

# Consultation Paper

Issued by:

**Government of Jersey and  
Jersey Financial Services Commission**

## **Rationalisation and Consolidation of Jersey's Private Fund and Unregulated Fund Regimes**

A joint consultation paper on proposals to:

- › introduce a new very private placement fund guide;
- › introduce a new multi-purpose Jersey “professional investor” definition;
- › introduce modern regulatory powers in the Control of Borrowing (Jersey) Law 1947;
- › phase out COBO only funds; and
- › phase out unregulated exchange-traded funds.

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## Joint Consultation Paper

Please note that terms in *italics* are defined in the Glossary of Terms.

The *Government* and the *Commission* invite comments on this joint *Government/Commission* consultation paper (*Consultation Paper*). **Thomas Cowsill** at Jersey Finance Limited is co-ordinating an industry response that will incorporate any matters raised by local businesses. Comments should reach Jersey Finance Limited by 12 September, 2016.

Responses should be sent to:

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Responses sent to Jersey Finance Limited will be shared verbatim with the *Government* and the *Commission*. If a respondent indicates to Jersey Finance Limited that they wish to remain anonymous, your response will be shared with the *Government* and the *Commission* on an anonymised basis (with reference made only to the type of respondent e.g. individual, law firm, bank, trust company etc.). Please indicate clearly in your response that you wish this to be the case.

Alternatively, responses may be sent directly to one or both of the following *Government* and *Commission* contacts by 12 September, 2016:

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### **Notes about this *Consultation Paper***

It is the policy of the *Commission* to make the content of all responses available for public inspection unless specifically requested otherwise.

### **How your information will be used**

The information you provide will be processed for the purpose of consultation. *Government* and the *Commission* will use your information in accordance with the Data Protection (Jersey) Law 2005 and the Freedom of Information (Jersey) Law 2011. Please note that *Government* and the *Commission* may quote or publish responses to this consultation but *Government* and the *Commission* will not publish the names and addresses of individuals. If you do not want any of your response to be published, you should clearly mark it as confidential. Confidential responses will be included in any summary of statistical information received and views expressed.

### **Feedback on this *Consultation Paper***

We value your feedback on how well we consult or seek evidence. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact [Communications.Unit@gov.je](mailto:Communications.Unit@gov.je)

## Glossary of Terms

AIF	means alternative investment fund.
AIFM	means alternative investment fund manager.
AIFMD	means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on AIFMs.
AIFMD Form	means any of the Commission application and notification forms relevant to AIFs, AIFMs and AIF depositaries pursuant to Jersey's AIFMD regime.
AML/CFT	Anti-Money Laundering/Combatting Financial Crime and Terrorism.
Certified Funds Code	means the Code of Practice for Certified Funds.
CIF	means collective investment fund.
CIFJL	means the Collective Investment Funds (Jersey) Law 1988.
COBO	means the Control of Borrowing (Jersey) Order 1958.
COBO Law	means the Control of Borrowing (Jersey) Law 1947.
COBO Only Fund	means a fund which falls within the definition of a collective investment fund in Article 3 of the CIFJL except that the offer of units in the scheme or arrangement is not an offer to the public within the meaning of Article 3 of the CIFJL, and which has not been granted a consent as either a PPF or a VPF.
Commission or JFSC	means the Jersey Financial Services Commission.
DSP	means a 'designated service provider' required to be appointed by a VPPF (as further described in Part H of the VPPF Guide).
eligible investor	means any person meeting the criteria set out in (ii), (iii) or (iv) at paragraph 2.2.1.3 of this Consultation Paper.
Expert Fund	means a Jersey expert fund.
Expert Fund Guide	means the Jersey Expert Fund Guide dated 2 April 2012 and updated 19 November 2012.
FSB	means fund services business.
FSJL	means the Financial Services (Jersey) Law 1998.
Government	means the Government of Jersey.
JEIF	means a Jersey eligible investor fund.
MiFID I	means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.
MiFID II	means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on Markets in Financial Instruments and Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on Markets in Financial Instruments.
Non-domiciled Form (non-fund)	means a proposed new application form to be submitted to the Registry by a non-domiciled structure which is not a VPPF or any other fund product but which requires a relevant consent.

PIRS	means any professional investor regulated scheme falling in scope of either of the PIRS Orders.
PIRS Orders	means the professional investor regulated scheme exemption under the Financial Services (Investment Business (Restricted Investment Business – Exemption)) (Jersey) Order 2001 and/or the Financial Services (Trust Company Business (Exemptions No.5)) (Jersey) Order 2001.
PPF	means a Jersey private placement fund.
PPF Guide	means the Jersey Private Placement Fund Guide issued 26 January 2012 (and updated 31 May 2013).
private fund	means a VPF (to be re-branded as a VPPF, subject to consultation); a PPF; and/or a COBO Only Fund.
professional investor	has the meaning given to this term under paragraph 1. of the Professional Investor Definition.
Professional Investor Definition	means the new multi-purpose “Professional Investor” definition (set out in final draft under Appendix D of this Consultation Paper).
public fund	means any CIF classification.
Recognized Fund	has the same meaning as provided by Article 1 of the CIFJL.
registered person	means a person who is registered, or holds a permit or certificate, as applicable, under one or more of the regulatory laws.
Registry	means the Jersey Companies Registry.
Registry Form	means the C2(a) form, ILP2 form, LLP2 form, LP2 form, SLP2 form, the newly proposed Unit Trust Form (non-fund) and the newly proposed Non-domiciled Form (non-fund) or such other form as the Registry may deem appropriate from time to time.
regulatory laws	means the Alternative Investment Funds (Jersey) Regulations 2012, the CIFJL and the FSJL.
relevant consent	means the relevant consent issued by the Commission pursuant to the COBO.
Restriction of Scope Order	means the Collective Investment Funds (Restriction of Scope) (Jersey) Order 2000.
retail investor	means any investor that is not: (i) a professional investor; (ii) an investor that makes an acquisition in accordance with paragraph 3. of Annexure A of the VPPF Guide; or (iii) an investor that makes the minimum initial investment in or commitment to the VPPF as prescribed under Part A of the VPPF Guide.
TCB	means trust company business.
Unclassified Open-Ended Fund	means a fund approved by the Commission as a Jersey open-ended unclassified collective investment fund offered to the general public.
Unit Trust Form (non-fund)	means a proposed new application form to be submitted to the Registry by a Jersey unit trust which is not a VPPF or any other fund product but which requires a relevant consent.
Unregulated Eligible Investor Fund	means one of the two categories of unregulated fund that may be established pursuant to the Unregulated Funds Order.

Unregulated Exchange-Traded Fund	means one of the two categories of unregulated fund that may be established pursuant to the Unregulated Funds Order.
unregulated fund	means any unregulated fund notified to the Commission pursuant to the Unregulated Funds Order.
Unregulated Funds Order	means the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008.
VPF	means a Jersey very private fund (to be re-branded as a VPPF, subject to consultation).
VPPF	means a Jersey very private placement fund
VPPF Form	means the application form to be submitted to the Commission's FSB/TCB fund authorisation team to enable the establishment of a VPPF.
VPPF Guide	means the Jersey Very Private Placement Fund Guide (set out in final draft under Appendix C of this Consultation Paper).

# 1 Summary

## 1.1 Overview

- 1.1.1 As part of the continuing work to secure Jersey's future as a leading international finance centre and to ensure that Jersey's funds sector continues to flourish, a comprehensive jurisdictional review was undertaken to consider the future direction of Jersey's financial services industry. The project was undertaken in association with McKinsey & Company.
- 1.1.2 One of the initiatives recommended by the jurisdictional review was to simplify Jersey's funds legislation and regulation process whilst retaining flexibility and innovation. Securing a competitive advantage in the fast moving funds sector means having flexible regulation with responsive processes.
- 1.1.3 This *Consultation Paper* arises from the work undertaken as part of the funds review project (*Funds Review Project*) by a working group comprised of members from the *Government*, the *Commission*, Jersey Finance Limited and industry (including the Jersey Funds Association) (together, the *Working Group*).
- 1.1.4 The *Working Group* have been tasked with the *Funds Review Project*. Specifically, a smaller sub-set of the *Working Group* (*Smaller Working Group*) have been asked to design a series of proposed enhancements to Jersey's funds regime that address the jurisdictional review's recommendation. Subject to consultation, it is intended that the proposed enhancements which have been identified as a series of initiatives by the *Smaller Working Group* be divided into three separate phases of the *Funds Review Project*:
- 1.1.4.1 **Phase I**, which forms the basis of this *Consultation Paper* is aimed at rationalising Jersey's *private fund* space and consolidating Jersey's *unregulated fund* space is described in detail below.
- 1.1.4.2 **Phase II**, which we intend to issue a *Government/Commission* consultation paper in respect of later this year, is aimed principally at consolidating the *public fund* space by reducing the number of *CIF* regimes to three: namely (i) a new and improved *Expert Fund* (which will include listed); (ii) a refined retail fund product (which will 'wrap up' existing *Unclassified Open-Ended Funds* and *Recognized Funds*); and (iii) an *AIFMD* compliant regime.
- 1.1.4.3 Regarding the *AIFMD* compliant regime, the proposal that the *Smaller Working Group* is currently developing and intending to consult on as part of this second phase involves the conversion of the *JEIF* into a Jersey registered alternative investment fund (*JRAIF*). The *JRAIF* will be supervised by the *Commission* by proxy as it will be the relevant *AIFM* that must be authorised and supervised by the *Commission* and who will be responsible for ensuring the *JRAIF's* compliance with the applicable sections of the *AIFMD*. Accordingly, it would not be necessary for the *JRAIF* to adhere to the *Certified Funds Code*.



- 1.1.4.4 We will also look to reduce the existing number of *FSB* classes under Article 2(10) of the *FSJL* and stream-line the authorisation process for *CIFs* and *FSBs* as part of this second phase.
- 1.1.4.5 **Phase III**, which we intend to issue a *Government/Commission* consultation paper in respect of next year, is aimed at reviewing the effectiveness of all the investment fund related *FSJL* exemptions, including the *PIRS Orders*. We also intend to consider what enhancements, in addition to the changes to the *COBO Law* proposed under Phase I (i.e. the introduction of modern regulatory supervision, enforcement and co-operation powers) should be made to the *COBO Law* and the *COBO*.

## 1.2 What is proposed and why?

- 1.2.1 This *Consultation Paper* sets out the details of, and invites responses on, the proposed implementation of Phase I of the *Funds Review Project*, namely the rationalisation and consolidation of Jersey's *private fund* and *unregulated fund* space which will broadly involve the:
  - 1.2.1.1 introduction of a *VPPF Guide*;
  - 1.2.1.2 introduction of a new and universal *Professional Investor Definition*;
  - 1.2.1.3 introduction of modern regulatory powers in the *COBO Law*;
  - 1.2.1.4 phasing out of *COBO Only Funds*; and
  - 1.2.1.5 phasing out of *Unregulated Exchange-Traded Funds*.
- 1.2.2 The details of the proposed implementation of Phase I of the *Funds Review Project* are more fully described in this *Consultation Paper* when read with Appendices C and D.

## 1.3 Who would be affected?

- 1.3.1 The proposals in this *Consultation Paper* have the potential to affect (i) any person operating in Jersey's *private fund* or *unregulated fund* space and who, for the avoidance of doubt and subject to various regulatory exemptions, may not be a *registered person*; and (ii) any person applying to the *Commission* for a *relevant consent* in respect of a non-fund product which is a Jersey unit trust or a non-Jersey domiciled structure.

## 2 Consultation on VPPF Guide

### 2.1 Introduction

- 2.1.1 Starting with Jersey's *private fund* space, our proposal is to introduce a new *VPPF Guide* akin to the existing *PPF Guide*. The *VPPF Guide* (set out in final draft under Appendix C of this *Consultation Paper*) is intended to provide greater certainty of the eligibility conditions and regulatory approach to the authorisation process for a *VPF* (to be re-branded a *VPPF* subject to consultation). The *VPPF Guide* consists of 12 Parts (Part A through to Part L) and two annexures.
- 2.1.2 It is intended that clear *Commission* guidance, in the form of the *VPPF Guide*, setting out the criteria pursuant to which a *VPPF* may obtain its *relevant consent* from the *Commission* on a fast-track basis, should simplify and expedite the current establishment process for this classification of *private fund* and highlight a *VPPF's* continuing regulatory obligations.
- 2.1.3 Subject to this consultation, it is intended that a *VPPF Form* will be prepared to accompany the *VPPF Guide* and that a new *Unit Trust Form (non-fund)* and a new *Non-domiciled Form (non-fund)* will also be prepared. This is because it is proposed that, going forwards, all applications for a *relevant consent* by a non-fund product will be dealt with by *Registry* and that all applications for a *relevant consent* or any other consent required under the *regulatory laws* by a fund product will be dealt with by the *Commission's FSB/TCB* authorisation team.
- 2.1.4 The new *Unit Trust Form (non-fund)* and the new *Non-domiciled Form (non-fund)* will form part of the *Registry Forms* and, like the other *Registry Forms*, will be filed directly with the *Registry* in order for the *relevant consent* to be issued. The new *Unit Trust Form (non-fund)* and the *Non-domiciled Form (non-fund)* will request the same level of beneficial owner and controller information for Jersey unit trusts and non-domiciled structures that are not *VPPFs* (or any other fund product) as is required to be disclosed in the other *Registry Forms* (such as the *Company C2A Form*) in order for a *relevant consent* to be issued by the *Registry*.
- 2.1.5 It is anticipated that the introduction of the new *Unit Trust Form (non-fund)* and the *Non-domiciled Form (non-fund)* will see an end to applications for a *relevant consent* being made to the *Commission's FSB/TCB* authorisation team from Jersey unit trust structures and non-domiciled structures where those structures are not fund products.
- 2.1.6 The *VPPF Form* will substitute the current requirement for an applicant to submit an application letter to the *Commission's FSB/TCB* authorisation team requesting authorisation of a *VPPF*. Provided that the *VPPF* satisfies the eligibility conditions set out in the *VPPF Guide* and the applicant submits a fully completed *VPPF Form* and *COBO fee*, a *VPPF* may be established and issued with a *relevant consent* using a 48 hour streamlined authorisation process.

- 2.1.7 Where a *VPPF* is a Jersey company or a Jersey partnership, prior to filing its *VPPF Form* with the *Commission's FSB/TCB* authorisation team, the relevant company or partnership will still be required to file the appropriate *Registry Form* with the *Registry* in order to obtain its certificate of incorporation or certificate of registration and its consent to issue shares or partnership interests pursuant to the *COBO*. A separate application to the *Registry* will not be required where a *VPPF* is a Jersey unit trust or a non-domiciled structure.
- 2.1.8 The proposed content of the *VPPF Form* is set out in Part J of the *VPPF Guide*. Essentially, there are seven pieces of information that the *VPPF* would need to supply together with four separate confirmations. It is intended that the *VPPF Form* will be signed by the *VPPF's* designated service provider (detailed further below).
- 2.1.9 Generally, the *VPPF Guide* would not apply retrospectively to *VPPFs* that are already in existence. In other words, it would only apply to *VPPFs* that are established on or after the date the *VPPF Guide* comes into force. However, where an existing *VPPF* requires its *relevant consent* to be varied or amended in any way and the *VPPF Guide* is in force, the intention is that the *VPPF Guide* would then apply to the *VPPF* and that *VPPF* would need to meet the eligibility conditions set out in the *VPPF Guide* before its *relevant consent* is amended or varied by the *Commission*.
- 2.1.10 The *Government* and the *Commission* invite responses to the following questions in connection with the *VPPF Guide*.
- 2.1.11 **Question: Do you agree with the re-branding of the existing VPF a VPPF? If not, please explain why. There is an opportunity to change the name of this private fund product altogether. Some suggestions raised so far include 'Restricted PPF', 'Limited PPF', 'Ultra PPF', 'Qualified PPF' and '15 or Fewer PPF'. We would welcome your suggestions on the most suitable name for this private fund product.**
- 2.1.12 **Question: Do you have any observations or concerns regarding the proposal to publish the VPPF Guide? If you do, please state in detail what your observation or concern is and explain the reason for it.**
- 2.1.13 **Question: Do you believe that there are any issues concerning the information or confirmations that must be given under the VPPF Form? If so, please explain why.**
- 2.1.14 **Question: Do you agree that the VPPF Guide should apply to existing VPPFs that require an amendment or variation to its relevant consent? If not, please explain in full why.**
- 2.1.15 *Government* and the *Commission* would encourage all those who are interested in this consultation to read the *VPPF Guide* in full before responding. Of particular note, we draw your attention to the sections of this *Consultation Paper* titled *What is a VPPF?*, *VPPF Structure*, *Investment Warning*, *15 or Fewer Test*, *Designated Service Provider*, *Timescale and cost* and *Regulatory treatment of a "family connection"* and an "employment connection".

## 2.2 What is a VPPF?

- 2.2.1 A *VPPF* will continue to have the same characteristics as the existing *VPF*. Specifically, a *VPPF*:

- 2.2.1.1 may be established in Jersey or in a country or territory outside of Jersey;
- 2.2.1.2 requires a *relevant consent* to be issued; and
- 2.2.1.3 consists of a “restricted” offer of units for subscription, sale or exchange so that such offers are 15 or fewer and the number of investors shall be 15 or fewer, with each investor being a person:
  - (i) who is a *professional investor* (within the meaning of paragraph 1. of Annexure A of the *VPPF Guide* and which is included as a standalone document under Appendix D of this *Consultation Paper*);
  - (ii) who makes a minimum initial investment in or commitment to the *VPPF* of not less than two hundred and fifty thousand pounds Sterling (or the equivalent of that amount in another currency) either through an initial offering of units in the *VPPF* or by subsequent acquisition;
  - (iii) to whom paragraph 3 of Annexure A of the *VPPF Guide* applies; or
  - (iv) to whom paragraph 5 of Annexure A of the *VPPF Guide* applies.
- 2.2.2 The *Professional Investor Definition* which forms an integral part of the criteria for a *VPPF* set out under Part E of the *VPPF Guide* is consulted on separately under paragraph 3 of this *Consultation Paper*.
- 2.2.3 For the purpose of the *VPPF Guide* only, persons meeting the criteria set out in (ii), (iii), or (iv) above at paragraph 2.2.1.3 are each an *eligible investor* and together, *eligible investors*. For the avoidance of doubt, *eligible investors* are not *retail investors*.
- 2.2.4 Part B of the *VPPF Guide* sets out the full definition of ‘collective investment fund’ for the purposes of explaining what a *VPPF* is. This definition is substantially the same as the meaning given to the same term under Article 3 of the *CIFJL*, save that the *VPPF Guide* emphasises that the offer must be addressed exclusively to a restricted circle of persons being 15 or fewer, as distinct from an offer to the public (within the meaning of Article 3 of the *CIFJL*). There is no intention to amend Article 3 of the *CIFJL* Law for the purposes of introducing the *VPPF Guide* and it is important to note that the *VPPF Guide* would not in any way replace the requirements of the *CIFJL*.
- 2.2.5 **Question: Does the *VPPF Guide* make it sufficiently clear that a *VPPF* must meet the meaning of a ‘collective investment fund’ as set out in Article 3 of the *CIFJL* including that an offer to invest in a *VPPF* must be addressed exclusively to a restricted circle of persons which must be 15 or fewer investors? If you do not think it does, please state why.**

## 2.3 Structure and criteria

- 2.3.1 *VPPFs* are intended to be flexible in terms of how they may be structured.
- 2.3.2 Part D of the *VPPF Guide* clarifies that a *VPPF* may be established in Jersey and can take the form of a company incorporated under the laws of Jersey, or one or more forms of partnership available in Jersey, or a unit trust constituted under the laws of Jersey. In addition, a *VPPF* may be incorporated or constituted, as applicable, in a country or territory outside Jersey in such form as is permitted by the relevant country or territory.

- 2.3.3 Part D of the *VPPF Guide* also confirms that there is no requirement for a Jersey general partner, managing partner or trustee to be appointed to a *VPPF* which is established as one or more limited partnerships, a limited liability partnership or as a unit trust respectively, nor is there any regulatory requirement for the *VPPF's* governing body to appoint one or more Jersey resident directors.
- 2.3.4 It should be noted that a *VPPF* is not required to comply with the *Certified Funds Code*, personal questionnaires are not required for any director, beneficial owner/controller, money laundering reporting officer or money laundering compliance officer of a *VPPF*, and the promoter of a *VPPF* does not require the prior approval of the *Commission*. A *VPPF* will however be subject to the *Commission's* sound business practice policy.
- 2.3.5 Where the *VPPF* is an alternative investment fund, Jersey's *AIFMD* regime and the applicable sections of the *Commission's* Code of Practice for Alternative Investment Funds and AIF Services Business will also apply. As is the case today, the *AIF* application process will be treated as an overlay on the *VPPF* application process and the relevant *AIFMD Form* will still be required to be filed with the *Commission's* FSB/TCB authorisation team in addition to the *VPPF Form*. The application timescale and fee attaching to the relevant *AIFMD Form* shall, for the avoidance of doubt, be separate to the application timescale and fee attaching to the *VPPF Form*.
- 2.3.6 The above derogations and requirements are set out in Part E of the *VPPF Guide*.
- 2.3.7 **Question: Do you foresee any issues in allowing a *VPPF* to take any of the forms described in Part D of the *VPPF Guide* (i.e. a company, partnership or unit trust incorporated or established either in Jersey or in a country or territory outside of Jersey)? If so, please explain what they are.**
- 2.3.8 **Question: Do you foresee any issues with not requiring a Jersey general partner, managing partner or trustee to be appointed to a *VPPF* which is established as one or more limited partnerships, a limited liability partnership or as a unit trust? If so, please explain your concerns in full.**
- 2.3.9 **Question: Do you foresee any issues with not requiring a *VPPF* to appoint one or more Jersey resident directors to its governing body? If so, please explain your concerns in full.**
- 2.3.10 **Question: Considering the *VPPF* criteria, as summarised in Part E of the *VPPF Guide*, do you believe it to be reasonable for a *VPPF* to have to meet this criteria? If not, please explain why.**

## 2.4 Investment warning

- 2.4.1 Paragraph 3 of Part E of the *VPPF Guide* states that only *professional investors* or *eligible investors* who have acknowledged in writing receipt and acceptance of the investment warning (or a warning that is in substantially the same form) may invest in a *VPPF*. This investment warning is set out in Part F of the *VPPF Guide*. It is substantially the same as the investment warning set out in paragraph 4.3 of the *PPF Guide*.
- 2.4.2 **Question: Do you agree that investors looking to invest in a *VPPF* should receive and acknowledge an investment warning before they can invest? If not, please explain the rationale behind your answer.**

- 2.4.3 **Question: Do you consider the investment warning itself to be appropriate and reasonable? If not, please explain why.**

## 2.5 15 or fewer test

- 2.5.1 One of the key criteria for a *VPPF* is that the number of offers of units for subscription, sale or exchange shall not exceed 15 and the number of *professional investors* and/or *eligible investors* shall not exceed 15 (*15 or Fewer Test*). However, the *VPPF Guide* proposes a number of generally accepted rules and exceptions around the *15 or Fewer Test*, which are set out under Part G of the *VPPF Guide*.
- 2.5.2 Of particular note is the position concerning *retail investors*. The general position is that only *professional investors* and *eligible investors* may invest in a *VPPF*. *Retail investors* are specifically prohibited from investing directly in a *VPPF*.
- 2.5.3 However, in determining the *15 or Fewer Test*, paragraph 7. of Part G of the *VPPF Guide* provides that it is possible for a *professional investor* to acquire an interest in a *VPPF* directly for and on behalf of one or more *retail investors* and in this scenario the *retail investor(s)* will not be counted in the *15 or Fewer Test*.
- 2.5.4 Paragraph 7 of Part G of the *VPPF Guide* substantially replicates the principles set out in paragraphs 1.9 and 1.10 of *PPF Guide*.
- 2.5.5 **Question: Do you agree with the proposed rules and exceptions around the 15 or Fewer Test which are set out under Part G of the VPPF Guide? If not, please explain your reasons why.**
- 2.5.6 **Question: Do you believe that any other rules or exceptions around the 15 or Fewer Test should be included under Part G of the VPPF Guide? If so, please state the additional rule(s) or exception(s) clearly and give a full explanation as to why you think it should be included in the VPPF Guide.**
- 2.5.7 **Question: Do you agree that retail investors should be able to invest indirectly in a VPPF? If not, please explain your reasons why.**

## 2.6 Designated service provider (DSP)

- 2.6.1 It is proposed that a *VPPF* must appoint a *DSP*. This requirement is set out in Part H of the *VPPF Guide*. The jobs and growth agenda is a key objective for *Government* and requiring a *VPPF* to appoint a Jersey entity that is registered by the *Commission* to carry on *TCB*, Investment Business and/or *FSB* within the meaning of the *FSJL* as its *DSP* supports this objective.
- 2.6.2 Requiring a *DSP* is also a good way of ensuring that the *Government* and the *Commission* understand what business is being undertaken in the Island and that such business is complying with its Jersey *AML/CFT* obligations and the interests of investors are being protected. A *DSP* will also ensure a minimum level of presence for the *VPPF* in Jersey.

- 2.6.3 In accordance with Part H of the *VPPF Guide*, the appointment of a *DSP* by the relevant VPPF will be imperative to its authorisation and ongoing supervision by the *Commission*.
- 2.6.4 **Question: Do you foresee any issues in requiring a VPPF to appoint a DSP? If so, please explain your concerns.**
- 2.6.5 **Question: Do you foresee any issues in requiring a DSP to sign the VPPF Form? If so, please explain what these issues are.**
- 2.6.6 **Question: Do you foresee any issues in requiring a DSP to file an annual confirmation or notify the Commission of the matters listed in paragraph 3 of Part H of the VPPF Guide? If so, please explain your concerns.**

## 2.7 Timescale and cost

- 2.7.1 The *VPPF Guide* provides that a *relevant consent* will be issued by the *Commission* within 48 hours<sup>1</sup> of the *Commission's FSB/TCB* authorisation team receiving a fully completed *VPPF Form* and corresponding application fee payable to the *Commission* in accordance with Article 12A of the *COBO*.
- 2.7.2 Subject to this consultation, the *VPPF* application fee payable to the *Commission* will be set out in a revised notice of fees payable by or in relation to the *COBO*. It is proposed that in line with the fee of £1070 payable in respect of any *PPF* applying to the *Commission's FSB/TCB* authorisation team for the issue of a *relevant consent* and in order to facilitate the proposed 48 hour stream-lined *VPPF* authorisation process that a fee of £1070 will also be payable in respect of any *VPPF* applying to the *Commission's FSB/TCB* authorisation team for the issue of a *relevant consent*. The proposed *VPPF* application fee represents an increase of £740 when compared against the fee of £330 payable in respect of any current *VPF* applying to the *Commission's FSB/TCB* authorisation team for the issue of a *relevant consent*.
- 2.7.3 Where a *VPPF* is also an alternative investment fund, the application timescale and fee attaching to the relevant *AIFMD Form* shall be separate to the application timescale and fee attaching to the *VPPF Form*.
- 2.7.4 **Question: Do you have any observations or concerns regarding the proposed 48 hour<sup>1</sup> stream-lined VPPF authorisation process or the proposed VPPF application fee of £1070? If you do, please state in detail what your observation or concern is and explain the reason for it.**

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<sup>1</sup> The proposed 48 hour stream-lined *VPPF* authorisation process represents an improvement on the current 5 days' time frame for the issue of a *relevant consent* to a *VPF* by the *Commission's FSB/TCB* authorisation team. The *Commission's* internal systems<sup>1</sup> are currently being updated as part of the *Commission's* change programme and this may impact the stream-lined process initially whilst this work is being finalised.

## 2.8 Regulatory treatment of a ‘family connection’ and an ‘employment connection’

- 2.8.1 The *VPPF Guide* seeks to provide certainty with respect to the regulatory treatment by the *Commission* of arrangements between persons who are connected to each other by way of a ‘family connection’ or incentive arrangements between persons who are connected to each other by way of an ‘employment connection’.
- 2.8.2 Where either of these arrangements exist, the *VPPF Guide* and the conditions set out therein will not apply to such an arrangement. In practical terms, this will mean that such an arrangement will not be considered a *VPPF* and, instead of such arrangement applying to the *Commission’s* FSB/TCB authorisation team for a *relevant consent* using the *VPPF Form* it should apply to the *Registry* for a *relevant consent* using the relevant *Registry Form*.
- 2.8.3 Annexure B of the *VPPF Guide* sets out the criteria for ‘employment connection’ and ‘family connection’ and there is further discussion on these type of arrangements under Part B of the *VPPF Guide*.
- 2.8.4 Given that it is intended that the *VPPF Guide* would not apply to these arrangements, it is likely that Annexure A will be removed from the *VPPF Guide* and re-designated as a standalone document. However, as there has been some confusion as to the regulatory treatment of *VPPFs* and ‘employment connections’ and ‘family connections’ in the past, we have included Annexure A in the *VPPF Guide* for the avoidance of any doubt for now.
- 2.8.5 **Question: Do you agree that an ‘employment connection’ and ‘family connection’ should not be treated as a *VPPF*? If you do not agree please explain why.**
- 2.8.6 **Question: Do you agree with how ‘employment connection’ and ‘family connection’ have been defined in the *VPPF Guide*? If not, please explain your concerns.**



## 3 Consultation on *Professional Investor Definition*

### 3.1 Introduction

- 3.1.1 Under Jersey's current investment funds framework, which includes *private fund*, *public fund*, *unregulated fund* and *AIFMD* compliant regimes, there exists a number of varying non-retail investor definitions including professional, sophisticated, expert and institutional.
- 3.1.2 Whilst we cannot influence the meaning of 'professional client' within the meaning of Annex II to *MiFID II* for the purpose of the *MIFID I*, *MiFID II* and the *AIFMD*, we can avoid the uncertainty which is created by having multiple non-retail investor definitions spread across the *PPF Guide*, the *PIRS Orders*, the *Expert Fund Guide*, the *Restriction of Scope Order* and the *Unregulated Funds Order*.
- 3.1.3 The basic definition of a *VPPF*, set out under Part A of the *VPPF Guide*, introduces the concept of the *Professional Investor Definition* which, as well as applying to *VPPFs*, it is proposed will apply equally to *PPFs* and *PIRS* (subject to the necessary amendments to the *PPF Guide* and the *PIRS Orders*) as part of this first phase and which, in due course and subject to further consultation under the second phase, will also be adopted in the *public fund* space subject to necessary amendments being made to the *Expert Fund Guide*, the *Unregulated Funds Order* and the *Restriction of Scope Order*.
- 3.1.4 The applicability of one *Professional Investor Definition* across our *private fund*, *public fund* and *unregulated fund* regimes will create more certainty and reduce the complexity and the potential for confusion which comes from having multiple non-retail investor definitions in operation across our existing investment funds framework.

### 3.2 *Professional Investor Definition*

- 3.2.1 The *Professional Investor Definition* which is set out in Annexure A of the *VPPF Guide* and as a standalone document under Appendix D of this *Consultation Paper* is largely based on the 'expert investor' definition employed under the existing *Expert Fund Guide*. This definition was chosen as the precedent for the new *Professional Investor Definition* because it is understood to be the most familiar non-retail investor definition amongst our local funds industry. However, the term 'professional investor', as opposed to 'expert investor' was chosen for the *Professional Investor Definition* on the basis that 'professional investor' appears to be the more universally adopted term in other jurisdictions, particularly in Europe and, on that basis, should be the most familiar non-retail investor term for our European and International counterparts.
- 3.2.2 There are a number of ways the draft *Professional Investor Definition* could be introduced in Jersey. For example, it could form part of each *Commission* guide as demonstrated under Annexure A of the *VPPF Guide* or, instead of being annexed to the relevant *Commission* guide itself, it could be published by the *Commission* as a standalone document and cross-referenced to in the relevant *Commission* guide (i.e. the *VPPF Guide*, the *PPF Guide* or the new, improved and likely to be re-named *Expert Fund Guide*). Alternatively, it could be set out in legislation. For example, it could be set out in the *CIFJL* with the ability for the Minister to amend the *Professional Investor Definition* by amending order.

- 3.2.1 **Question: Do you have any observations or concerns regarding the proposed universal application of the *Professional Investor Definition* across our *private fund*, *public fund* and *unregulated fund* regimes (including the *PIRS Orders*, but excluding our *AIFMD* framework)? If you do, please state in detail what your observation or concern is and explain the reason for it.**
- 3.2.2 **Question: Are there categories of persons that should be considered *professional investors* but who currently do not meet any of the criteria set out in the *Professional Investor Definition*? If so, please explain who they are and why they should be considered a *professional investor*.**
- 3.2.3 **Question: Would the *Professional Investor Definition* be better placed in legislation or in *Commission* guidance or other documentation? Please explain the reasons for your response.**

## 4 Consultation on the Introduction of Modern Regulatory Powers in the *COBO Law*

### 4.1 Overview

- 4.1.1 To ensure that the *Commission* has, beyond doubt, effective supervision and enforcement of the *private fund* space, it is proposed that the *COBO Law* be amended to include modern regulatory supervision, enforcement and co-operation powers in line with the same powers that are available to the *Commission* under the *CIFJL*.
- 4.1.2 The proposed amendments to the *COBO Law* will need to be made by way of an amending Law; a draft of which will be subject to public consultation, debate by the States of Jersey and approval by the UK's Privy Council. Preparation of the amending Law is due to commence imminently and it is expected that the *Government* will be consulting on a draft of the amending Law in Q4 2016.<sup>2</sup>
- 4.1.3 **Question: Do you have any immediate observations or concerns regarding the proposal to amend the *COBO Law* to include the same modern regulatory supervision, enforcement and co-operation powers as are contained in the *CIFJL*? If you do, please state in detail what your observation or concern is and explain the reason for it.**

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<sup>2</sup> Preparation of amendments to the *COBO Law* will be progressed as quickly as possible. However, it is important to note that the launch of the *VPPF Guide* is not dependent upon the amendments to the *COBO Law* being in force prior to the launch date.

## 5 Consultation on the Phasing Out of *COBO Only Funds*

### 5.1 Overview

- 5.1.1 The introduction of the *PPF* product in January, 2012 has seen a decline in the number of *COBO Only Fund* applications being received by the *Commission* (set out in more detail in paragraph 5.2 below) since 2013. Any new *COBO Only Funds* have tended to be follow on funds as opposed to funds with a new promoter.
- 5.1.2 For the reasons set out in paragraph 5.1.1 and in further effort to consolidate Jersey's *private fund* space, the proposal is to close *COBO Only Funds* for new applications and gradually phase out this third *private fund* product leaving two remaining *private fund* products from which to choose; the *PPF* and the newly proposed *VPPF*.
- 5.1.3 Whilst the establishment of any new *COBO Only Funds* will not be permitted, any existing *COBO Only Fund* will be able to continue in operation until the end of its natural life or, alternatively it may apply to the *Commission* to convert into a *VPPF*, a *PPF* or any *public fund* product.
- 5.1.4 With effect from 01 January, 2017, it is proposed that the *Commission's FSB/TCB* authorisation team will not be accepting any new applications for *COBO Only Funds*.

### 5.2 *COBO Only Fund* statistics

- 5.2.1 As at 31 March, 2016 there are 124 *COBO Only Funds*<sup>3</sup>. The analysis below shows the number of *COBO Only Funds* granted a *relevant consent* by the *Commission* between 2012 and 30 June 2016 which demonstrates their decline in popularity.

<b>Date</b>	<b><i>COBO Only Fund</i></b>
2012	4
2013	2
2014	0
2015	0
2016 (as at 30 June 2016)	1

- 5.2.2 **Question: Do you have any observations or concerns regarding the proposal that new applications for *COBO Only Funds* will no longer be accepted by the *Commission* going forwards and the gradual phasing out of *COBO Only Funds*? If you do, please state in detail what your observation or concern is and explain the reason for it.**

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<sup>3</sup> This information is extracted from the quarterly statistics collected by the *Commission* on *COBO* funds, such statistics include *PPFs* and *VPFs* which are *AIFs*.

## 6 Consultation on the Phasing Out of *Unregulated Exchange-Traded Funds*

### 6.1 Overview

- 6.1.1 Pursuant to the *Unregulated Funds Order*, *Unregulated Exchange-Traded Funds* may be established simply by way of notice to the *Registry* with no reference to the *Commission's* policy statement and guidance note on promoters of public and private collective investment funds provided that the relevant *Unregulated Exchange-Traded Fund* is listed on one or more of the exchanges or markets listed in Schedule 4 of the *Unregulated Funds Order*. There are no restrictions on the number or types of investors that may invest in *Unregulated Exchange-Traded Funds* nor is there a minimum investment amount for persons investing in *Unregulated Exchange-Traded Funds*.
- 6.1.2 The *Commission* has subsequently seen the misuse of *Unregulated Exchange-Traded Funds* which, in turn, has led to formal enforcement action being taken by the *Commission* in connection with this *unregulated fund* product.
- 6.1.3 For the reasons set out in paragraphs 6.1.1 and 6.1.2 above and owing to the decline in the number of *Unregulated Exchange-Traded Funds* being notified to *Registry* (set out in more detail in paragraph 6.2 below), it is proposed that the *Unregulated Exchange-Traded Fund* be closed for new notifications and gradually phased out. *Unregulated Eligible Investor Funds* will continue in operation as normal.
- 6.1.4 Whilst the establishment of any new *Unregulated Exchange-Traded Funds* will not be permitted any existing *Unregulated Exchange-Traded Fund* will be able to continue in operation until the end of its natural life or, alternatively it may convert into another fund product.
- 6.1.5 With effect from 01 January, 2017, it is proposed that the *Registry* will not be accepting any new notifications for *Unregulated Exchange-Traded Funds*.

### 6.2 *Unregulated Exchange-Traded Fund* statistics

As at 30 June 2016, there are 24 *Unregulated Exchange-Traded Funds*. The analysis below shows the number of *Unregulated Exchange-Traded Funds* notified to the *Registry* between 2012 and 30 June 2016 which demonstrates their decline in popularity.

<b>Date</b>	<b><i>Unregulated Exchange-Traded Fund</i></b>
2012	9
2013	1
2014	4
2015	1
2016 (as at 30.06.2016)	0

- 6.2.1 **Question: Do you have any observations or concerns regarding the proposal that new notifications for *Unregulated Exchange-Traded Funds* will no longer be accepted by the *Commission* going forwards and the gradual phasing out of *Unregulated Exchange-Traded Funds*? If you do, please state in detail what your observation or concern is and explain the reason for it.**
- 6.2.2 **Question: Do you believe that existing *Unregulated Exchange-Traded Funds* should be able to continue in operation until the end of their natural life or, do you believe that they should be required to make an application to the *Commission* to convert into a regulated *public fund* product (for example an unclassified or a listed fund product)? If so, please explain why.**
- 6.2.3 **Question: For those existing *Unregulated Exchange-Traded Funds*, would you be minded to convert to another Jersey fund product? If so, which fund product would you choose and what would be the anticipated timescale for such conversion (subject to *Commission* approval if a regulated fund product)?**

## 7 Summary of Questions

Reference	Question
2.1.11	Do you agree with the re-branding of the existing VPF a VPPF? If not, please explain why. There is an opportunity to change the name of this private fund product altogether. Some suggestions raised so far include 'Restricted PPF', 'Limited PPF', 'Ultra PPF', 'Qualified PPF' and '15 or Fewer PPF'. We would welcome your suggestions on the most suitable name for this private fund product.
2.1.12	Do you have any observations or concerns regarding the proposal to publish the <i>VPPF Guide</i> ? If you do, please state in detail what your observation or concern is and explain the reason for it.
2.1.13	Do you believe that there are any issues concerning the information or confirmations that must be given under the <i>VPPF Form</i> ? If so, please explain why.
2.1.14	Do you agree that the <i>VPPF Guide</i> should apply to existing <i>VPPFs</i> that require an amendment or variation to its <i>relevant consent</i> ? If not, please explain in full why.
2.2.5	Does the <i>VPPF Guide</i> make it sufficiently clear that a <i>VPPF</i> must meet the meaning of a 'collective investment fund' as set out in Article 3 of the <i>CIFJL</i> including that an offer to invest in a <i>VPPF</i> must be addressed exclusively to a restricted circle of persons which must be 15 or fewer investors? If you do not think it does, please state why.
2.3.7	Do you foresee any issues in allowing a <i>VPPF</i> to take any of the forms described in Part D of the <i>VPPF Guide</i> (i.e. a company, partnership or unit trust incorporated or established either in Jersey or in a country or territory outside of Jersey)? If so, please explain what they are.
2.3.8	Do you foresee any issues with not requiring a Jersey general partner, managing partner or trustee to be appointed to a <i>VPPF</i> which is established as one or more limited partnerships, a limited liability partnership or as a unit trust? If so, please explain your concerns in full.
2.3.9	Do you foresee any issues with not requiring a <i>VPPF</i> to appoint one or more Jersey resident directors to its governing body? If so, please explain your concerns in full.
2.3.10	Considering the <i>VPPF</i> criteria, as summarised in Part E of the <i>VPPF Guide</i> , do you believe it to be reasonable for a <i>VPPF</i> to have to meet this criteria? If not, please explain why.

2.4.2	Do you agree that investors looking to invest in a <i>VPPF</i> should receive and acknowledge an investment warning before they can invest? If not, please explain the rationale behind your answer.
2.4.3	Do you consider the investment warning itself to be appropriate and reasonable? If not, please explain why.
2.5.5	Do you agree with the proposed rules and exceptions around the <i>15 or Fewer Test</i> which are set out under Part G of the <i>VPPF Guide</i> ? If not, please explain your reasons why.
2.5.6	Do you believe that any other rules or exceptions around the <i>15 or Fewer Test</i> should be included under Part G of the <i>VPPF Guide</i> ? If so, please state the additional rule(s) or exception(s) clearly and give a full explanation as to why you think it should be included in the <i>VPPF Guide</i> .
2.5.7	Do you agree that <i>retail investors</i> should be able to invest indirectly in a <i>VPPF</i> ? If not, please explain your reasons why.
2.6.4	Do you foresee any issues in requiring a <i>VPPF</i> to appoint a <i>DSP</i> ? If so, please explain your concerns.
2.6.5	Do you foresee any issues in requiring a <i>DSP</i> to sign the <i>VPPF Form</i> ? If so, please explain what these issues are.
2.6.6	Do you foresee any issues in requiring a <i>DSP</i> to file an annual confirmation or notify the <i>Commission</i> of the matters listed in paragraph 3 of Part H of the <i>VPPF Guide</i> ? If so, please explain your concerns.
2.7.4	Do you have any observations or concerns regarding the proposed 48 hour stream-lined <i>VPPF</i> authorisation process or the proposed <i>VPPF</i> application fee of £1070? If you do, please state in detail what your observation or concern is and explain the reason for it.
2.8.5	Do you agree that an ‘employment connection’ and ‘family connection’ should not be treated as a <i>VPPF</i> ? If you do not agree please explain why.
2.8.6	Do you agree with how ‘employment connection’ and ‘family connection’ have been defined in the <i>VPPF Guide</i> ? If not, please explain your concerns.
3.2.1	Do you have any observations or concerns regarding the proposed universal application of the <i>Professional Investor Definition</i> across our <i>private fund</i> , <i>public fund</i> and <i>unregulated fund</i> regimes (including the <i>PIRS Orders</i> , but excluding our <i>AIFMD</i> framework)? If you do, please state in detail what your observation or concern is and explain the reason for it.
3.2.2	Are there categories of persons that should be considered <i>professional investors</i> but who currently do not meet any of the criteria set out in the <i>Professional Investor Definition</i> ? If so, please explain who they are and why they should be considered a <i>professional investor</i> .



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3.2.3	<b>Would the <i>Professional Investor Definition</i> be better placed in legislation or in <i>Commission</i> guidance or other documentation? Please explain the reasons for your response.</b>
4.1.3	<b>Do you have any immediate observations or concerns regarding the proposal to amend the <i>COBO Law</i> to include the same modern regulatory supervision, enforcement and co-operation powers as are contained in the <i>CIFJL</i>? If you do, please state in detail what your observation or concern is and explain the reason for it.</b>
5.2.2	<b>Do you have any observations or concerns regarding the proposal that new applications for <i>COBO Only Funds</i> will no longer be accepted by the <i>Commission</i> going forwards and the gradual phasing out of <i>COBO Only Funds</i>? If you do, please state in detail what your observation or concern is and explain the reason for it.</b>
6.2.1	<b>Do you have any observations or concerns regarding the proposal that new notifications for <i>Unregulated Exchange-Traded Funds</i> will no longer be accepted by the <i>Commission</i> going forwards and the gradual phasing out of <i>Unregulated Exchange-Traded Funds</i>? If you do, please state in detail what your observation or concern is and explain the reason for it.</b>
6.2.2	<b>Do you believe that existing <i>Unregulated Exchange-Traded Funds</i> should be able to continue in operation until the end of their natural life or, do you believe that they should be required to make an application to the <i>Commission</i> to convert into a regulated <i>public fund</i> product (for example an unclassified or a listed fund product)? If so, please explain why.</b>
6.2.3	<b>For those existing <i>Unregulated Exchange-Traded Funds</i>, would you be minded to convert to another Jersey fund product? If so, which fund product would you choose and what would be the anticipated timescale for any such conversion (subject to <i>Commission</i> approval if a regulated fund product)?</b>

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## **Appendices**

### **Appendix A**

#### **List of representative bodies and other persons to be sent this *Consultation Paper***

- › Jersey Finance Limited
- › Jersey Funds Association

## Appendix B

### List of members of the *Smaller Working Group*

- › Ben Robins of Mourant Ozannes
- › Brett Allen of BNP Paribas
- › Caroline McGrath of the Jersey Financial Services Commission
- › Daniel O'Connor of Carey Olsen
- › David Porter of the Jersey Financial Services Commission
- › Emily Haithwaite of Bedell Cristin
- › Kristin Holmes of the Government of Jersey
- › Martin Paul of Bedell Cristin
- › Mike Jones of the Jersey Financial Services Commission
- › Niamh Lalor of Ogier
- › Olenka Apperley of the Jersey Financial Services Commission
- › Oliver Morris of KPMG
- › Peggy Gielen of Jersey Finance Limited
- › Peter Rioda of Sanne
- › Thomas Cowsill of Jersey Finance Limited

## Appendix C - VPPF Guide



# Jersey Very Private Placement Fund Guide

The purpose of this Guide is to set out the eligibility conditions for a Very Private Placement Fund (VPPF) which requires a consent to be issued pursuant to the Control of Borrowing (Jersey) Order 1958 (COBO). A VPPF which satisfies the eligibility conditions set out in this Guide may be established and issued with a relevant consent pursuant to the COBO using the stream-lined authorisation process, as described in this Guide.<sup>4</sup>

## A. Basic definition

A VPPF is a collective investment fund<sup>5</sup> established in Jersey, or a collective investment fund established in a country or territory outside of Jersey which requires a relevant consent to be issued pursuant to the COBO and in which the number of offers of units for subscription, sale or exchange shall not exceed 15 and the number of investors shall not exceed 15<sup>6</sup>, with each investor being a person:

1. who is a “professional investor” (within the meaning of paragraph 1. of Annexure A of this Guide);
2. who makes a minimum initial investment in or commitment to the VPPF of not less than two hundred and fifty thousand pounds sterling (or the equivalent of that amount in another currency) either through an initial offering of units in the VPPF or by subsequent acquisition;
3. to whom paragraph 3. of Annexure A of this Guide applies; or
4. to whom paragraph 5. of Annexure A of this Guide applies,

(for the purposes of this Guide, persons meeting the eligibility criteria set out in any of paragraphs 2., 3. or 4. above shall each be an “eligible investor” and, together, “eligible investors”).

Provided that the criteria and relevant definitions outlined in Annexure B of this Guide are met, arrangements between persons who are connected to each other by way of a “family connection” or

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<sup>4</sup> This Guide is not intended to have retroactive effect but, for the avoidance of doubt, is intended to apply in the circumstances where a VPPF which has been issued with a relevant consent pursuant to the COBO prior to the effective date for the introduction of this Guide (Effective Date) requires its relevant consent to be varied or amended in any way following the Effective Date.

<sup>5</sup> See part B. of this Guide for the meaning attributed to ‘collective investment fund’ for the purpose of part A. of this Guide which is substantially the same as the meaning given to the same term under Article 3 of the Collective Investment Funds (Jersey) Law 1988 (the **CIF Law**) but for the requirement under this Guide for a restricted offer to 15 persons or under as opposed to the requirement for an offer to the public (within the meaning of Article 3 of the CIF Law).

<sup>6</sup> This language is consistent with the standard consent issued pursuant to the COBO.

incentive arrangements between persons who are connected to each other by way of an “employment connection” will not be treated by the JFSC as a VPPF for the purpose of this Guide.

The service providers to a VPPF may rely on the Financial Services (Investment Business (Restricted Investment Business - Exemption)) (Jersey) Order 2001 and/or the Financial Services (Trust Company Business (Exemptions No.5)) (Jersey) Order 2001, subject to the terms of such Orders.

## B. Definition of "collective investment fund" for the purpose of part A. of this Guide

1. For the purposes of part A. of this Guide any scheme or arrangement for the investment of money is a collective investment fund if:
  - a. it has as its object or one of its objects the collective investment of capital acquired by means of a restricted offer of units for subscription, sale or exchange; and
  - b. the circumstances referred to in any sub-paragraph of paragraph 2. of this Part B. apply to the fund.
2. The circumstances to which reference is made in sub-paragraph 1.b. are as follows:
  - a. units are or are to be bought back or redeemed continuously or in blocks at short intervals upon the request of the holder and out of the assets of the fund;
  - b. units are or have been or will be issued continuously or in blocks at short intervals; or
  - c. the fund operates on the principle of risk spreading.
3. For the purposes of this Guide:
  - a. a restricted offer of units for subscription, sale or exchange is an offer that is addressed exclusively to a restricted circle of persons; and
  - b. an offer shall not be considered to be addressed to a restricted circle of persons unless:
    - i. the offer is addressed to an identifiable category of persons to whom it is directly communicated by the offeror or the offeror’s appointed agent,
    - ii. the members of that category are the only persons who may accept the offer and they are in possession of sufficient information to be able to make a reasonable evaluation of the offer,<sup>7</sup>
    - iii. the number of persons in Jersey or elsewhere to whom the offer is so communicated does not exceed 15, and
    - iv. the units which are the subject of the offer are not to be listed on any stock exchange within one year of the offer being made.<sup>8</sup>

<sup>7</sup> A VPPF is not required to have a Private Placement Memorandum or Offer Document (but may do so for example, where required in accordance with AIFMD). “Sufficient information” could simply be the LPA or articles of association and the subscription form.

<sup>8</sup> This definition is limited in application to the context of this Guide only and is not intended to replace Article 3 of the CIF Law.

## C. Definition of "relevant consent" for the purpose of part A. of this Guide

For the purposes of paragraph A. of this Guide, a "relevant consent" means:

1. in the case of a body corporate, the consent of the JFSC under Articles 1, 2, 3 or 4 of the COBO;
2. in the case of a unit trust, the consent of the JFSC under Article 9 of the COBO;
3. in the case of a limited partnership, the consent of the JFSC under Article 10 of the COBO; or
4. in the case of a limited liability partnership, the consent of the JFSC under Article 11 of the COBO.

## D. Structure<sup>9</sup>

A VPPF established in Jersey shall take the form of a company incorporated under the laws of Jersey (including a protected cell company, an incorporated cell company or any cell thereof) or one or more partnerships (including limited partnerships (LP), limited liability partnerships (LLP), separate limited partnerships (SLP), or incorporated limited partnerships (ILP)), or a unit trust constituted under the laws of Jersey.

A VPPF established in a country or territory outside of Jersey shall be incorporated or constituted, as applicable, in such equivalent form as is permitted under the laws of such country or territory.

If a VPPF is established as a company incorporated under the laws of Jersey or in another country or territory, there is no requirement under this Guide for it to appoint Jersey resident directors to its board.

If a VPPF is established as one or more limited partnerships (including LPs, LLPs, SLPs, or ILPs) either under the laws of Jersey or another country or territory, there is no requirement under this Guide for it to have a general partner or, in the case of an LLP, a managing partner that is a Jersey company or Jersey resident directors appointed to the board of that company.

If a VPPF is established as a unit trust, there is no requirement under this Guide for it to have a trustee that is a Jersey company or Jersey resident directors appointed to the board of that trustee.

## E. Criteria<sup>10</sup>

1. A VPPF must meet the basic definition of a VPPF set out under part A. of this Guide.
2. No retail investors<sup>11</sup> are permitted to invest in a VPPF (except in the circumstances where paragraphs 3. or 5. of Annexure A of this Guide apply).

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<sup>9</sup> No requirement for the mind or management of a VPPF (including a non-domiciled VPPF) to be in Jersey.

<sup>10</sup> 12 months after the launch of this Guide, the JFSC shall review and consult on whether or not the requirement for a VPPF to appoint an auditor should be expressly included in the VPPF criteria set out under part E. of this Guide. This will depend on the number of DSPs who confirm in the relevant VPPF application form that an auditor will be appointed to the relevant VPPF. The JFSC reserves the right to adjust the VPPF criteria on this point at any time should an International assessment so require it.

<sup>11</sup> A "retail investor" means any investor that is not: (i) a "professional investor" (as defined under paragraph 1. of Annexure A of this Guide); (ii) an investor that makes an acquisition in accordance with paragraph 3. of Annexure A of this Guide; or (iii) an investor that makes the minimum initial investment in or commitment to the VPPF as prescribed under Part A of this Guide.

3. Only professional investors (within the meaning of paragraph 1. of Annexure A of this Guide) or eligible investors (within the meaning of paragraph 1. of Part A. of this Guide) who have acknowledged in writing receipt and acceptance of an investment warning in substantially the same form as the investment warning set out under part F. of this Guide may invest in a VPPF.
4. A VPPF must appoint a Jersey Designated Service Provider (DSP) (as defined and more specifically described under part H. of this Guide).
5. Where a VPPF is also an AIF, Jersey's AIFMD legislation and AIF Codes will apply.
6. The activity of a VPPF is subject to the JFSC's Sound Business Practice Policy, as amended from time to time.

For so long as the criteria set out in paragraphs 1. to 6. of this part E. are met:

- i. A VPPF is not required to comply with the Codes of Practice for Certified Funds.
- ii. Personal questionnaires are not required for any director, beneficial owner/controller, money-laundering reporting officer or money laundering compliance officer of a VPPF.
- iii. The promoter of a VPPF does not need the prior approval of the JFSC.
- iv. A VPPF is not required to have a Private Placement Memorandum or an Offer Document.

## F. Investment warning

The investment warning referred to under paragraph 3. of part E. of this Guide shall be in substantially the following terms:

1. *"[The Fund] has been established in Jersey as a Very Private Placement Fund. It is only suitable for those who fall within the definition of 'professional investor' or 'eligible investor' as such terms are defined in the Jersey Very Private Placement Fund Guide published by the Jersey Financial Services Commission. By acknowledging this statement you are expressly agreeing that you fall within the definition of a 'professional investor' or an 'eligible investor' and accept the reduced regulatory requirements on the Fund accordingly.*
2. *If you are acquiring an interest in [the Fund], directly or indirectly, for or on behalf of a retail investor, the Commission expects you to be satisfied that the investment is suitable for the relevant underlying retail investor and that the relevant underlying retail investor is able to bear the economic consequences of investment in [the Fund], including the possibility of the loss of their entire investment.*
3. *You are wholly responsible for ensuring that all aspects of the Fund are acceptable to you. Investment in a Very Private Placement Fund may involve special risks that could lead to a loss of all or a substantial portion of such investment. Unless you fully understand and accept the nature of the Fund and the potential risks inherent in the Fund you should not invest in the Fund. The investor or his duly authorised agent must acknowledge in writing that he has received and accepted this investment warning. By signing the acknowledgement it is accepted that an investment in the Fund may involve special risks that could lead to a loss of all such investment. The Commission is protected by the Control of Borrowing (Jersey) Law 1947, as amended, against liability arising from the discharge of its functions under that Law."*

## G. 15 or fewer test

It is important to note the restricted circle provisions imposed by the CIF Law which also form part of this VPPF Guide albeit, by reference to a smaller restricted circle of persons in the case of a VPPF.

In addition, in determining the 15 or fewer offers and professional and/or eligible investors test (*15 or Fewer Test*) set out in the VPPF definition under part A. of this Guide, the following rules shall generally apply:

1. A transfer of units/shares/interests in a VPPF from one investor to another shall not be permitted if it means that the number of investors in the relevant VPPF exceeds 15.
2. A top up of investment by one or more of the 15 investors in a VPPF shall be treated as part of the original offer to the relevant investor(s).
3. A split (transfer) of part of a holding of units/shares/interests by an investor to another investor in a VPPF which would result in there being more than 15 investors in the relevant VPPF shall not be permitted.
4. Where a person acquires a unit/share/interest in a VPPF with no rights attaching to it other than management and/or control rights (i.e. no share in the profits of the relevant VPPF), that person shall not be counted as an investor.
5. A carried interest vehicle which is established for the sole purpose of sharing in the profits of a VPPF shall not be counted as an investor. This is on the basis that generally, the principal purpose of a carry vehicle is to incentivise the relevant fund's management and/or advisory team. Each participant of the carried interest vehicle must be a "professional" or an "eligible" investor as such terms are defined in this Guide.
6. A general partner of a VPPF which is established as a form of limited partnership shall not be counted as an investor.
7. In accordance with paragraph 5. of Annexure A of this Guide, a professional investor may acquire an interest in a VPPF directly for or on behalf of one or more retail investors. In this scenario, the professional investor will be counted as one investor in the relevant VPPF and it will not be necessary to look through to the number of underlying investors for the purpose of the *15 or Fewer Test*. By subscribing for or acquiring an interest in a VPPF, the holder of such interest or person acquiring such interest shall have represented to the relevant VPPF that such holder or such acquirer is a professional investor. The board of directors, general partner, trustee, manager or managing trustee (as the case may be) of the relevant VPPF shall be entitled to rely upon such representation for these purposes.<sup>12</sup>
8. The requirements of this Guide shall not be satisfied if a VPPF has, without the consent of the JFSC, associated with it any ancillary scheme or arrangement (for the purposes of this paragraph, a "Feeder Fund") whose sole or exclusive purpose is to invest in the relevant VPPF and the Feeder Fund has any investors who are not professional or eligible investors.<sup>13</sup>
9. On a case by case basis the JFSC may, in exceptional circumstances, deem it appropriate to permit a derogation from the above general rules. Any such application for derogation(s) will not be dealt with on an expedited basis.

<sup>12</sup> A VPPF relying on paragraph 7. of part G. of this Guide should have due regard to paragraph 2. of the investment warning set out in part F. of this Guide.

<sup>13</sup> Paragraphs 7. and 8. of part G. of this Guide are consistent with paragraphs 1.9 and 1.10 of the Jersey Private Placement Guide



## H. Designated service provider (DSP)

A VPPF must appoint a DSP.

A DSP is a Jersey entity that is registered by the JFSC to carry on Trust Company Business, Investment Business and/or Fund Services Business within the meaning of the FSJ Law. The DSP must not be a managed entity.

A DSP shall be responsible for:

1. signing and dating the relevant VPPF application form;
2. filing an annual confirmation letter with the JFSC confirming that the information provided in the VPPF application form at the outset remains true and accurate; and
3. notifying the JFSC in writing as soon as reasonably practicable in the event of any:
  - a. non-compliance with the VPPF's Jersey AML/CFT obligations;
  - b. change of Jersey based service provider appointed to the VPPF;
  - c. material/unresolved complaints made in relation to the VPPF; or
  - d. qualified audit of the VPPF's annual accounts and financial statements (where such VPPF has appointed an auditor).

## I. AML/CFT

A VPPF is required to comply with all relevant provisions of the Money Laundering (Jersey) Order 2008 and for the avoidance of doubt, is a specified Schedule 2 business for the purposes of the Proceeds of Crime (Jersey) Law 1999 and the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008.<sup>14</sup>

## J. Content of VPPF application form (VPPF Form)

The following information/confirmation must be provided in the VPPF Form:

- i. Information
  1. the name and address of the VPPF;
  2. the Article(s) of the COBO under which the VPPF is seeking a relevant consent from the JFSC;
  3. where there is a minimum investment amount, the minimum investment amount per investor in the VPPF;
  4. the name, address and function of the DSP and any other Jersey based service provider appointed in connection with the VPPF;
  5. the proposed investment policy of the VPPF;
  6. the anticipated value of the VPPF's assets under management (AUM);
  7. where an auditor is appointed by the VPPF, the name and address of that auditor;
- ii. Confirmations
  8. that all investors will be "professional investors" or "eligible investors" as such terms are defined in this Guide (where the circumstances described under paragraph 5. of Annexure A of this Guide are applicable, full details of the relevant circumstances must be disclosed in the VPPF Form);
  9. that the number of offers of units for subscription, sale or exchange shall not exceed 15 and the number of investors shall not exceed 15;

<sup>14</sup> Cross reference Art 13(10) of Money Laundering (Jersey) Order 2008.

10. whether any financial service business regulatory exemption(s) will be relied upon either by the VPPF or any of its Jersey service providers and if so, the name of the relevant exemption(s); and
11. That the DSP will carry out all necessary due diligence on all parties to the VPPF prior to its launch date and will, on an ongoing basis, ensure compliance with all necessary due diligence and Jersey AML/CFT requirements applicable to the VPPF.

## K. Timescale and cost

**A 48 hour stream-lined authorisation process will apply to all VPPFs.** It will no longer be necessary to submit an application letter to the JFSC's FSB/TCB authorisation team as the VPPF Form will replace this requirement. The relevant consent will be granted in 48 hours in relation to a VPPF provided that the JFSC's FSB/TCB authorisation team receives the fully completed VPPF Form and the corresponding application fee.

Where a VPPF is also an alternative investment fund, the application timescale and fee attaching to the relevant AIFMD Form shall be separate to the application timescale and fee attaching to the VPPF Form.

## L. JFSC powers

The JFSC will have appropriate enforcement, supervision and co-operation powers in relation to VPPFs, subject to changes to the Control of Borrowing (Jersey) Law 1947 and possibly the COBO to bring them in line with the same powers under the CIF Law.

The DSP as a regulated entity will be subject to the JFSC's standard supervision process; to include periodic on-site examinations etc.

## ANNEXURE A

### Definition of a “Professional Investor”

1. A “professional investor” is:
  - a. a natural or legal person, partnership, trust, or other unincorporated association whose ordinary business or professional activity includes, or it is reasonable to expect that it includes, acquiring, underwriting, managing, holding or disposing of investments<sup>15</sup> whether as principal or agent, or the giving of advice on investments;
  - b. an individual who has a net worth, or joint net worth with that person’s spouse or civil partner, greater than one million United States dollars (or the equivalent of that amount in another currency) excluding that person’s:
    - i. principal place of residence; and
    - ii. any rights under a contract of insurance;
  - c. a body corporate, partnership, trust, or other unincorporated association which has assets available for investment of not less than one million United States dollars (or the equivalent of that amount in another currency);
  - d. a person who is authorised to carry on fund services business, trust company business or investment business within the meaning of the Financial Services (Jersey) Law 1998, as amended, or a person who is authorised in another jurisdiction to carry on materially equivalent services by way of business, to or in connection with a Fund (a “**Relevant Service Provider**”) and any Associate thereof or a co-investment entity in which a Relevant Service Provider or Associate thereof is participating in relation to a Fund;
  - e. a person who is a senior employee, director, partner, expert consultant or shareholder of or to a Relevant Service Provider or an Associate thereof, who acquires an interest in a Fund as part of his remuneration or as an incentive, benefit or reward for acting in such a role;
  - f. a person who is a senior employee, director, partner or expert consultant of or to a person referred to in sub-paragraph 1.a. above;
  - g. a carried interest scheme or arrangement established in relation to a Fund;
  - h. a family trust settled by or for the benefit of one or more persons referred to in sub-paragraphs 1.e. or 1.f. above or their spouses, civil partners or dependants;
  - i. a trustee of an employment benefit or executive incentive arrangement/scheme established for the benefit of one or more persons referred to in sub-paragraphs 1.e. or 1.f. above or their spouses, civil partners or dependants;
  - j. a government, local authority, public authority or supra-national body in Jersey or elsewhere;
  - k. a body corporate, partnership, trust, or other unincorporated association of which, every member, partner or beneficiary is a ‘professional investor’ (within the meaning of this paragraph 1.);

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<sup>15</sup> “Investments” for the purpose of this definition includes, but is not limited to, investments as defined in the Financial Services (Jersey) Law 1998, real estate, foreign exchange transactions and cash.



administration is complete or that the new beneficial owner will make the minimum investment in or commitment to the relevant Fund as prescribed in this Guide.

4. Professional investors, investors who make an acquisition in accordance with paragraph 3. of this Annexure A, and those investors that make the minimum initial investment in or commitment to a Fund as prescribed in this Guide are deemed to be able to evaluate the financial risks of a Fund and to bear the economic consequences of investment in a Fund, including the possibility of the loss of their entire investment.
5. Any discretionary investment manager acquiring an interest in a Fund, directly or indirectly, for or on behalf of one or persons who are not professional investors must be satisfied that such investment is suitable for the underlying investor, and that the underlying investors are able to bear the economic consequences of investment in the relevant Fund, including the possibility of the loss of their entire investment.

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## ANNEXURE B

### JFSC treatment of family office and employee incentive arrangements for the purpose of this Guide.

In the case of an arrangement between persons who are connected to each other by way of a family connection or incentive arrangements between persons who are connected to each other by way of an employment connection, provided that such arrangement meets the criteria and relevant definitions outlined below, the VPPF Guide will not apply to it.

#### Criteria for “employment connection” and “family connection”

The arrangement:

1. may or may not meet the basic definition of a VPPF under part A. of the VPPF Guide but does not meet the definition of a collective investment fund under Article 3 of the CIF Law; and
2. has its administration carried out by a person that is registered by the JFSC to carry on Trust Company Business and/or Fund Services Business within the meaning of the Financial Services (Jersey) Law 1998, as amended but who is not a managed entity; and
3. is disclosed in the application to the JFSC for a relevant consent to be issued pursuant to the COBO (e.g. the C2A Form).

It should be noted that the relevant consent issued pursuant to the COBO by the JFSC to such “family connection” or “employee incentive” arrangement will not include the condition that “the number of offers of units for subscription, sale or exchange shall not exceed 15 and the number of investors shall not exceed 15”.

Definitions<sup>16</sup> of “employment connection” and “family connection”

“employment connection” means a connection that exists between persons by reason of each being an eligible employee of the same employer.

“eligible employee” means:

- a. an individual that is a senior employee, partner or director of an employer or of a company in the same group as the employer; or
- b. a trust, foundation, company, partnership or other scheme or arrangement established for the sole benefit of an individual referred to in paragraph a.

“family connection” means:

- a. a connection that exists between two persons (respectively the “first person” and the “second person”) by reason that the first person is:
  - i. the wife, husband or civil partner of the second person,
  - ii. a relative (as defined below) of the second person,
  - iii. the wife, husband or civil partner of a relative of the second person,
  - iv. the wife, husband or civil partner of the second person’s wife, husband or civil partner, or

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<sup>16</sup> These definitions are aligned with the policy set out in the Financial Services (Investment Business (Qualifying Segregated Managed Accounts – Exemption)) (Jersey) Order 2014.

- b. a connection that exists between two persons (either or both of which is a family vehicle) by reason that at least one beneficiary of the family vehicle has a family connection described in paragraph a. with:
  - i. at least one other natural person, or
  - ii. at least one beneficiary of another family vehicle.

“family vehicle” means a trust, foundation, company, partnership or other scheme or arrangement established for the benefit (directly) of:

- a. a natural person; or
- b. two or more natural persons, who are all connected to each other by virtue of a family connection described in paragraph a. of that defined expression.

“relative” means brother, sister, aunt, uncle, nephew, niece, lineal ancestor or lineal descendant, for which purpose:

- a. any relationship of the half blood shall be treated as a relationship of the whole blood and the step child or adopted child of a person as his or her child; and
- b. an illegitimate child shall be treated as the legitimate child of his or her mother and reputed father.

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## Appendix D - Professional Investor Definition



# New Multi-Purpose “Professional Investor” Definition

Proposed Policy Position to apply to Jersey Expert Funds, Jersey Private Placement Funds and Jersey Very Private Placement Funds.

**Note:** Any statements of proposed policy made herein are still in draft and have not been (and may not be) formally adopted by Government or the Jersey Financial Services Commission.

## Background

- A. No person may invest in units in a Jersey Expert Fund “Expert Fund” (as defined in the Jersey Expert Fund Guide issued on 2 April 2012) unless:
  - a. they are a “Professional Investor” (within the meaning of paragraph 1. below);
  - b. they make a minimum initial investment in or commitment to the Expert Fund of not less than one hundred thousand United States dollars (or the equivalent of that amount in another currency) either through an initial offering of units in the Expert Fund or by subsequent acquisition;
  - c. paragraph 3. (below) applies to them; or
  - d. paragraph 5. (below) applies to them.
- B. No person may invest in units in a Jersey Private Placement Fund “PPF” (as defined in the Jersey Private Placement Fund Guide issued on 26 January 2012) unless:
  - a. they are a Professional Investor (within the meaning of paragraph 1. below);
  - b. they make a minimum initial investment in or commitment to the PPF of not less than two hundred and fifty thousand pounds sterling (or the equivalent of that amount in another currency) either through an initial offering of units in the PPF or by subsequent acquisition;
  - c. paragraph 3. (below) applies to them; or
  - d. paragraph 5. (below) applies to them.
- C. No person may invest in units in a Very Private Placement Fund “VPPF” (as defined in the Jersey Very Private Placement Fund Guide issued on [enter date]) unless:
  - a. they are a Professional Investor (within the meaning of paragraph 1. below);
  - b. they make a minimum initial investment in or commitment to the VPPF of not less than two hundred and fifty thousand pounds sterling (or the equivalent of that amount in another currency), either through an initial offering of units in the VPPF or by subsequent acquisition;



- c. paragraph 3. (below) applies to them; or
- d. paragraph 5. (below) applies to them.

## Definition

1. A “Professional Investor” is:
  - a. a natural or legal person, partnership, trust, or other unincorporated association whose ordinary business or professional activity includes, or it is reasonable to expect that it includes, acquiring, underwriting, managing, holding or disposing of investments<sup>17</sup> whether as principal or agent, or the giving of advice on investments;
  - b. an individual who has a net worth, or joint net worth with that person’s spouse or civil partner, greater than one million United States dollars (or the equivalent of that amount in another currency) excluding that person’s:
    - i. principal place of residence; and
    - ii. any rights under a contract of insurance;
  - c. a body corporate, partnership, trust, or other unincorporated association which has assets available for investment of not less than one million United States dollars (or the equivalent of that amount in another currency);
  - d. a person who is authorised to carry on fund services business, trust company business or investment business within the meaning of the Financial Services (Jersey) Law 1998, as amended, or a person who is authorised in another jurisdiction to carry on materially equivalent services by way of business, to or in connection with a Fund (a “**Relevant Service Provider**”) and any Associate thereof or a co-investment entity in which a Relevant Service Provider or Associate thereof is participating in relation to a Fund;
  - e. a person who is a senior employee, director, partner, expert consultant or shareholder of or to a Relevant Service Provider or an Associate thereof, who acquires an interest in a Fund as part of his remuneration or as an incentive, benefit or reward for acting in such a role;
  - f. a person who is a senior employee, director, partner or expert consultant of or to a person referred to in sub-paragraph 1.a. above;
  - g. a carried interest scheme or arrangement established in relation to a Fund;
  - h. a family trust settled by or for the benefit of one or more persons referred to in sub-paragraphs 1.e. or 1.f. or their spouses, civil partners or dependants;
  - i. a trustee of an employment benefit or executive incentive arrangement/scheme established for the benefit of one or more persons referred to in paragraph 1.e. or 1.f. or their spouses, civil partners or dependants;
  - j. government, local authority, public authority or supra-national body in Jersey or elsewhere;
  - k. a body corporate, partnership, trust, or other unincorporated association of which, every member, partner or beneficiary is a ‘professional investor’ (within the meaning of this paragraph 1.);
  - l. a ‘professional client’ within the meaning of Annex II to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments; or

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<sup>17</sup> “Investments” for the purpose of this definition includes, but is not limited to, investments as defined in the Financial Services (Jersey) Law 1998, real estate, foreign exchange transactions and cash.

- m. where an application is made to the Jersey Financial Services Commission (JFSC), such other natural or legal persons as the JFSC may deem appropriate on a case by case basis.
2. For the purposes of this document:
    - a. "Associate" means:
      - i. in relation to a legal person, any legal person which is a subsidiary or a holding body of that legal person or a subsidiary of any such holding body and any individual, partnership or other unincorporated association or firm which has direct or indirect control of that legal person and any legal person which is directly or indirectly controlled by any such individual, partnership or other unincorporated association, or firm; and
      - ii. in relation to an individual, partnership or other unincorporated association, means any legal person directly or indirectly controlled by that individual, partnership or other unincorporated association.
    - b. "Fund" means a Jersey Expert Fund, a Jersey Private Placement Fund or a Jersey Very Private Placement Fund (as appropriate).
    - c. "Guide" means the Jersey Expert Fund Guide, the Jersey Private Placement Guide or the Jersey Very Private Placement Fund Guide, as amended from time to time (as appropriate).
    - d. "holding body" and "subsidiary" shall have the meanings set out in the Companies (Jersey) Law 1991, as amended.
  3. The acquisition of:
    - a. non-participating units in a Fund that is structured as a corporate (such as non-redeemable founders' or management shares);
    - b. founder or nominal interests in a Fund that is structured as a limited partnership; or
    - c. any founder or nominal interests equivalent to those referred to in paragraphs 3.a. and 3.b. above, in a Fund that is structured as a unit trust,  
which are created or issued to facilitate:
      - i. the formation and structuring of the relevant Fund;
      - ii. to exercise voting and/or management rights in respect of the relevant Fund; or
      - iii. to give entitlement to performance related fees or dividends as part of remuneration arrangements for management or advisory entities to the relevant Fund or their personnel; or
    - d. any interest in a Fund where the transfer has been involuntarily, such as on the death or bankruptcy of a registered holder, in the absence of provision in the constitutive documents, to the personal representatives or trustee in bankruptcy,  
  
shall be permissible notwithstanding that the person acquiring the same does not fall within paragraphs 1 or 5 or does not make the minimum investment in or commitment to the relevant Fund as prescribed in the relevant Fund Guide. However, in the case of paragraph 3.d. above, it is expected that paragraph 1 above will apply on a transfer to a new beneficial owner once the administration is complete or that the new beneficial owner will make the minimum investment in or commitment to the relevant Fund as prescribed in the relevant Fund Guide.
  4. Professional investors, investors who make an acquisition in accordance with paragraph 3. above, and those investors that make the minimum initial investment in or commitment to a Fund as prescribed in the relevant Fund Guide are deemed to be able to evaluate the financial risks of a

Fund and to bear the economic consequences of investment in a Fund, including the possibility of loss of their entire investment.

5. Any discretionary investment manager acquiring an interest in a Fund, directly or indirectly, for or on behalf of one or more persons who are not professional investors must be satisfied that such investment is suitable for the underlying investors, and that the underlying investors are able to bear the economic consequences of investment in the relevant Fund, including the possibility of the loss of their entire investment.

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