarily unable to fulfil their responsibilities.

3.6

Complaints

3.6.1 A *registered person* must establish and maintain an effective *complaint* handling system and procedures and in particular must:

3.6.1.1 Maintain adequate records of *complaints* against the *registered person*, including a central register that contains details of any agreed compensation or compromise;

3.6.1.2 Handle *complaints* transparently, competently, diligently, and impartially;

3.6.1.3 Inform *clients* of how *complaints* may be made and how they may expect these to be responded to;

3.6.1.4 Provide, in writing, within five business days, unless expressly agreed by the complainant to the contrary, an acknowledgement that their *complaint* has been received and confirm that the *complaint* is being considered;

3.6.1.5 Keep the complainant informed about the progress of their *complaint*, including details of any actions being taken to resolve their *complaint*;

3.6.1.6 Advise the complainant in writing when the *complaint* is considered closed and where the *complaint* is not upheld, clearly state the reason(s) for rejecting the *complaint*;

3.6.1.7 At the same time, advise the complainant in writing:

3.6.1.7.1 That if they are dissatisfied with its response to the *complaint*, the complainant may be able to refer the *complaint* to the Channel Islands Financial Ombudsman;

3.6.1.7.2 Of the contact details for the Channel Islands Financial Ombudsman (namely its website address, postal address, email address and telephone number);

3.6.1.8 Comply with the requirement of 5.2.11, in relation to determining whether a *complaint* gives rise to any notification requirement under its professional indemnity insurance policy; and

3.6.1.9 Consider the *complaints* data for patterns emerging.

3.6.2 As soon as it becomes aware, a *registered person* must notify the *JFSC* in writing, if:

3.6.2.1 A *complaint* is not satisfactorily resolved within three months of the *client* having lodged a *complaint*;

3.6.2.2 The Channel Islands Financial Ombudsman, using the powers it has under Article 16 of the Financial Services Ombudsman (Jersey) Law 2014, requires the *registered person* to pay compensation to a complainant or directs the *registered person* to take other specified steps in relation to a complainant;

3.6.2.3 A pattern to *complaints* is identified;

3.6.2.4 Any *complaint* has resulted in the *registered person* making a claim on its Professional Indemnity Insurance policy; or

3.6.2.5 Any *complaint* has resulted in the *registered person* having made any type of settlement worth in excess of £1,000.

3.6.3 A *registered person* must deal with the Channel Islands Financial Ombudsman in an open and co-operative manner.

Notes:

1 With respect to 3.6.1, a registered person may wish to consider adopting and following the "Model complaint-handling procedure for financial services providers" published by the Channel Islands Financial Ombudsman.

2 With respect to 3.6.1.2, the JFSC considers that it would be inconsistent with that requirement if a registered person were to act in a way that may undermine the integrity of the complaints-resolution framework provided under the Financial Services Ombudsman (Jersey) Law 2014, such as:

(a) Making a settlement offer that is conditional upon the complainant not referring the matter to the Channel Islands Financial Ombudsman. (The complainant may want to seek independent advice from the Channel Islands Financial Ombudsman before deciding whether or not to accept the offer.) This would not preclude a registered person – if it has fully informed the complainant of their right to refer their complaint to the Channel Islands

Financial Ombudsman – asking the complainant to sign a full and final release as part of the settlement if the offer is accepted;

(b) Misleading a complainant about their right to refer a complaint to the Channel Islands Financial Ombudsman.

(c) Offering a view as to the likelihood of the Channel Islands Financial Ombudsman ruling in favour of the complainant.

3 With respect to 3.6.2, "as soon as it becomes aware" applies from the point at which the registered person knows, or has reasonable grounds for believing, that any of the matters stated has occurred or may be about to occur, even where it is outside the control of the registered person.

Record Keeping

All records

3.7

3.7.1 The *registered person* must ensure that it has appropriate record keeping arrangements for compliance with applicable laws, (including *anti-money laundering legislation* and company legislation) Orders and regulatory requirements, set by the *Code* or the *relevant AML/CFT Handbook*.

3.7.2 A *registered person* is expected to maintain its books and records in a language understood by the employees of the business. These must be translated into English at the request of the *JFSC*. A *registered person* must be able to readily retrieve them in Jersey and, if kept otherwise than in legible form, maintain them so as to be readable at a computer terminal in Jersey so that they may be produced in legible form without delay.

3.7.3 A *registered person* must have a clearly documented policy and procedure regarding record retention that includes:

3.7.3.1 Periodic review of the accessibility and condition of paper and electronic records;

3.7.3.2 The adequacy of the safekeeping of records; and

3.7.3.3 Periodic testing of procedures relating to the retrieval of records.

3.7.4 A *registered person* that is ceasing to conduct investment business is required to arrange appropriate record keeping arrangements as part of a cessation of business plan.

Business records

3.7.5 A *registered person* must maintain an audit trail of material changes to the policies and procedures manual that covers the operation of the *registered person*, which is updated as required. When updates are made, the effective date of such updates must be recorded and the superseded records maintained.

3.7.6 The period for which business records must be kept is the later of:

3.7.6.1 The period required for any particular record by any law;

3.7.6.2 The *relevant AML/CFT Handbook*; or

3.7.6.3 Where records relate to significant corporate governance matters, such as management meeting minutes and risk assessment matters, or are records relating to requirements established by the *Code* – ten years from the date of the record.

Client records

3.7.7 A *registered person* is expected to keep adequate, orderly and up to date *client* records which are in line with the requirements established by Part 4 of the *Money Laundering Order* and as set out in the *relevant AML/CFT Handbook*.

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.

Notes:

1 The Code does not establish any retention requirements for tape recordings of telephone conversations.

2 With respect to 3.7.5, a change to the policies and procedures manual that necessitates communication to impacted staff is a material change.

3 With respect to 3.7.6.1, the JFSC considers that laws relating to companies, tax, proceeds of crime, and data protection may be relevant.

Client Classification

3.8

3.8.1 Where a *registered person* carries on Class C or Class D investment business, the *registered person* must establish, implement and maintain written policies, procedures and controls to classify its Class C or Class D *clients*, as *Retail Clients* or *Professional Clients*.

3.8.2 The *JFSC* accepts that some *clients*, who do not meet the definition of either a *Large Undertaking* or *Professional Investor* (per se Professional Client), may be classified as a *Professional Client* (an Elective Professional Client). A *registered person* may classify a *client* as a *Professional Client* if the *registered person*:

3.8.2.1 Undertakes an adequate assessment of the expertise, experience and knowledge of the *client*; **and**

3.8.2.2 Forms an opinion that, in light of the nature of the transactions or services envisaged, the *client* is capable of making their own investment decisions and understanding the risks involved. In forming this opinion the *registered person* must, at a minimum, document its consideration of:

3.8.2.2.1 The frequency of the *client's* dealings in the kind of investments which are to be the subject matter of the *registered person's* advice;

3.8.2.2.2 The size of the *client's* portfolio, defined as including cash deposits and investments as defined by Schedule 1 to the *FS(J)L*; and

3.8.2.2.3 The *client's* relevant professional expertise.

3.8.3 With respect to 3.8.2, if the *client* is not an individual (for example a company, a foundation, a trust or a partnership), the *registered person* must perform the assessment in relation to the individual(s) authorised to carry out transactions on behalf of the *client*.

3.8.4 Before a *client* is classified as an *Elective Professional Client*:

3.8.4.1 A *registered person* must provide the *client* with a clear written warning that, as an *Elective Professional Client*, the *investment employee* that provides the advice is not bound by paragraph 3.3.2 of the *Code* and the *registered person* may receive remuneration by way of product commission;

3.8.4.2 The *client* must state to the *registered person*, in writing and in a separate document from any contract of engagement with the *registered person*, that they:

3.8.4.2.1 Wish to be an *Elective Professional Client*, either generally or in respect of a particular service or transaction or type of transaction or product; and

3.8.4.2.2 Are aware of the consequences of such an election.

3.8.5 Where a *registered person* becomes aware that the circumstances of an *Elective Professional Client* have changed to an extent that the *client* no longer fulfils the criteria to be an *Elective Professional Client*, the *registered person* must re-classify the *Elective Professional Client* as a *Retail Client* and inform the *client*, in writing, without delay.

3.8.6 Where a *registered person* carries on Class C or Class D investment business and the actions described in 3.8.1 have resulted in some *clients* being classified as *Retail Clients*, a *registered person* must establish, implement and maintain written internal policies, procedures and controls to identify the residency of its *Retail Clients*. A *registered person* must identify the residency of a *Retail Client* such that it is able to comply with 4.8 of the *Code*.

3.8.7 With respect to 3.8.6, where a *Retail Client* has provided the *registered person* with two addresses (a Jersey address and a non-Jersey address), it is for the *registered person* to demonstrate that it has established with which address (and therefore with which jurisdiction) the *Retail Client* has their most substantial connection. The *registered person* must treat the *client* as resident in the jurisdiction of that address.

Notes:

1 With respect to 3.8.1, the JFSC recognises that a registered person may adopt a policy whereby all clients are classified as Retail Clients. Before adopting such a policy the registered person is encouraged to fully consider the implications of such a decision on paragraphs 3.8.6 and 4.8 of the Code.

2 With respect to 3.8.2.2.2, the JFSC considers it unlikely that a client with a portfolio of less than £500,000 could properly be classified as an Elective Professional Client.

3 With respect to 3.8.7, the JFSC would not expect that a Retail Client who is known to be resident in Jersey for tax purposes and has a Jersey correspondence address in the registered person's records (verified for AML/CFT purposes), would be treated by the registered person as non-resident in Jersey.

3.9

Payment of financial penalties

3.9.1 A *registered person* must not pay a financial penalty imposed by the *JFSC* on any other person.

4 A registered person must be transparent in its business arrangements.

A *registered person* must disclose on its stationery and in advertising material that it is regulated by the Jersey Financial Services Commission.

A *registered person* must communicate information to *clients* in a way that is adequate, fair and not misleading.

4.1 A *registered person* must provide to its *clients* confirmation, in writing, of the services that it is providing as well as a contract, agreement or other written form setting out its general and specific terms associated with providing those services. This documentation must:

4.2

4.3.1 Be distinguishable from marketing or promotional material;

4.3

4.3.2 Be consistent with the *Code*;

4.3.3 Be clearly expressed in plain language that only uses technical or legal terms where absolutely necessary;

4.3.4 Be provided prior to the provision of any investment business service, except when it is impractical to do so, in which case the document shall be provided at the earliest available opportunity;

4.3.5 Explain whether the *registered person* is acting as a principal or as the agent of the *client* or any other person;

4.3.6 Where the *registered person* holds *client money*, set out the terms on which that money is held; and

4.3.7 Include all appropriate information relevant to the service that will be provided.

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.

4.5

A *registered person* that provides advice about investments from a restricted range of the available providers of investments of the same type must inform its *clients* of the nature and extent of that restriction in writing. The specific wording is at the discretion of individual businesses, but the onus will be on each *registered person* to demonstrate that the nature and extent of such restrictions have been communicated clearly to the *client*.

4.6

A *registered person* is required to demonstrate in writing that the *client* has been made aware of all associated fees and charges including commissions (both initial and recurring), where these are permissible, and any payments to or from third parties (such as introductory fees or commission sharing arrangements) - effectively a “no surprises” policy. This information must be disclosed prior to transactions being effected and information concerning commissions, fees and charges must include either a monetary or percentage figure. Any implications in relation to cancellation, failure to meet premiums and the ability and effect of making changes must also be made clear to the *client*.

4.7

There will be circumstances where a strict compliance with 4.6 is not practicable e.g. A *registered person* operating in a discretionary manager capacity might not be able to

advise its *clients* of all fees and charges prior to effecting transactions. In these circumstances the *registered person* must:

4.7.1 Make it clear to its *clients*, at the outset of the relationship, the specific type of associated fees/charges that will be payable, including, where appropriate, estimates (either monetary or percentage); and

4.7.2 Advise its *clients*, in writing and on a timely basis, of all fees and charges actually incurred.

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:

4.8 4.8.1 Where the *Retail Client* enters into or has entered into a long term insurance contract, as described in paragraph 3.3.2.2;

4.8.2 Where the *Retail Client* received investment advice and based on that investment advice entered into an investment, on or before 31 December 2013, for which trail commission remains payable; and

4.8.3 With respect to *Retail Clients* that transfer a portfolio of investments to a *registered person*, the *registered person* may be remunerated by trail commission payable on the existing investment portfolio in the following circumstances:

4.8.3.1 The investment permits the transference of trail commission to another *registered person*;

4.8.3.2 The *registered person* must advise the *Retail Client* that they intend to make an application to re-register the investment and receive trail commission (this advice must include the amount of trail commission – monetary or percentage figure); and

4.8.3.3 The registered person must provide the Retail Client with an on-going advisory service in return for receiving the trail commission.

4.9 With respect to 4.8.2, where the investment is amended post 2013 to the extent that it is essentially a new investment, or the *Retail Client* is required to sign a new contract, the *registered person* is no longer eligible to receive trail commission.

4.10 A *registered person* must inform *clients* if it has a policy of recording telephone conversations with them. This may be achieved by including an appropriate statement in the *registered person's* terms of business, marketing and promotional material or regular statements provided to *clients*, or by advising callers at the start of all telephone conversations.

4.11 A *registered person* must inform its *clients* of its investment strategy and past performance where relevant.

Notes:

*1 Guidance on clear written communication can be obtained from the Plain English Campaign (*http://www.plainenglish.co.uk*).*

2 For the purpose of 4.1, the JFSC considers that, at a minimum, "stationery" includes: headed letter paper; emails sent in lieu of a letter; and facsimiles. The JFSC does not consider the following to be stationery unless they are quite clearly being utilised in lieu of a letter or as advertising material: text messages; account statements; business cards; and compliment slips.

3	*For the purpose of 4.8 commission does includes monetary and/or non-monetary benefits that may influence a registered person's decisions.*
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.*

5 A registered person must maintain, and be able to demonstrate the existence of, adequate financial resources and adequate insurance.

Financial resources

5.1

5.1.1 Where a *registered person* is a Jersey registered company that holds a registration to undertake deposit-taking business, and consequently provides the *JFSC* with a quarterly prudential report, the Adjusted Net Liquid Assets (**ANLA**) requirements set by the *Code* do not apply.

5.1.2 Where the *registered person* operates in Jersey as a branch of a legal entity registered outside Jersey that holds a registration to undertake deposit-taking business and its immediate home regulator applies Basel II prudential requirements or has implemented the 1997 Market Risk Accord then the *ANLA* requirements set by the *Code* do not apply. A *registered person* to whom this paragraph applies must notify the *JFSC*, in writing.

5.1.3 A *registered person* conducting Classes A, B or C investment business must maintain:

5.1.3.1 A minimum of £25,000 paid up share capital and a surplus of *ANLA* over the Total Requirement in the ratio of 110% in accordance with the calculation set out in the First Schedule; and

5.1.3.2 A minimum *net assets* position of £25,000 in the *registered person's* accounts at all times.

5.1.4 A *registered person* conducting Class D investment business must maintain:

5.1.4.1 A minimum of £10,000 paid up share capital and a surplus of *ANLA* over the Total Requirement in the ratio of 110% in accordance with the calculation set out in the First Schedule; and

5.1.4.2 A minimum *net assets* position of £10,000 in the *registered person's* accounts at all times.

5.1.5 Where a *registered person* does not have issued share capital that meets the requirement of either 5.1.3.1 or 5.1.4.1 (as applicable), the *JFSC* may deem a *registered person* to be compliant where the requirement is met by a combination of issued share capital and share premium. In such circumstances, the *registered person* must discuss its position with the *JFSC* and, if deemed compliant, the *registered person* must provide prior written notification, to the *JFSC*, of any proposed reduction to share premium.

5.1.6 Where a *registered person* has one or more of a Position, Counterparty or Foreign Currency Risk Requirement, the calculation referred to in paragraphs 5.1.3.1 and 5.1.4.1 must be undertaken every business day. A *registered person* not subject to these risks must complete the calculation at least once every three months however these *registered persons* must prepare the calculation on a monthly basis or other such period as the *JFSC* may determine, if either:

5.1.6.1 A *registered person's ANLA* falls below 130% of its Total Requirement; or

5.1.6.2 An event occurs which has a material adverse effect on the *registered person's* financial resources.

5.1.7 A *registered person* is required to immediately notify the *JFSC* in writing (in addition to any notification obligation under the *FS(J)L* or the *Code*):

5.1.7.1 If its *ANLA* falls below 130% of its Total Requirement;

5.1.7.2 If its *ANLA* falls below 110% of its Total Requirement;

5.1.7.3 Of any single contingency, financial commitment or exposure exceeding 25% of its *ANLA*;

5.1.7.4 Of any instrument, transaction or situation that appears not to be catered for in the First Schedule, or where its application might give a misleading impression of the adequacy of the financial resources; and

5.1.7.5 If it no longer complies with the requirements of 5.1.3 or 5.1.4 of the *Code,* as applicable.

Subordinated Loans

5.1.8 On submission of a written request by the *registered person*, the *JFSC* will consider granting consent to adjust the total liabilities figure by excluding a long term subordinated loan as a liability (Table 3 of the First Schedule). Any request must be accompanied by a signed consent request checklist and such consent is only likely to be granted where:

5.1.8.1 The subordinated loan is drawn up in accordance with the *JFSC's* proforma Subordinated Loan Agreement; and

5.1.8.2 The subordinated loan is made by an approved lender.

5.1.9 The Subordinated Loan Agreement must be signed by authorised signatories of all parties to the agreement, and:

5.1.9.1 Be for a fixed period of not less than two years; or

5.1.9.2 Where no fixed term is cited, be subject to a minimum notice period of repayment of at least two years.

5.1.10 Where the *JFSC* has considered and granted a variance in respect of the treatment of a subordinated loan within the *ANLA* calculation, the amount deducted may not exceed the lower of:

5.1.10.1 The drawn down amount of the subordinated loan; and

5.1.10.2 Four times the *net assets* position of the *registered person*, calculated using the *registered person's* latest audited financial statements.

5.1.11 The variance treatment for the subordinated loan will automatically fall away if either:

5.1.11.1 The *registered person* fails to comply with any of the requirements of the subordinated loan agreement, including the notification requirements; or

5.1.11.2 The subordinated loan repayment date falls due within one year.

5.1.12 In addition to being a signatory to the Subordinated Loan Agreement, the *JFSC* will place a condition on the *registered person's* registration, utilising Article 10 of the *FS(J)L*, requiring that the *registered person* complies in full with the terms of the Subordinated Loan Agreement.

Notes:

1 "net assets" is defined as total assets less total liabilities.

2 With respect to the share capital requirements in 5.1.3 and 5.1.4, if the registered person operates in Jersey as a branch of a legal entity registered outside Jersey then the share capital requirement applies to the legal entity.

3 The JFSC has published a guidance note on the ANLA calculation which is available from the policy statements and guidance notes section of the JFSC website.

4 The proforma Subordinated Loan Agreement and consent request checklist are available from the JFSC website.

5 For the purposes of 5.1.8.2, an approved lender is:

(a) A financial service business as defined by Article 2 of the FS(J)L;

(b) A financial service business regulated by a "relevant supervisory authority", as defined by Article 1 of the FS(J)L;

(c) A person that is registered by the JFSC to carry on deposit-taking business under Article 9 of the Banking Business (Jersey) Law 1991;

(d) A principal person of the registered person; or

(e) A person that does not meet any of the above criteria but whom has been specifically approved by the JFSC.

Insurance Arrangements

5.2

5.2.1 A *registered person* must have and maintain adequate insurance cover at all times, commensurate with its business activities. Such cover must include professional indemnity insurance (**PII**) extended to include fidelity guarantee (employee dishonesty or fraud) insurance and director's and officer's insurance.

5.2.2 *PII* cover and extensions must include negligence and errors and omissions by a *registered person* and employee dishonesty and must, where possible, extend to all territories from which a *registered person* conducts business.

5.2.3 A *registered person* must not enter into, arrange, claim on or make a payment under a contract of insurance that is intended to have, or has or would have, the effect of indemnifying any person against all or part of a financial penalty imposed by the *JFSC*.

5.2.4 *PII* cover must be written on a "claims-made" basis including costs and expenses and, so far as lawful, must include:

5.2.4.1 Legal defence costs;

5.2.4.2 Loss or theft of documents (liability and costs of replacement, reinstatement, restoration or reconstruction of data);

5.2.4.3 Self-employed or contract hire persons engaged in a *registered person*'s business; and

5.2.4.4 Indemnity to current or former employees, partners and consultants.

5.2.5 Subject to 5.2.6, the minimum indemnity limit for any one claim and in the aggregate must equal or exceed the greater of:

5.2.5.1 Three times the amount of relevant fees and commissions;

5.2.5.2 10% of controlled assets; or

5.2.5.3 £1,000,000 (one million pounds sterling).

5.2.6 A *registered person* shall not be required by virtue of 5.2.5 to have aggregate insurance cover exceeding £5,000,000 (five million pounds sterling).

5.2.7 In the event that a *registered person*'s aggregate level of PII cover is depleted as a result of a claim on its policy, such that it is no longer sufficient to meet the requirements set out in 5.2.5, a *registered person* must obtain reinstated cover that meets the requirements set out under paragraph 5.2.5.

5.2.8 Any excess (or deductible) per claim on the policy must not:

5.2.8.1 Exceed £5,000 (five thousand pounds sterling) or 3% of the annual relevant fees and commissions, whichever is greater; or

5.2.8.2 Reduce the limit of indemnity payable under the policy such that it is insufficient to meet the minimum indemnity limit prescribed under 5.2.5.

5.2.9 As soon as it becomes aware, a *registered person* must notify the *JFSC* in writing of any material limitations in its *PII* policy, including the basis on which the limitation has been applied, in respect of matters such as:

5.2.9.1 An inability to obtain PII cover in line with the requirements of 5.2.3 or 5.2.5;

5.2.9.2 Any territory from which a *registered person* conducts business or may reasonably be expected to conduct business;

5.2.9.3 Any exclusion applied by way of endorsements;

5.2.9.4 Any retroactive date applied to the PII policy;

5.2.9.5 The cancellation of the PII policy;

5.2.9.6 If a *registered person* becomes aware that it has conducted any activity that is not covered by the PII policy; and

5.2.9.7 If a *registered person*'s aggregate level of PII cover is depleted as described at 5.2.7.

5.2.10 *Registered person* that is ceasing to conduct investment business is required to arrange for appropriate "run off" *PII* cover in respect of claims arising from past acts or omissions. The level of such cover requires the *JFSC*'s consent as part of the cessation of business plan.

5.2.11 A *registered person* must have adequate procedures in place to ensure compliance with all terms and conditions set out in its *PII* policy, particularly in relation to the timely notification of events by a *registered person* to its insurer, which may lead to a claim on the policy by a *registered person.*

5.2.12 Where a *registered person* may be subject to an Eligible complaint as defined at Article 7 of the Financial Services Ombudsman (Jersey) Law 2014, in addition to the
1. requirements at 5.2.3, a *registered person* must ensure that its *PII* cover is adequate in the event that a Determination is made against a *registered person* by the Channel Islands Financial Ombudsman.

Notes:

With respect to 5.2, a registered person may consider allocating responsibility to a named principal person to ensure that adequate insurance cover is maintained at all times (5.2.1) and that a registered person is in compliance with all terms and conditions set out in its PII policy (5.2.11).

Paragraph 5.2.3 is not intended to prevent a registered person from entering into, arranging, claiming on or making any payment under a contract of insurance which indemnifies any person against all or part of the costs of defending JFSC enforcement action or any costs the person may be ordered to pay to the JFSC.

With respect to 5.2.5.1 and 5.2.8.1 "relevant fees and commissions" for PII purposes is gross income paid or payable to a registered person, which is fees, commission, brokerage, or other relevant income arising from professional business activities (regulated or not) covered under the PII policy. This applies for the last accounting year before the start or renewal of the policy, or as per the business plan for new applicants.

With respect to 5.2.9 "as soon as it becomes aware" applies from the point at which a registered person knows, or has reasonable grounds for believing, that any of the matters stated has occurred or may be about to occur, even where it is outside the control of a registered person.

The JFSC has issued a guidance note on professional indemnity insurance, available from the policy statements and guidance notes page of the JFSC website, which a registered person may find helpful when considering the PII requirements. Specifically,

(a) With respect to the material limitations notification required by paragraph 5.2.9, paragraph 3.1 of the guidance note provides a list of exclusions and limitations that the JFSC considers standard and therefore fall outside of the notification requirement; and

(b) Paragraph 6.3.2 of the guidance note highlights the information to be submitted to the JFSC when requesting a variance to enter into a self-insurance arrangement.

With respect to 5.2.10, the JFSC will generally expect to see "run off" PII cover covering a period of at least three years.

The requirements of paragraph 5.2.1 may be satisfied by a registered person being covered under the provisions of a group PII policy if such cover is sufficient to satisfy the requirements under paragraphs 5.2.1 to 5.2.6.

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

Notes:

1 There is a need for candour and co-operation in a registered person's relationship with the JFSC. Article 28(3) of the FS(J)L provides that a registered person, or formerly registered person, shall be guilty of an offence if he or she fails to provide the JFSC with any information in his or her possession, knowing or having reasonable cause to believe that or being reckless as to whether –

(a) The information is relevant to the exercise by the JFSC of its functions under the FS(J)L in relation to the registered person, or formerly registered person; and

(b) The withholding of the information is likely to result in the JFSC being misled as to any matter which is relevant to and of material significance for the exercise of those functions in relation to the registered person or formerly registered person.

2 The scope of Principle 6 is extended to the provision of information and the notification of events concerning non-regulated activities and other members of the corporate group, to the extent that such information or events might reasonably be expected to have a material impact on the registered person in Jersey.

3 Notification to the Companies Registry does not constitute notification to the JFSC for the purposes of this principle.

4 The JFSC considers that the obligations of a registered person under this Principle include the timely provision of data required in connection with a registered person's regulatory fees and the timely payment of fees due.

General Notifications

6.1 A *registered person* must advise the *JFSC* in writing as soon as it becomes aware of any matter that might reasonably be expected to affect its registration or be in the interests of its *clients*/investors to disclose. Wherever possible, this notification must include details of the steps the *registered person* has taken, or intends to take, to mitigate the matter.

6.2

6.3 In addition to the requirements of the relevant law, a *registered person* must allow, and shall procure that any agent or subcontractor of the *registered person* also allows, inspections by or on behalf of the *JFSC* of any part of the activities in relation to which the *registered person* has been granted registration under the *FS(J)L*. The *registered person* must provide all reasonable assistance in connection with any such inspection and shall procure that any such agents or subcontractors also provide all reasonable assistance.

6.4

6.5 A *registered person* must comply with the notification requirements of the *JFSC*'s policy on outsourcing as may be updated from time to time.

A *registered person* must provide the *JFSC* with details of its senior management and *investment employees* upon request.

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*.

Note:

1 With respect to 6.1, "as soon as it becomes aware" applies from the point at which the registered person knows, or has reasonable grounds for believing, that any of the matters referred to have occurred or may be about to occur, even where it is outside the control of the registered person. The JFSC considers the following indicative that notification is necessary. Any matter which:

(a) Is material to the JFSC's ability to undertake its function of supervision of financial services provided in or from within Jersey;

(b) The registered person considers is material to, or may make it impractical for it to comply with, one or more of:

(i) The provisions of the FS(J)L or any Regulation or Order made under it;

(ii) Compliance with a registration condition;

(iii) Compliance with a direction issued by the JFSC;

(iv) The Code;

(v) The fitness and propriety of its principal persons, key persons or investment employees, especially where the registered person has imposed a formal disciplinary measure or sanction.

Specific Notifications

6.6 A *registered person* must notify the *JFSC* of the following, in writing, not less than ten business days before the change is implemented:

6.6.1 A change in the name of the *registered person*;

6.6.2 The adoption of, or change in, any business name under which the *registered person* carries on investment business;

6.6.3 A change to:

6.6.3.1 The address of the principal office of the *registered person*,

6.6.3.2 The address of the registered office of the *registered person*, and

6.7 6.6.3.3 Any address which is treated as the proper address of the *registered person* by Article 40(6) of the *FS(J)L*, and

6.6.4 The summary winding up or voluntary dissolution of a *registered person*.

A *registered person* must notify the *JFSC*, in writing, within a reasonable time of becoming aware of, or having resolved to undertake, any of the following:

6.7.1 The decision to voluntarily cease a business activity, whether temporarily or permanently, where this decision involves the revocation of a registration in accordance with Article 9(4)(a) of the *FS(J)L*, in this case a *registered person* must complete a Cessation of Business Plan, as prescribed by the *JFSC*, which must include details of arrangements for the protection of *clients*, creditors and other stakeholders. Before implementing a Cessation of Business Plan a *registered person* must obtain written confirmation from the *JFSC* that it has no objection to it;

6.7.2 The presentation of any application to the court for désastre;

6.7.3 The summoning of any meeting to consider a resolution to wind up the *registered person* or the winding up of the *registered person* or of a company which is a subsidiary or holding company of the *registered person*;

6.7.4 The application by any person for the commencement of any insolvency proceedings, appointment of any receiver, administrator or provisional liquidator under the law of any country, in relation to the *registered person*;

6.7.5 The making or any proposals for the making of a composition or arrangement with creditors of the *registered person*;

6.7.6 The imposition of disciplinary measures or disciplinary sanctions on the *registered person* or any of their *principal persons* or *key persons* by any relevant supervisory authority, professional body or any investment exchange or clearing house;

6.7.7 The conviction of the *registered person*, or any of its *principal persons*, *key persons* or *investment employees*, for any offence:

6.7.7.1 Under legislation of any jurisdiction relating to the conduct of financial services business (includes legislation relating to banking, building societies, collective investment funds, companies, credit unions, consumer credit, friendly societies, insolvency, insurance and industrial and provident societies and trust companies), or

6.7.7.2 Involving fraud or dishonesty

6.7.8 The imposition of any penalties for deliberate tax evasion on the *registered person* or any of its *principal persons*, *key persons* or *investment employees*;

6.7.9 The re-registration of a *registered person* incorporated with unlimited liability as a limited liability company;

6.7.10 A general partner in a *registered person* becoming a limited partner;

6.7.11 The granting, withdrawal or refusal of any application for authorisation to carry on regulated financial services business in any country or territory outside of Jersey, or the revocation of such authorisation;

6.7.12 The granting, withdrawal or refusal of an application for membership of any investment exchange or clearing house, or the revocation of such membership;

6.7.13 The withdrawal or refusal of an application for membership of any professional body by the *registered person*, a *principal person*, *key person* or *investment employee* of the *registered person*, in any jurisdiction, or the revocation of such a membership;

6.7.14 The appointment of inspectors (howsoever named) by a statutory or other regulatory authority to investigate the affairs of the *registered person*;

6.7.15 Any litigation following the institution of proceedings before a Court of Law:

6.7.15.1 Instigated by the *registered person* or any subsidiary of the *registered person*,

6.7.15.2 Instigated against the *registered person*, or

6.7.15.3 Where the *registered person* is a cited party;

6.7.16 Any decision relating to business activities likely to have a material effect on the *registered person* or its profitability (notifications should specify, as applicable, the name of any company and its principal business), such decisions include, but are not limited to:

6.7.16.1 The introduction of a new business activity,

6.7.16.2 Closure to new business,

6.7.16.3 The formation, acquisition, disposal or dissolution of a subsidiary, associated group company or branch office, wherever situated, and

6.7.16.4 Changes to investments held, where a *registered person* acquires or disposes for its own benefit of a holding of more than half in nominal value of the equity share capital of a company, specifying the name of the company and its principal business;

6.7.17 Any material changes, other than those specifically referred to in the *Code*, in the information previously submitted under the following headings, any:

6.7.17.1 Overseas operations through which the *registered person* carries on investment business, irrespective of the vehicle utilised to deliver the business (branch subsidiary, representative office or otherwise); and

6.7.17.2 Jurisdictions outside Jersey in which the *registered person* carries on investment business, indicating whether this is done through a branch office, a subsidiary or otherwise.

6.7.18 A decision by the *registered person's* auditor to qualify its audit report or to raise an emphasis of matter therein;

6.7.19 Any material deficiencies in the effectiveness of controls over *client money* identified during an independent review as required by paragraph 3.2.2.

Notes:

1 With respect to 6.7, the JFSC considers:

(a) "a reasonable time" to be five business days; and

(b) That " becoming aware" applies from the point at which the registered person knows, or has reasonable grounds for believing, that any of the matters stated has occurred or may be about to occur, even where it is outside of the control of the registered person.

2 With respect to 6.7.1, a full outline of the matters that must be addressed within the COBP is available from the JFSC upon request.

6.8

Notifications arising in other parts of the Code

A *registered person* is required to comply with notification requirements established in other parts of the *Code*:

6.8.1 3.1.2.6 sets a requirement to contact the *JFSC* as soon as a *registered person* becomes aware that the regulatory span of control requirements will not be maintained;

6.8.2 3.5.6 sets a notification requirement in respect of a compliance officer being temporarily unable to fulfil his/her responsibilities;

6.8.3 3.6.2 sets notification requirements in respect of *complaints*;

6.8.4 5.1.2 sets a notification requirement on a *registered person* that is a branch of a legal entity registered outside Jersey and the *registered person* is not required to complete the *ANLA* requirements of the *Code*;

6.8.5 5.1.7 sets notification requirements in respect of *ANLA* requirements; and

6.8.6 5.2.9 sets notification requirements in respect of *PII*.

Notifying or providing information via the JFSC's online portal

6.9 Where the *JFSC* so specifies (whether in the *Code* or otherwise) a *registered person* must notify or provide information by means of the *JFSC*'s online portal.

6.10 If, because of a systems failure of any kind, a *registered person* is unable to access the online portal to make a relevant notification or provide required information it must notify the *JFSC* in writing within one business day of the systems failure being identified.

7 A registered person must not make statements that are misleading, false or deceptive.

A *registered person* must take reasonable steps to ensure that its financial service advertisements (**advertisements**) are not misleading, false or deceptive. Words used in *advertisements* must be chosen carefully and certain words, such as "guarantee", "assured", "confidential" and "secret", must be treated with great caution.

7.1 An *advertisement* must not contain:

7.2 7.2.1 A statement, promise or forecast unless the *registered person*, at the time the *advertisement* is made has reasonable grounds for believing it is not misleading, false or deceptive;

7.2.2 A statement of opinion held by any person unless the *registered person*, at the time the *advertisement* is made, has reasonable grounds for believing it to be the honestly held opinion of that person at that time;

7.2.3 A statement of fact unless the *registered person*, at the time the *advertisement* is made, has reasonable grounds for believing the statement will continue to be true for so long as the *advertisement* continues to be made in current publications;

7.2.4 A statement about the scale of activities of, or any of the activities of, or the resources of or available to, a *registered person* or that *registered person's* group unless the *registered person*, at the time the *advertisement* is made, has reasonable grounds for believing the statement is not misleading, false or deceptive;

7.2.5 A statement relating to taxation benefits unless it is clearly illustrated by example to show what it means in practice and to whom such benefits apply;

7.2.6 A statement relating to *client* confidentiality unless it is qualified to show the limits of any confidentiality assurance made;

7.2.7 A statement of comparison with other entities carrying on investment business unless the basis of comparison is clearly stated and the comparison is fair; or

7.3 7.2.8 A statement implying that the service is only available for a limited period or in limited form, if such is not the case.

An *advertisement* made in a written or broadcast form must not contain:

7.3.1 A statement of fact which the *registered person* does not at the time the *advertisement* is made have reasonable grounds, supported by documentary evidence, for believing to be true; or

7.4 7.3.2 A statement of opinion held by any person which the *registered person* does not at the time the *advertisement* is made, have reasonable grounds, supported by documentary evidence, for believing to be the honestly held opinion of that person at that time.

The content and format of any advertisement must not:

7.4.1 Be designed so as to be likely to be misunderstood;

7.4.2 Be designed so as to disguise the significance of any warning statement or information, which is required to be included under the *Code*; or

7.4.3 Signify in any way that the *advertisement* is approved by the *JFSC*.

An advertisement may include a quotation from a statement made by any person commending any investment or service provided that:

7.5.1 Where the person is an employee or associate of the *registered person*, that fact is disclosed in the *advertisement*;

7.5.2 The quotation is included with that person's written consent;

7.5 7.5.3 The statement is relevant to the investment or service which is the subject of the *advertisement*;

7.5.4 Where the whole of the statement is not quoted, what is quoted represents fairly the message contained in the whole of the statement; and

7.5.5 The statement has not become inaccurate or misleading subsequent to it being made.

The *registered person* must be able to demonstrate that adequate disclosure of the key risks and the relevant terms and conditions was made to the *client* before commitment was made, so as to ensure the *client* has made an informed decision. An *advertisement* may only specify
7.6 some of the terms and conditions which attach to an investment or service, and exclude others, providing:

7.6.1 Those which are specified give a fair indication of the nature of the investment or service and the risks involved and the *advertisement* contains the terms and conditions; or

7.6.2 Where no mention of terms and conditions is made, the *advertisement* must contain information as to how all the terms and conditions may be obtained.

7.7 Any *advertisement* shall disclose any special areas of risk relating to the investment or service, such as limited marketability, gearing, stabilisation etc.

7.8

In the case of an investment the value of which may fluctuate or is not guaranteed (or both) and which may result in the investor not getting back the amount invested, the
7.9 *advertisement* shall state that fact prominently.

In the case of an investment the value of which is guaranteed, protected, assured or similar:

7.9.1 The *advertisement* shall state clearly the nature of the guarantee, protection or assurance, the name of the guarantor, to what the guarantee relates and whether there are any matters which may affect the investor's ability to benefit from it.

7.9.2 The word "guarantee" is not permitted to be used in an *advertisement* unless the *advertisement* clearly demonstrates that the guarantor is independent of the promoter or the *registered person* can evidence to the *JFSC*, should it so require, the financial basis of that guarantee. In using the word "guarantee" a *registered person* should be mindful that any person underwriting risks associated with an investment might give rise to a requirement for that person to register under the relevant insurance laws of a particular jurisdiction.

7.9.3 Where the *advertisement* otherwise meets the guidelines for use of the word "guaranteed", "assured", "protected" or similar, the *registered person* must:

7.9.3.1 Consider whether the name of the product fairly represents the nature of the guarantee/assurance/protection/similar which is being offered; and

7.9.3.2 Ensure the extent to which the guarantee applies is clearly stated. For example, if advertising a fund where the guarantee extends to certain

sub-funds but not others, the different levels of guarantee must be explicit.

7.9.4 If the *advertisement* states that the investment is "capital guaranteed", the *registered person* must ensure that this is truly the case in respect of 100% capital return.

A general warning to prospective investors to seek independent taxation advice, as to their own position, must be made in any *advertisement* where reference to personal tax benefits is made.

7.10 An *advertisement* must not specify a rate of return without specifying how it is calculated, including any element which may involve a reduction in the investor's capital.

7.11 If the income from an investment may fluctuate, the *advertisement* shall state clearly that this is the case.

7.12 Any *advertisement* inviting direct investment in futures, options, warrants and contracts for differences or any other higher risk product or instrument shall contain an appropriate and

7.13 clear risk warning, for example: "The risk of loss from investing in commodity and financial futures, foreign exchange contract securities, warrants and index contracts and options can be substantial", or similar.

Notes:

1 Article 1 of the FS(J)L defines a "financial service advertisement" as an advertisement containing – (a) an invitation to transact financial service business; or (b) information which is intended or might reasonably be presumed to be intended to lead directly or indirectly to the transaction of financial service business, and includes any means of bringing such an invitation or such information to the notice of any person, and a reference to an advertisement shall be construed accordingly. It is the JFSC's view that this definition covers written, broadcast and oral advertisements.

2 For the purpose of Principle 7, "written" and "broadcast" have the same meaning as provided by Article 1 of the Financial Services (Advertising) (Jersey) Order 2008.

3 Under Article 39L of the FS(J)L, it is an offence for any person to knowingly or recklessly make a misleading, false or deceptive statement, promise or forecast for the purpose of inducing another person to enter into, or to refrain from entering into, an agreement for the provision of financial service business.

4 The requirements in Principle 7 are not intended to capture advertising or promotional literature forwarded by the registered person to its clients on behalf of third parties.

5 Advertisements that meet the exempt criteria set out in Article 2(2) of the Financial Services (Advertising) (Jersey) Order 2008 are also exempt from the requirements of Principle 7.

6 For the avoidance of doubt, the FS(J)L does not require advertisements to be approved by the JFSC and accordingly the JFSC would not normally contribute to any review or vetting process. In serious cases, however, the JFSC will consider exercising its powers of direction to have an advertisement amended or withdrawn. Nevertheless, the JFSC is especially interested in advertisements that meet the criteria set out in 7.13 of the Code and would appreciate sight of any such advertisements before issue.

7 It may not be possible or practicable to list within an advertisement all areas of risk that might apply to a particular product or service. Similarly, it may not be possible or

	practicable to specify all of the relevant terms and conditions. The necessary extent to which the risk warnings and the terms and conditions are specified in an advertisement will be dependent upon the nature of the products or services being advertised.

The First Schedule

Financial Resource Requirements

Table 1 (the Resource Requirement Table) sets out the methodology for calculating the Adjusted Net Liquid Assets and Total Requirement. Tables 2 – 6 set out the applicable calculations and the applicable definitions can be found in the *JFSC* publication: Definitions and Guidance on the Adjusted Net Liquid Assets (**ANLA**) Calculation. In Tables 2 – 6 the column headed "GN ref" highlights the relevant item in section 5 of the guidance note.

In line with 5.1.5, the calculation must be performed with a frequency that reflects the circumstances of the business and the risks that face it. Unless the *JFSC* consents otherwise the following must apply:

- For entities with any Position, Counterparty or Foreign Currency Risk Requirements, the calculation must be undertaken every business day.
- All other *registered persons* must complete the calculation on at least a quarterly basis. In addition, a *registered person* must prepare the calculation more frequently, if either:
    - Its *ANLA* falls below 130% of its Expenditure Requirement; or
    - An event occurs which has a material adverse effect on the *registered person's* financial resources.

The *JFSC* may consider variances to the required frequency of ANLA calculations if a *registered person* can demonstrate either enhanced capitalisation or if it regularly exceeds the requirement to a sufficient extent to suggest that the risk of breach is minimal. Such variances will be conditional on these circumstances being maintained.

The *JFSC* may impose enhanced requirements on a *registered person*, based on its risk based supervision.

Table 1 - Resource Requirement Table

	£	£	
Adjusted Total Assets	**X**		**From Table 2**
Adjusted Total Liabilities	**(X)**		**From Table 3**
Adjusted Net Liquid Assets (ANLA)		**X**	
Expenditure Requirement (ER)	**(X)**		**From Table 4**
Position Risk Requirement (PRR)	**(X)**		**From Table 5**
Counterparty Risk Requirement (CRR)	**(X)**		**From Table 6**
Foreign Currency Risk Requirement (FCRR)	**(X)**		GN ref 46
Total Requirement (TR):		**(X)**	
Ratio of ANLA to TR			**%**

Notes:

1 *The ratio of ANLA to TR must be maintained at a level of more than 110% (either by increasing share capital or introducing subordinated loans).*

2 *Notify the JFSC **immediately** if the Ratio of ANLA to TR falls below 130%, and make a further notification if it falls below 110%.*

Table 2 - Calculation of Adjusted Total Assets

Assets:	**£**	**£**	**£**	**GN ref**
Total Fixed Assets		**X**		
Current assets:				
Work in progress	**X**			
Debtors and prepayments	**X**			
Amounts due from related parties	**X**			
Cash at bank and in hand	**X**			
Investments	**X**			
Other	**X**			
Total Current Assets		**X**		
Total Assets			**X**	1
Illiquid Asset Adjustments:				
Fixed assets	**(X)**			2
Debtors > 90 days	**(X)**			3
Work in progress > 90 days	**(X)**			4
Prepayments > 90 days	**(X)**			5
Amounts due from related parties	**(X)**			6
Any other relevant items[ii]	**(X)**			
Total Illiquid Assets Adjustment		**(X)**		
Adjusted Total Assets – take to Table 1			**X**	

Table 3 – Calculation of Adjusted Total Liabilities

Liabilities:	**£**	**£**	**£**	**GN ref**
Current Liabilities:				
Trade creditors and accruals	**X**			
Bank Overdraft	**X**			
Bank loans < 1 year	**X**			
Lease obligations < 1 year	**X**			
Taxation obligations < 1 year	**X**			
Deferred income	**X**			
Amounts due to related parties <1 year	**X**			7
Subordinated loan < 1 year to run	**X**			
Other < 1 year	**X**			
Total Current Liabilities		**X**		
Long Term Liabilities:				
Bank loans > 1 year	**X**			
Lease obligations > 1 year	**X**			
Taxation obligations > 1 year	**X**			
Amounts due to related parties > 1 year	**X**			7
Subordinated loan > 1 year	**X**			
Other >1 year	**X**			
Total Long Term Liabilities		**X**		
Total Liabilities			**X**	8
Adjustments to Total Liabilities:				
PII Excess	**X**			9
Additional Excess on *PII*	**X**			10
Guarantees and/or charges over assets	**X**			11
Provision for Clawback	**X**			12
Non-refundable deferred income	**(X)**			13
Allowable subordinated loan > 1 year	**(X)**			14
Allowable undrawn credit facility	**(X)**			15
Bank loans > 1 year	**(X)**			
Lease obligations > 1 year	**(X)**			
Taxation obligations > 1 year	**(X)**			
Any other relevant items	**(X)**			
Total Adjustments to Total Liabilities		**(X)**		
Adjusted Total Liabilities – take to Table 1			**X**	

Table 4 – Calculation of Expenditure Requirement

Calculation of Expenditure Requirement (ER):	**£**	**£**	**£**	**GN ref**
Operating expenses	**X**			
Depreciation	**X**			
Finance costs	**X**			
Tax expense	**X**			
Other expenses	**X**			16
Total actual expenditure		**X**		17
Adjustments to total actual expenditure:				18
Discretionary bonuses/profit share	**(X)**			19
Bad debt expense	**(X)**			
Exceptional costs	**(X)**			20
Other	**(X)**			21
Total adjustments to total actual expenditure		**(X)**		
Adjusted total actual expenditure			**Y**	
Compare to:				
Budget expenditure for the current year (net of forecast discretionary bonuses and bad debt expenses)			**Z**	22
Take the higher:			**Y or Z**	23
Relevant Annual Expenditure (RAE)				
Expenditure Requirement (ER) – take to Table 1			**X**	**RAE x 25%**

Notes:

1 Registered persons must exercise care to ensure that any items deducted from the Expenditure Requirement (under Adjustments to total actual expenditure) were originally included in either the "Total actual Expenditure" or "Budgeted Expenditure" figure.

Table 5 – Calculation of Position Risk Requirement

Registered persons which maintain positions in investments (either long or short) are exposed to the risk that the price of such investments may move against them in the future. A *registered person* must calculate each of its position risk requirements in accordance with this table, and take the total position risk requirement, which is the sum of the requirements for each category, for entry in Table 1.

Calculation of Position Risk Requirement (PRR):	**£**	**£**	**GN ref**
A. Debt:			
UK Government or local authority	**(X)**		24
Issued or accepted by an approved bank	**(X)**		25
Other marketable investments	**(X)**		26
Frns	**(X)**		27
Total Debt PRR:		**(X)**	
B. Equities:			
Listed on a regulated investment exchange	**(X)**		28
Traded on a regulated investment exchange	**(X)**		29
Total Equity PRR:		**(X)**	
C. Futures, Options and Contracts for Difference:			
Exchange traded futures	**(X)**		30
OTC futures	**(X)**		31
Purchased options	**(X)**		32
Contracts for differences	**(X)**		33
Total Futures, Options and Contracts for Difference PRR:		**(X)**	
D. Other Investments:			
Unit linked bonds and units in a regulated collective investment scheme[iii] unless covered below	**(X)**		34
Units in higher volatility[iv] and property funds	**(X)**		35
With profit life policies	**(X)**		36
Any other investments[v]	**(X)**		37
Total Other Investments PRR:		**(X)**	
Position Risk Requirement – take to Table 1		**(X)**	

Table 6 – Counterparty Risk Requirement

A *registered person* must calculate the net CRR under each of the category headings below. Categories in which there is no entry or the net CRR is negative are to be treated as nil. The overall CRR is the aggregate of all such sub-totals. The *JFSC* may consent to these calculations being based on an internationally recognised standard.

Calculation of Counterparty Risk Requirement (CRR):	**£**	**£**	**GN ref**
Cash against document transactions:	**(X)**		38
Free deliveries:	**(X)**		39
Options purchased for a counterparty:	**(X)**		40
Amounts owed in respect of exchange traded margined transactions:	**(X)**		41
Concentrated risk from one counterparty:	**(X)**		42
Investments subject to repurchase, reverse repurchase, stock borrowing or stock lending transactions:	**(X)**		43
Over the Counter Derivatives:	**(X)**		44
Other receivables and accrued income:	**(X)**		45
Counterparty Risk Requirement – take to Table 1		**(X)**	

The Second Schedule

Application of the Code to persons registered to conduct Class E investment business

Definition - Class E investment business is defined under Schedule 1 of the Financial Services (Financial Service Business) (Jersey) Order 2009 as follows:

"Investment business carried on only with respect to funds which would be funds within the meaning of the Collective Investment Funds (Jersey) Law 1988 but for the fact that they do not, and do not intend to, acquire capital by means of an offer to the public of units for subscription, sale or exchange, as described in that Law."

Variance from the Code – Persons registered to conduct only Class E of investment business are afforded variances from certain provisions of the *Code*. Where a business is registered to conduct Class E as well as other classes of investment business, the full *Code* will apply to the whole of that business.

Application of the Code – Persons registered to conduct only Class E of investment business must comply with the following high level principles:

A *registered person* must conduct its business with integrity.

1. A *registered person* must have the highest regard for the interests of its *clients*.
2. A *registered person* must organise and control its affairs effectively for the proper
3. performance of its business activities and be able to demonstrate the existence of adequate risk management systems.
4. A *registered person* must comply with the regulatory span of control principles set out under 3.1.1 and 3.1.2 of the *Code*.
5. A *registered person* must comply with the Compliance Officer, Money Laundering Reporting Officer and Money Laundering Compliance Officer requirements set out under
6. paragraph 3.5 of the *Code*.
7. A *registered person* must maintain and adequately document policies and procedures that cover the management of the business.

A *registered person* must keep adequate and orderly records which must include, but are not necessarily limited to:

- Its financial affairs;
- Business transactions undertaken;
- Transactions effected for *clients*;
- Its internal organisation, including the apportionment of responsibilities among its
8. employees;
- Directors' and staff own account dealings;
- Risk management systems; and
- Board or management minutes.

A *registered person* is expected to maintain such books and records so as to be able to readily retrieve them in Jersey and, if kept otherwise than in legible form, maintain them so as to be readable at a computer terminal in Jersey so that they may be produced in legible form within five business days.

9.	A *registered person* must have a clearly documented policy regarding record retention. Records must be retained in accordance with any applicable legislation, in addition the following minimum retention periods must be applied: › Records relating to significant corporate governance matters, such as management meeting minutes and risk assessment matters – ten years from the date of the record; › Any other business records relating to requirements established by the *Code* – ten years from the date of the record; › Contractual documentation such as *client* account opening paperwork, mandates, agreements and Fact Finds – five years from the closure of the account or from the end of a series of transactions; and › Any other *client* records relating to requirements established by the *Code* – five years from the date of the transaction. A *registered person* must maintain, and be able to demonstrate the existence of, adequate financial resources and adequate insurance.
10.	A *registered person* must deal with the *JFSC* in an open and co-operative manner and comply with the notification requirements set out under Principle 6 of the *Code*.
11.	A *registered person* must not make statements that are misleading, false or deceptive.

12.

The Third Schedule

Table of consents

The following table summarises those variances which are specifically referred to in the *Code* as being available, on application in writing, from the *JFSC*.

Control and Risk Management		
3.3.4	Consent	On submission of a written request by the *registered person*, the *JFSC* will consider, on a case-by-case basis, the acceptability or otherwise of any other qualifications held by an *investment employee*. Such a request must: › Include a written explanation as to why the *registered person* considers the alternative qualification to be appropriate for that employee; and › Must be accompanied by a copy of the syllabus studied or equivalent where practical.
3.3.6	Consent	The *JFSC* may, on written application by the *registered person*, grant exemptions from the requirement to hold qualifications referred to in 3.3.1.4.1 and 3.3.2 of the *Code*. In doing so, the *JFSC* will pay regard to any previous exemption granted in respect of the *investment employee* on whose behalf the exemption is being sought, as well as the nature of the role being performed and the *registered person's* systems and controls.
3.5.5	Consent	In exceptional circumstances the *JFSC* may, on written application from a *registered person*, grant an exemption from the requirement under 3.5.4.2 of the *Code* where, for example, the *registered person* operates in Jersey as a branch and therefore relies upon a Compliance department based outside of Jersey. In considering such a request, the *JFSC* will pay particular regard to the extent to which the Jersey operation is subject to compliance monitoring and who has been nominated as the Jersey based compliance contact.
Financial Resources		
5.1.8	Consent	On submission of a written request by the *registered person*, the *JFSC* will consider granting consent to adjust the total liabilities figure by excluding a long term subordinated loan as a liability (Table 3 of the First Schedule). Any request must be accompanied by a signed consent request checklist and such consent is only likely to be granted where: › The subordinated loan is drawn up in accordance with the *JFSC's* proforma Subordinated Loan Agreement; and › The subordinated loan is made by an approved lender.
5.2.10	Consent	A *Registered person* that is ceasing to conduct investment business is required to arrange for appropriate "run off" *PII* cover in respect of claims arising from past acts or omissions. The level of such cover requires the *JFSC*'s consent as part of the cessation of business plan.

First Schedule	Consent	The *JFSC* may consider variances to the required frequency of *ANLA* calculations if a *registered person* can demonstrate either enhanced capitalisation or if it regularly exceeds the requirements to a sufficient extent that the risk of a breach is minimal. Such variances will be conditional on these circumstances being maintained.

[i] Formerly the sensitive activities policy.

[ii] The *registered person* must exercise appropriate judgement to include any items here that may not be covered by the defined categories of illiquid asset adjustment but would be considered to be illiquid.

[iii] Refer to the FCA definition of a collective investment scheme.

[iv] Higher volatility funds would include geared futures and options fund or warrant funds, assuming they are regulated schemes. Where they are not regulated the 100% of realisable value must be taken as the CRR.

[v] Any items subject to Position Risk that are not covered under the defined categories within parts A – D of this table.