



Jersey Financial
Services Commission

Feedback on Consultation Paper No. 1 2021

Disclosure requirements related to Sustainable Investments

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

A feedback paper on Consultation No. 1 2021

Issued: June 2021

Glossary of terms

Defined terms are indicated throughout this document as follows:

Abbreviation	Full name
CIF Code	Certified Funds Code of Practice
Code	Code of Practice
Commission Law	Financial Services Commission (Jersey) Law 1998, as amended
CP	Consultation Paper
CP1 2021	Consultation No. 1 2021
CP4 2020	Consultation No. 4 2020
FSB	Fund Services Business
FSB Code	Fund Services Business Code of Practice
FSJL	Financial Services (Jersey) Law 1998
IB	Investment Business
IB Code	Investment Business Code of Practice
JFSC	Jersey Financial Services Commission
JPF	Jersey Private Fund
JPF Guide	Jersey Private Fund Guide
Registered person	a person who is registered by the JFSC under Article 9 of the FSJL
SFDR	EU Sustainable Finance Disclosure Regulation
Sustainable Investment	An investment or investments which contribute to either an environmental or social objective.

Contents

1	Executive summary	4
1.1	Overview	4
1.2	Who will be affected?	4
1.3	Costs and benefits	4
2	Summary of requirement	5
3	Feedback and JFSC comments	6
4	Appendices	7
4.1	Specific Code and Guide Changes	7
4.2	Respondents.....	10

1 Executive summary

1.1 Overview

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

In late 2020 and early 2021, the JFSC engaged with all of the respondents to [Consultation No. 4 2020 \(CP4 2020\)](#) and several other parties. This allowed the JFSC to find ways to introduce regulation that is commercially viable, proportionate to Jersey, and meets international standards, culminating in [Consultation No.1 2021 \(CP1 2021\)](#).

This feedback paper:

- › provides a summary of the feedback received, and
- › details the amendments to various codes of practice (**Codes**) and the Jersey Private Fund Guide that will become effective in due course.

1.2 Who will be affected?

The amendments will affect:

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

1.3 Costs and benefits

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

2 Summary of requirement

The requirements are summarised below. For the specific requirements and scope per Code and guide refer to appendix 4.1. The requirements that will be implemented do have some changes with respect to the version consulted on in CP1 2021; further consultation is not required because the changes either reduce the scope or provide clarification of the position already supported.

Definition of Sustainable Investment

Sustainable Investment: An investment or investments which contribute to either an environmental or social objective.

Requirements related to Funds

When a Fund/JPF/Registered person is marketed on the basis of investing in a Sustainable Investment as part of its investment objective, it must disclose (via website or pre contractual document/prospectus or documents in which the terms of investing in the Fund/JPF are contained such as a subscription agreement) all material information in relation to the Sustainable Investment strategy and objectives; including but not limited to:

- › alignment with any specific taxonomy or where there is no alignment to a specific taxonomy a statement to that effect;
- › the proportion of investments that are sustainable;
- › the basis on which due diligence, benchmarking, and performance measurement and reporting, are likely to be conducted; and
- › any limitations to methodologies and data.

Transition Period	Upon effective date for new funds (15 July 2021), with a six month transition for funds existing prior to 15 July 2021 (17 January 2022).
-------------------	---

Requirements related to registered persons undertaking Investment Business

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 information is available the Client must be informed of that fact.

Transition Period	Upon effective date (17 January 2022); effectively a six month transition period.
-------------------	---

Please refer to Appendix 4.1 for the exact wording for each code of practice and the JPF Guide.

3 Feedback and JFSC comments

Feedback summary

There was general support for both the initiative and the proposed implementation. One respondent raised concerns on the wording particularly in relation the FSB Code which has been addressed; all other concerns were discussed and addressed, where applicable, with the respondents. In addition, as part of the continued collaborative approach, there have been discussions at meetings with Industry and working groups in respect of the requirements. These concerns, the amendments made, and where relevant how the concerns were addressed, are provided in the section below.

Feedback detail

Sustainable Investment definition	
Feedback/concern	Suggestion made to change the definition to include ‘an investment or investments’, and to rearrange the marketing sentence for improved clarity given a Registered person does not have an investment objective as such.
JFSC comment	The JFSC agreed with the suggestion.
Outcome	The change has been made.
FSB Code	
Feedback/concern	<ol style="list-style-type: none"> 1. Requirement should only apply to those Registered persons that have the responsibility around the investment objective and marketing of a Fund. 2. Where there are multiple responsible service providers this could cause confusion. 3. Should the requirement apply where it is already caught by the CIF Code?
JFSC comment	<ol style="list-style-type: none"> 1. The JFSC agrees and worked with the respondent to narrow the requirement accordingly. For those Registered persons that are carved out, they are now required to notify the JFSC if they become aware of a Fund not disclosing in accordance with the requirements (see outcome below). 2. The JFSC discussed this with the respondent and there was agreement that this would be overly prescriptive and practically difficult, given the different permutations, for the JFSC to determine which provider is most suitable/appropriate to take responsibility. The changes applied as a result of point 1 regarding the scope of responsibility mitigate this scenario further. 3. The provision for this scenario was already catered for by way of paragraph 2.11 of the FSB Code “With reference to paragraph 2.10, where a Certified Fund is subject to the equivalent requirement contained in the Code of Practice for Certified Funds, the Registered person will need to comply with paragraph 2.10 only in the circumstance that Registered person cannot evidence that the Certified Fund has complied with the equivalent requirement in the Code of Practice for Certified Funds.”; again this is further reinforced by way of the changes applied as a result of point 1.
Outcome	<p>Changes made:</p> <ul style="list-style-type: none"> › paragraph 2.12 has been added to the FSB Code “The requirement in paragraph 2.10 applies only to those Registered persons that are the governing body of the Fund or that otherwise accept responsibility or

	<p>part thereof for the website, pre-contractual document, prospectus, or documents in which the terms of investing in the Fund are contained such as a subscription agreement.”</p> <ul style="list-style-type: none"> › paragraph 2.13 has been added to the FSB Code “Where a Registered person is not subject to the requirements of paragraph 2.10 the Registered person must still notify the JFSC, in writing, within five business days of the Registered person becoming aware of the Fund not disclosing such material information in relation to the sustainable investment strategy and objectives of the Fund.”
--	---

Sustainable Finance Disclosure Regulation

Feedback/concern	Do these regulations directly replicate the fund requirements that fall under the EU Sustainable Finance Disclosure Regulation (SFDR) such as Article 8 and 9?
JFSC comment	<p>No these requirements are not a direct replication of SFDR.</p> <p>In line with the JFSC approach to introduce requirements that are commercially viable, proportionate, and meeting international standards, and in-line with consistent Industry feedback, these requirements concentrate on disclosure related to any fund that has a sustainable investment and is marketed on that basis. The JFSC has intentionally steered clear of a complex set of requirements that alter dependent on the nature and degree of the sustainable objective.</p>

Disclosure templates

Feedback/concern	Will the JFSC provide a template for the disclosure requirements?
JFSC comment	<p>No the JFSC will not be providing a template. We understand that Industry are utilising templates for compliance with the requirements of other jurisdictions, and as long as they equally allow compliance to be demonstrated with the JFSC requirements, then those templates may be used, thereby avoiding unnecessary duplication of templates.</p>

IB scope of advice

Feedback/concern	Does this apply when advising clients to a discretionary management solution?
JFSC comment	<p>The requirements do not apply directly to the activity of discretionary management, but only to the activity of providing advice, and then only when in relation to a fund that is marketed on the basis of investing in a Sustainable Investment as part of its investment objective. Where the advice is for a fund as per above, which includes multiple funds and multiple disclosures, it is acceptable for the advisor to provide to the client an overarching disclosure.</p>

4 Appendices

4.1 Specific Code and Guide changes

The requirements are provided here in more detail, as they are written in the specific Codes and Guide; there are also consequential amendments such as updates to 'Code Revision' sections, which are not included below. The full details of these changes are available in the links provided for the new Code/Guide including tracked change versions.

CIF Code

[Inserted in Glossary]

Sustainable Investment: An investment or investments which contribute to either an environmental or social objective.

[Inserted 2.12]

2.12 When a Fund is marketed on the basis of investing in a Sustainable Investment as part of its investment objective, it must disclose (via website, or pre-contractual document, prospectus, or documents in which the terms of investing in the Fund are contained such as a subscription agreement) all material information in relation to the sustainable investment strategy and objectives; including but not limited to:

- 2.12.1 alignment with any specific taxonomy, or where there is no alignment to a specific taxonomy a statement to that effect;
- 2.12.2 the proportion of investments that are sustainable;
- 2.12.3 the basis on which due diligence, benchmarking, and performance measurement and reporting, are likely to be conducted; and
- 2.12.4 any limitations to methodologies and data.

Notes:

- 1 With reference to paragraph 2.12, the effective date is 15 July 2021. For funds which existed prior to 15 July a transitional period with an effective date of 17 January 2022 applies.

[Link to new CIF Code](#)

[Link to tracked change CIF Code](#)

FSB Code

[Inserted in Glossary]

Sustainable Investment: An investment or investments which contribute to either an environmental or social objective.

[Inserted 2.10]

2.10 When a Registered person provides services as defined in paragraph 2.12, 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 disclose (via website, or pre-contractual document, prospectus, or documents in which the terms of investing in the Fund are contained such as a subscription agreement) all material information in relation to the sustainable investment strategy and objectives; including but not limited to:

- 2.10.1 alignment with any specific taxonomy, or where there is no alignment to a specific taxonomy a statement to that effect;
- 2.10.2 the proportion of investments that are sustainable;

2.10.3 the basis on which due diligence, benchmarking, and performance measurement and reporting, are likely to be conducted; and

2.10.4 any limitations to methodologies and data.

2.11 With reference to paragraph 2.10, where a Certified Fund is subject to the equivalent requirement contained in the Code of Practice for Certified Funds, the Registered person will need to comply with paragraph 2.10 only in the circumstance that Registered person cannot evidence that the Certified Fund has complied with the equivalent requirement in the Code of Practice for Certified Funds.

2.12 The requirement in paragraph 2.10 applies only to those Registered persons that are the governing body of the Fund or that otherwise accept responsibility or part thereof for the website, pre-contractual document, prospectus, or documents in which the terms of investing in the Fund are contained such as a subscription agreement.

2.13 Where a Registered person is not subject to the requirements of paragraph 2.10 the Registered person must still notify the JFSC, in writing, within five business days of the Registered person becoming aware of the Fund not disclosing such material information in relation to the sustainable investment strategy and objectives of the Fund.

Notes:

1. With reference to paragraphs 2.10, 2.11, 2.12 and 2.13, the effective date is 15 July 2021, however for Registered persons which provided services as defined in paragraph 2.12 in relation to an existing Fund prior to the 15 July 2021, a transitional period with an effective date of 17 January 2022 applies.

[Link to new FSB Code](#)

[Link to tracked change FSB Code](#)

JPF Guide

[Inserted: new part L]

L Sustainable Investment

Sustainable Investment is an investment or investments which contribute to either an environmental or social objective.

When a JPF is marketed on the basis of investing in a Sustainable Investment as part of its investment objective, it must disclose (via website, or pre-contractual document, private placement memorandum, offer document, or documents in which the terms of investing in the JPF are contained such as a subscription agreement) all material information in relation to the sustainable investment strategy and objectives; including but not limited to:

- › alignment with any specific taxonomy, or where there is no alignment to a specific taxonomy a statement to that effect;
- › the proportion of investments that are sustainable;
- › the basis on which due diligence, benchmarking, and performance measurement and reporting, are likely to be conducted; and
- › any limitations to methodologies and data.

With reference to part L, the effective date is 15 July 2021. For funds which existed prior to 15 July 2021 a transitional period with an effective date of 17 January 2022 applies.

[Link to new JPF Guide](#)

[Link to tracked change JPF Guide](#)

IB Code

[Inserted in Glossary]

Sustainable Investment: An investment or investments which contribute to either an environmental or social objective.

[Inserted 2.30]

Sustainable Investment

2.30 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.

Effective Date: There will be a 6 month transition period with an effective date of 17 January 2022.

[Link to new IB Code](#)

[Link to tracked change IB Code](#)

4.2 Respondents

Given the nature of the collaborative approach in formulating the proposals that went into CP1 2021, it was not expected that there would be significant feedback, as concerns were generally addressed prior to CP1 2021 being published. Three named respondents provided feedback in addition to various anonymous responses:

- › Mourant Ozannes (Jersey) LLP: Law Firm
- › Barclays Bank Plc (Jersey Branch): Fund Services Business and Investment Business
- › Standard Bank Jersey Ltd
- › Various Anonymous: Investment Business, Private Fund, Fund Services Business, Collective Investment Fund