JFSC

CONSULTATION PAPER NO. 7 2013

REVISION TO THE MONEY LAUNDERING (JERSEY) ORDER 2008

In order to address recommendations made by the International Monetary Fund and to restrict the application of customer due diligence measures to secondary market trading in collective investment schemes

ISSUED JULY 2013

CONSULTATION PAPER

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

The *Commission* invites comments on this consultation paper. Heather Bestwick at *Jersey Finance* is co-ordinating an industry response that will incorporate any matters raised by local businesses. Comments should reach *Jersey Finance* by 23 August 2013.

Responses should be sent to:

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Alternatively, responses may be sent directly to Andrew Le Brun at the *Commission* by 23 August 2013. If you require any assistance, clarification or wish to discuss any aspect of the proposal prior to formulating a response, it is of course appropriate to contact the *Commission*. The *Commission* contact is:

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

GLOSSARY OF TERMS

AML Guidance for CIS	means anti-money laundering guidance for *CIS* published by *IOSCO*
AML/CFT	means countering money laundering and the financing of terrorism
AML/CFT Handbook	means the Handbook for the Prevention and Detection of Money Laundering and Terrorist Financing for Financial Services Business Regulated under the Regulatory Laws
ASSPs	means authorised security service providers
BSA	means the Bank Secrecy Act of the *US*
CDD	means customer due diligence
CIBO principles	means principles on client identification and beneficial ownership for the securities industry published by *IOSCO*
CIF Law	means the Collective Investment Funds (Jersey) Law 1988
CIS	means a collective investment scheme
Jersey CIS	means: • a recognized fund, an unclassified fund and an unregulated fund, as defined in the Collective Investment Funds (Jersey) Law 1988 and orders made thereunder; and • a non-public fund commonly referred to as a "COBO-only" fund – carrying on activities caught under Paragraph 7(1)(h) of part B of Schedule 2 of the Proceeds of Crime (Jersey) Law 1999.
Commission	means the Jersey Financial Services Commission
Commission Law	means the Financial Services Commission (Jersey) Law 1998
DNFBPs	means designated non-financial businesses and professions
equivalent business	means a business as defined in Article 5 of the *Money Laundering Order*
EEA	means the European Economic Area
EU	means the European Union
existing customer	means a relationship that pre-dates the introduction of *CDD* measures in February 2008
FATF	means the Financial Action Task Force
FCA	means the Financial Conduct Authority of the *UK*
FSA	means the former Financial Services Authority of the *UK* and its successor – the *FCA*
G8	means the Group of Eight, which is a forum for the governments of eight of the world's eleven largest national economies, namely: Canada; France; Germany; Italy; Japan; Russia; the *UK*; and the *US*

Guernsey	means the Bailiwick of Guernsey
Guernsey Handbook	means the Handbook for Financial Services Businesses on Countering Financial Crime and Terrorist Financing
Guernsey Regulations	means the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007
Handbook for the Accountancy Sector	means the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for the Accountancy Sector
Handbook for the Legal Sector	means the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for the Legal Sector
IMF	means the International Monetary Fund
IoM Code	means the Isle of Man Money Laundering and Terrorist Financing Code 2013
IoM Handbook	means the Isle of Man Anti-Money Laundering and Countering the Financing of Terrorism Handbook
IOSCO	means the International Organisation of Securities Commissions
Jersey Finance	means Jersey Finance Limited
MLCO	means Money Laundering Compliance Officer
Money Laundering Directive	means Directive 2005/60/EC of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing
Money Laundering Order	means the Money Laundering (Jersey) Order 2008
PEP	means a politically exposed person
PRA	means the Prudential Regulation Authority of the *UK*
Proceeds of Crime Law	means the Proceeds of Crime (Jersey) Law 1999
relevant person	means a person carrying on a financial services business (as described in Schedule 2 of the *Proceeds of Crime Law*) and which is carrying on that business in or from within Jersey, or, if a Jersey company, carrying on that business in any part of the world
Supervisory Bodies Law	means the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008
Three Handbooks	means the *AML/CFT Handbook*, the *Handbook for the Accountancy Sector* and the *Handbook for the Legal Sector*
UK	means the United Kingdom
UK Guidance Notes	means the Joint Money Laundering Steering Group's Guidance for the UK Financial Sector
UK Regulations	means the Money Laundering Regulations 2007
US	means the United States of America
2004 Law	means the law of 12 November 2004 relative à la lutte contre le blanchiment et contre le financement du terrorisme of Luxembourg

2010 Act	means the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 of Ireland
2011 Ordinance	means the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance of 2011 of Hong Kong

CONTENTS

1 EXECUTIVE SUMMARY

1.1 Overview

1.1.1 In 2009, the *IMF* published a "third round"[1] report on Jersey's compliance with the 40+9 Recommendations of the *FATF*.

1.1.2 Whilst Jersey was assessed as "complying" or "largely complying" with 44 of the 49 Recommendations and 15 of the 16 "core" and "key" *FATF* Recommendations, a number of recommendations were made in the report about how Jersey's framework for *AML/CFT* could be improved. Accordingly, this paper:

1.1.2.1 Considers recommendations that have yet to be addressed in respect of *FATF* Recommendations that apply to financial institutions and *DNFBPs*; and

1.1.2.2 In order to address these recommendations, proposes changes to:

- the *Money Laundering Order*;
- the *AML/CFT Handbook*;
- the *Handbook for the Accountancy Sector*; and
- the *Handbook for the Legal Sector*.

1.1.3 Like many *FATF* member countries, Jersey has been assessed as "partially compliant" with former *FATF* Recommendation 5 - which sets out *CDD* measures that are to be applied by financial institutions. In particular, this paper considers the suggestion that is made by the *IMF* that "available concessions from conducting full CDD represent an overly-generous implementation of the FATF's facility to apply reduced or simplified measures for certain low-risk scenarios".

1.1.4 This paper also considers whether there is a need to make separate provision in the *Money Laundering Order* in a case where there is a change in the beneficial ownership of a collective investment scheme which is affected through a secondary market.

1.1.5 Finally, the paper provides an overview of some recent changes to the *FATF* Recommendations and highlights some of the more important changes that are relevant to financial institutions and *DNFBPs*.

1.1.6 Changes that may be needed to address the revised *FATF* Recommendations, including greater emphasis on risk, will be the subject of a later consultation paper and are not addressed in this paper.

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[1] This is the term used to describe assessments conducted using the Methodology for Assessing Compliance with the *FATF* 40 Recommendations and 9 Special Recommendations - published in February 2004.

1.2 What is proposed and why?

1.2.1 Sections 5 to 14 of this paper make proposals to amend the *Money Laundering Order* and *Three Handbooks* in a way that is consistent with:

1.2.1.1 international standards;

1.2.1.2 implementation of those standards in neighbouring countries; and

1.2.1.3 the money laundering and terrorist financing risk that is present in Jersey.

1.2.2 In addition to responding to specific questions posed in this paper, respondents are invited to consider whether the *Commission's* proposals are consistent with international standards, implementation of those standards elsewhere, and money laundering and terrorist financing risk. The cost to industry of implementing these proposals is considered in section 16 of this paper.

IMF recommendations and "Progress report"

1.2.3 Proposals in sections 5 to 13 respond to recommendations made by the *IMF*.

1.2.4 These recommendations cover a number of important elements of Jersey's *CDD* regime, and, in particular, provisions that allow:

1.2.4.1 reliance to be placed by a *relevant person* (a term that is defined in section 1.4) on "identification measures" already carried out by another party; and

1.2.4.2 a *relevant person* to apply simplified "identification measures" to a customer.

1.2.5 "Identification measures" are defined in Article 3 of the *Money Laundering Order* and are measures to collect information about a customer (and its owners and controllers, and any parties on whose behalf it acts) and to verify that information by reference to reliable and independent sources (that provide evidence of a customer's identity).

1.2.6 The circumstances in which reliance can be placed on a third party and simplified identification measures applied are already narrowly drawn, but there are proposals in this paper that may have the effect of limiting use still further. In particular:

1.2.6.1 Where reliance is placed on a third party to collect and hold evidence of a customer's identity, it would be necessary to test – from time to time – that such evidence can be, and is, provided by the third party on request.

1.2.6.2 It would be necessary to obtain assurance in writing from a third party that is relied upon to collect and hold evidence of identity that it will provide notice to the *relevant person* should it cease trading, or terminate its relationship with a particular customer.

1.2.6.3 It would no longer be possible to place reliance on a third party where to do so would present a higher risk of money laundering, or where the third party has not itself applied full identification measures to its customer.

1.2.6.4 It would no longer be possible to apply simplified identification measures to a customer acting on behalf of unidentified persons where the customer relationship is considered by the *relevant person* to present a higher risk of money laundering.

1.2.7 These changes are designed to be "evolutionary" rather than "revolutionary" and are intended to bring Jersey's provisions for reliance and simplification closer to provisions in place in the *Guernsey* and the *UK*, where these have been rated by the *IMF* or *FATF* as complying or largely complying with international standards. As referred to in section 1.3 of this paper, international standards continue to evolve, and the changes proposed at this time may have a short "shelf life".

1.2.8 Other proposals are designed to better enable the senior management of a *relevant person* to monitor *AML/CFT* risk. In particular:

1.2.8.1 It would be necessary to collect information on cases where verification of the identity of a customer has been delayed in accordance with the *Money Laundering Order*.

1.2.8.2 The circumstances in which verification of a customer's identity might be delayed would be clarified.

1.2.8.3 It would be necessary for compliance with *AML/CFT* policies and procedures to be monitored by an independent audit function.

1.2.9 There are also proposals to:

1.2.9.1 Set an end-date for the collection of missing information on customer relationships established before February 2008 (in most cases by December 2014).

1.2.9.2 Ensure that evidence of a customer's identity that is held by a *relevant person* might be passed without legal impediment to another party, where reliance is placed by that other party on the evidence that is held by the *relevant person*.

1.2.9.3 Require policies and procedures to be applied to any financial services business carried on by a subsidiary of a *relevant person* that are consistent with those applied directly by its parent.

1.2.9.4 Require policies and procedures to identify and assess risks that may arise in relation to the development of new products, services, business practices and technology.

1.2.10 Action taken by the Island's authorities to address recommendations made by the *IMF* will be considered in a "progress report" that is to be presented to, and discussed at, a plenary meeting of MONEYVAL[2] – a part of the Council of Europe – in December 2013. This will be the first time (outside full assessments) that Jersey will have been required to explain how it has responded to recommendations made in an external *AML/CFT* assessment, a process that most other jurisdictions have been subject to already for a number of years.

1.2.11 Jersey's "progress report" will be based on information provided by the insular authorities to MONEYVAL in November 2013, and will be supplemented by a written analysis prepared by MONEYVAL's Secretariat. This written analysis will consider whether sufficient action has been taken by Jersey's authorities to address recommendations made by the *IMF* in respect of the "core" *FATF* Recommendations[3]. During the plenary meeting, a rapporteur country (which will be nominated in September 2013) will be appointed to ask questions about action taken by the insular authorities to address other recommendations made by the *IMF*[4].

1.2.12 The timing of amendments to the *Money Laundering Order* will therefore have a direct effect on MONEYVAL's assessment of action taken by the insular authorities. If satisfied with the information that has been presented **and** action taken by the insular authorities, the plenary will be invited to adopt the "progress report" and Secretariat's written analysis, which will then both be published. MONEYVAL's rules of procedure outline the action that would be taken in other cases.

Secondary market trades

1.2.13 Proposals in section 14 of this paper are intended to bring the treatment of secondary market trades of shares or units in a *Jersey CIS* more into line with other jurisdictions, including *Guernsey*.

1.2.14 In future, is it proposed that identification measures in the *Money Laundering Order* should apply to a *Jersey CIS* only when creating shares or units, so long as any subsequent transfer in the ownership of those shares or units is affected through a stockbroker (or similar) that applies identification measures in line with, or equivalent to, the *Money Laundering Order*.

1.2.15 Change is proposed because it is said that:

1.2.15.1 Jersey has placed itself at a competitive disadvantage by implementing requirements that are not similarly applied in other jurisdictions;

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2 See: www.coe.int/t/dghl/monitoring/moneyval/About/MONEYVAL_in_brief_en.asp

3 Former Recommendations 1, 5, 10, 13 and Special Recommendations II and IV.

4 In particular, action required to comply with former "key" *FATF* Recommendations 3, 4, 23, 26, 35, 36, 40 and Special Recommendations I, III and V and to address partially compliant ratings (Former Recommendations 5, 9, 12, 14 and 16).

1.2.15.2 where ownership of shares or units in a *CIS* changes "on market", the customer relationship that exists in relation to the secondary market trade is conducted entirely separately from the *CIS*; and

1.2.15.3 the subsequent application of identification measures by a *CIS* to secondary market trades disrupts the registration of ownership and is duplicative of measures conducted by an investment firm.

1.2.16 Proposals may help to reduce the compliance costs of a *Jersey CIS* and encourage their greater use.

Benchmarking

1.2.17 In formulating its proposals, the Commission has had regard to implementation of the former *FATF* Recommendations in:

1.2.17.1 *Guernsey* – whose most recent mutual evaluation report was published by the *IMF* in January 2011.

1.2.17.2 *The UK* – whose most recent mutual evaluation report was published by the *FATF* in June 2007 and was subject to a follow-up report in October 2009.

1.2.17.3 The Isle of Man - whose most recent mutual evaluation report was published by the *IMF* in September 2009.

1.2.18 In the case of proposals to revise the application of simplified identification measures to intermediaries, regard has also been had to mutual evaluation reports (third round) and MONEYVAL assessments (fourth round) of countries that have been rated as "complying" with former *FATF* Recommendation 5.

1.2.19 In the case of proposals to revise the application of identification measures to *Jersey CIS*, regard has been had to guidance published by *IOSCO* and provisions applied in France, Germany, *Guernsey*, Hong Kong, Ireland, the Isle of Man, Luxembourg, Switzerland, the *UK* and the *US*.

1.2.20 Throughout, regard has been had to the content of the revised *FATF* Recommendations.

1.3 Revised FATF Recommendations and G8 action

1.3.1 Subsequent to publication of Jersey's "third round" assessment, international *AML/CFT* standards have been updated:

1.3.1.1 Revised *FATF* Recommendations were published in February 2012, and may be found on the *FATF* website.

1.3.1.2 The methodology that will be used to assess compliance with the revised *FATF* Recommendations was published in February 2013 and may also be found on the *FATF* website.

1.3.2 It is expected that a detailed self-assessment of Jersey's compliance with the revised *FATF* Recommendations will identify a need for further changes to be made to Jersey's *AML/CFT* regime, including in areas that are considered in this paper.

1.3.3 In order to identity all of the changes that may be needed to Jersey's *AML/CFT* framework, it will also be necessary to carry out a national risk assessment - in line with guidance published by the *FATF*. Inter alia, such a risk assessment would form the basis for the application of simplified *CDD* concessions, and may lead to further amendments to areas that are addressed in sections 6 and 7 of this paper (dealing with simplified identification measures).

1.3.4 Both the results of the self-assessment and national risk assessment will need to be considered alongside action plans published by *G8* members and some other jurisdictions, including Jersey, to prevent the misuse of companies and legal arrangements. The *UK* action plan, for example, proposes that the Companies Act 2006 and the *UK Regulations* should oblige companies to know who owns and controls them, by requiring that companies obtain and hold adequate, accurate and current information on their beneficial ownership. As a result, it may be necessary to revisit the amendments that are proposed in section 14 of this paper (dealing with the application of identification measures to secondary market trades).

1.3.5 The effect of all these developments is that the "shelf life" of the changes that are proposed in this paper may be quite limited.

1.3.6 In addition to new technical standards introduced in the revised *FATF* Recommendations, the revised assessment methodology includes a much more rigorous analysis of the effectiveness of implementation. Under the next round of reviews, assessors will consider how effective a country's *AML/CFT* framework is using eleven new tests, which are referred to in the methodology as "immediate outcomes".

1.4 Who would be affected?

1.4.1 The amendments that are proposed in sections 5 to 13 will affect all persons carrying on a financial services business and which are: (i) carrying on that business in or from within Jersey; or (ii) if a Jersey company, carrying on that business in any part of the world.

1.4.2 Such a person is referred to in the *Money Laundering Order* and in this paper as a *relevant person*. The term "relevant person" is also used in the *UK* and Isle of Man to describe a similar type of person. In order to avoid confusion, such a person in the *UK* is referred to in this paper as a "firm" and such a person in the Isle of Man is referred to as a "licence-holder". In *Guernsey*, its equivalent of a *relevant person* is referred to as a financial services business.

1.4.3 Proposals in section 14 of this paper will affect only a relevant person that is a *CIS*.

2 CONSULTATION

2.1 Basis for consultation

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

2.1.2 In addition, the *Commission* is required to consult on amendments to Codes of Practice that are issued in accordance with Article 22 of the *Supervisory Bodies Law* (which are described as "regulatory requirements" in the *Three Handbooks*).

2.2 Responding to the consultation

2.2.1 The *Commission* invites comments in writing from interested parties on the proposals included in this consultation paper. Where comments are made by an industry body or association, that body or association should also provide a summary of the type of individuals and/or institutions that it represents.

2.2.2 To assist in analysing responses to the consultation paper, respondents are asked to:

2.2.2.1 prioritise comments and to indicate their relative importance; and

2.2.2.2 respond as specifically as possible and, where they refer to costs, to quantify those costs.

2.3 Next steps

2.3.1 The proposals set out in this consultation paper have already been shared in draft form with the *Commission's* Steering Group for countering money laundering and the financing of terrorism, made up of representatives from the *Commission*, *Jersey Finance*, the Joint Financial Crimes Unit, and industry. A full list of members can be found on the *Commission's* website.

2.3.2 A full list of representative bodies that have been sent this consultation paper is available at Appendix A.

2.3.3 Following consultation, the *Commission* will:

2.3.3.1 Prepare instructions to amend the *Money Laundering Order*.

2.3.3.2 Prepare appropriate changes to the *Three Handbooks*.

2.3.4 It is intended that the amending Order and revisions to the *Three Handbooks* should have effect before the end of October 2013, ahead of MONEYVAL's "progress report".

3 THE COMMISSION

3.1 Overview

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

3.2 Commission's functions

3.2.1 The *Commission Law* prescribes that the *Commission* shall be responsible for:

3.2.1.1 the supervision and development of financial services provided in or from within Jersey;

3.2.1.2 providing the States of Jersey, any Minister or any other public body with reports, advice, assistance and information in relation to any matter connected with financial services;

3.2.1.3 preparing and submitting to Ministers recommendations for the introduction, amendment or replacement of legislation appertaining to financial services, companies and other forms of business structure;

3.2.1.4 such functions in relation to financial services or such incidental or ancillary matters –

- as are required or authorised by or under any enactment, or
- as the States of Jersey may, by Regulations, transfer; and

3.2.1.5 such other functions as are conferred on the *Commission* by any other Law or enactment.

3.3 Guiding principles

3.3.1 The *Commission's* guiding principles require it to have particular regard to:

3.3.1.1 the reduction of risk to the public of financial loss due to dishonesty, incompetence, malpractice, or the financial unsoundness of persons carrying on the business of financial services in or from within Jersey;

3.3.1.2 the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;

3.3.1.3 the best economic interests of Jersey; and

3.3.1.4 the need to counter financial crime in both Jersey and elsewhere.

4 SUMMARY OF PROPOSALS

4.1 Overview

4.1.1 This section summarises the key changes that are proposed in this consultation paper.

4.2 Reliance on third parties

4.2.1 In section 5 of this paper, it is proposed to require a *relevant person* to periodically test that third parties that are relied upon to have carried out identification measures have appropriate policies and procedures in place to apply those measures and will provide a copy of evidence of identity that they hold without delay. Currently there is no such requirement, though testing is not uncommon in practice.

4.2.2 In order to place reliance on a third party under the *Money Laundering Order*, it is proposed that a *relevant person* must also record its assessment of the risk of placing reliance on that party and why it is "fit" for it to do so, and obtain assurance in writing that the third party applies the necessary identification measures. Currently, whilst risk must be assessed, there is no requirement to record that assessment, and the assurance that is provided need not address the performance of "enhanced" identification measures.

4.2.3 It is proposed to prohibit reliance on a third party where to do so would present a higher risk of money laundering.

4.2.4 It is also proposed that it would no longer be possible to rely upon a third party that itself has placed reliance on a written assurance (a so-called reliance "chain") or on a third party that has applied the so-called "source of funds" concession to verify identity.

4.2.5 It is proposed to recognise in legislation that the written assurance that is required by the *Money Laundering Order* may be provided in future through general "terms of business", rather than each time that reliance is placed on a third party.

4.2.6 It is proposed to retain – for the time being at least – a concession for group third parties.

4.2.7 Finally, it is proposed that reliance might be placed on identification measures already applied by a trust and company services provider in a consistent way, where it makes no difference whether the *relevant person* forms a relationship with: (i) a trustee or general partner that is a trust and company services provider; or (ii) a legal person that is administered by a trust and company services provider.

4.3 Simplified identification measures – intermediaries

4.3.1 In section 6 of this paper, it is proposed that a *relevant person* must record its assessment of the risk of applying simplified identification measures and why it is "fit" for it to apply those measures to a customer who is an intermediary. Currently, whilst risk must be assessed, there is no requirement to record that assessment.

4.3.2 In addition, it is proposed to prohibit the application of simplified identification measures under Article 17 of the *Money Laundering Order* in a particular case where the intermediary is considered to present a higher risk of money laundering.

4.3.3 In line with the revised *FATF* Recommendations, it is also proposed to make explicit provision for trust and company services providers, lawyers and accountants to be treated in some limited cases as intermediaries under Article 17 of the *Money Laundering Order*.

4.4 Simplified identification measures – other cases

4.4.1 In section 7 of this paper, it is proposed to place further limits on use of the concession in the *Three Handbooks* that is often referred to as the "source of funds" concession. In particular, it would no longer be possible to apply this concession to a customer who is not an individual.

4.4.2 In light of new legislation, it is also proposed to reconsider the basis for the concession given to lawyers and estate agents under Article 18(8A) of the *Money Laundering Order* in respect of certain Jersey property transactions. The effect of the current provision is that there is no need for lawyers and estate agents to verify the identity of customers that buy or sell property regulated by the Housing (Jersey) Law 1949 (now repealed).

4.5 Delay in verification of identity

4.5.1 In section 8 of this paper, it is proposed to clarify the basis on which verification of the identity of a customer may be delayed until after a relationship has been established.

4.5.2 It is proposed to make specific provision for verification of identity to be delayed in the case of a beneficiary under a life assurance policy, person considered to have a beneficial interest in a "third party" such as a trust, and a bank account holder.

4.5.3 In all other cases, verification of identity may continue to be delayed in line with existing provisions in Article 13(4) of the *Money Laundering Order*.

4.5.4 It is proposed that a report must be made to the senior management of a *relevant person* about delays in verification of identity.

4.6 Existing customers

4.6.1 In section 9 of this paper, it is proposed that - by 31 December 2014 - a *relevant person* must:

4.6.1.1 Hold "identification" information and "relationship" information for every continuing business relationship that takes into account the *relevant person's* assessment of the risk of that relationship; or

4.6.1.2 In line with Article 14(7) of the *Money Laundering Order*, have started to terminate any business relationship to which it has been unable to apply the necessary identification measures. Where it holds assets for a customer that it has lost contact with, then a *relevant person* should block access to those assets until such time as it is possible to return them to the customer.

4.6.2 Alternatively, it will be possible to agree a bespoke remediation plan with the *Commission* by 31 December 2014.

4.6.3 In cases where reliance is placed on identification measures undertaken by a third party, it is proposed that a written assurance that is in line with Article 16(4) of the *Money Laundering Order* should be collected for continuing business relationships as soon as is reasonably practicable, where such an assurance is not already held.

4.6.4 This section also proposes removing a concession that permits lawyers and accountants to "self-certify" the identity of a client.

4.6.5 Current provisions say only that identification measures must be applied to *existing customers* at "appropriate times".

4.7 Disclosure of records

4.7.1 In section 10 of this paper, it is proposed to allow (but not require) a *relevant person* to make records available to another financial institution or *DNFBP*, so that it will always be possible for a *relevant person* to:

4.7.1.1 provide records to a correspondent bank in line with former *FATF* Recommendation 7 (correspondent banking);

4.7.1.2 provide records to a relying party in line with former *FATF* Recommendation 9 (reliance on third parties); and

4.7.1.3 provide information about the beneficiary of a wire transfer to another party in line with former Special *FATF* Recommendation VII (wire transfers).

4.8 Independent audit function

4.8.1 In section 11 of this paper, it is proposed to require that testing of *AML/CFT* policies and procedures be carried out by an independent audit function. In determining what form that audit function should take, a *relevant person* must have regard to the risk of money laundering and terrorist financing and its size.

4.9 Application of group policies and procedures

4.9.1 Whilst there is currently a requirement for measures that are equivalent to the *Money Laundering Order* to be applied by a *relevant person* to a subsidiary, no reference is made to the application of group policies and procedures.

4.9.2 In section 12 of this paper, it is proposed to require a *relevant person* to maintain policies and procedures in respect of any financial services business carried on by a subsidiary of that person. These should be consistent with those applied by the *relevant person* in respect of its own financial services business activities.

4.10 Technological developments

4.10.1 In section 13 of this paper, it is proposed to require a *relevant person* to maintain policies and procedures for identifying and assessing risks that may arise in relation to:

4.10.1.1 the development of new products and services, and new business practices, including new delivery mechanisms; and

4.10.1.2 the use of new or developing technologies - for both new and existing products and services.

4.10.2 To support this change, it is proposed to require a *relevant person's* senior management to take account of the above risks in its business risk assessment, to provide that compliance with the above policies and procedures is considered by the *MLCO*, and to provide additional guidance on training.

4.11 Application of identification measures to secondary market trades

4.11.1 The *Commission's* position is that all open-ended and closed-ended *CIS* should be required to conduct identification measures on investors.

4.11.2 However, section 14 of the paper proposes that identification measures should not be required in a case where a *relevant person* that is a *CIS*:

4.11.2.1 does not create shares or units, and merely registers a change in ownership of an existing share or unit that has been affected through a secondary market transaction; and

4.11.2.2 is satisfied that a person carrying on investment business in Jersey or *equivalent business* has already conducted identification measures in respect of that particular transaction.

5 RELIANCE ON THIRD PARTIES

5.1 Overview

5.1.1 This section proposes changes to Article 16 (reliance on third parties[5]) of the *Money Laundering Order*.

5.1.2 In considering recommendations made by the *IMF*, regard has been had to:

5.1.2.1 The implementation of former *FATF* Recommendation 9 in *Guernsey* – which has been assessed as "largely compliant" by the *IMF*.

5.1.2.2 The Isle of Man's response to the *IMF's* assessment that it "largely complies" with former *FATF* Recommendation 9.

5.1.3 For the purpose of consistency, implementation of former *FATF* Recommendation 9 in the *UK* has also been considered, notwithstanding that it has been assessed as "partially compliant" by the *FATF*.

5.2 CDD measures in place in Jersey

5.2.1 The requirement to perform *CDD* measures – in line with former *FATF* Recommendation 5 – is set out in Article 13 of the *Money Laundering Order*. *CDD* measures comprises of "identification measures" and "on-going monitoring".

5.2.2 Under Article 3 of the *Money Laundering Order*, "identification measures" is to be understood to cover the collection of information on identity ("identification" information), verification of that information, and the collection of wider relationship information (e.g. source of funds) ("relationship" information).

5.2.3 Subject to an assessment of the risk of placing reliance on another, Article 16 of the *Money Laundering Order* allows (but does not require) reliance to be placed on identification measures already applied by a third party that is a financial institution or *DNFBP* (terms as defined by the *FATF*) – where the third party is regulated and overseen for *AML/CFT* compliance by the *Commission* or carries on *equivalent business*. In particular, a *relevant person* may rely on the third party to hold evidence of identity, but should be satisfied that this will be provided to it on request.

[5] Under Article 16 of the *Money Laundering Order*, a third party may be an introducer or an intermediary – as defined in Article 16(6).

5.2.4 In line with Section 4.10 of the *AML/CFT Handbook* (and equivalent provisions in the *Handbook for the Accountancy Sector* and *Handbook for the Legal Sector*), reliance may also be placed on identification measures applied by a third party that is in the same financial group as a *relevant person*, notwithstanding that the third party may not itself be directly subject to *AML/CFT* requirements or subject to direct supervision for compliance with those requirements.

5.2.5 However, Article 16 of the *Money Laundering Order* may not be applied in any case where the *relevant person* suspects money laundering.

5.3 IMF report

5.3.1 The *IMF's* view is that Jersey "partially complies" with former *FATF* Recommendation 9. This is because:

5.3.1.1 Article 16 of the *Money Laundering Order* permits reliance to be placed on a third party that is located in a "secrecy jurisdiction" (a country that prevents transmission of evidence of identity), and it considers that guidance provided to deal with such a case is not adequate to address the risk presented. [See paragraph 476 of the *IMF* report.]

5.3.1.2 Subject to an assessment of risk, Article 16 of the *Money Laundering Order* permits reliance to be placed on identification measures applied by the legal and accounting sectors in Jersey that (at the time of the assessment) had yet to demonstrate compliance with *AML/CFT* requirements. [See paragraph 478 of the *IMF* report.]

5.3.1.3 Article 16 of the *Money Laundering Order* permits a *relevant person* to place reliance on a third party that is a branch or subsidiary in the same group as the *relevant person* that is not directly subject to requirements to prevent money laundering consistent with the *FATF* Recommendations. [See paragraph 481 of the *IMF* report.]

5.3.1.4 In a case where a third party terminates its relationship with a customer, Article 16 of the *Money Laundering Order* does not provide that the third party must immediately transfer evidence of identity that is relied on to the *relevant person*. [See paragraph 476 of the *IMF* report.]

5.3.1.5 There is no provision in Article 16 of the *Money Laundering Order* for a *relevant person* to test from time to time that third parties will provide evidence of identity regarding customers. [See paragraph 477 of the *IMF* report.]

5.3.2 Inter alia, the report recommends that the insular authorities should consider requiring a *relevant person* to perform spot-testing of a third party's performance of *CDD* obligations.

5.3.3 The report also recommends that the authorities should limit the application of the concession that allows a *relevant person* to place reliance on a third party, so that a *relevant person* could not rely on:

5.3.3.1 a third party in a "secrecy jurisdiction" that could be legally prevented from providing evidence of identity; or

5.3.3.2 a third party that has only recently become subject to requirements to conduct *CDD* measures.

5.3.4 The report also suggests that the authorities should eliminate the concession that permits a *relevant person* to place reliance on a third party that is a member of the same financial group as the *relevant person*, but not itself subject to, nor supervised for compliance with, *CDD* requirements that are compliant with former *FATF* Recommendation 5.

5.4 Position in Guernsey

5.4.1 Regulation 10 of the *Guernsey Regulations* and Chapter 4.10 of the *Guernsey Handbook* explain which third parties may be relied upon.

5.4.2 Both provide that, so long as certain criteria are satisfied, a financial services business ("A") can place reliance on *CDD* measures already undertaken by another financial services business, lawyer or accountant ("B"), where an existing customer of B wishes to establish a direct business relationship (or carry out a one-off transaction) with A.

5.4.3 In *Guernsey*, a third party can be an "appendix C business", which is:

5.4.3.1 A financial services business (broadly the same definition as is applied in Jersey but excluding lawyers, accountants, estate agents, and high value goods dealers) that is supervised by the Guernsey Financial Services Commission. This definition includes trust and company services providers.

5.4.3.2 A business in a country listed in Appendix C to the *Guernsey Handbook* which would, if in *Guernsey*, be a financial services business, and which is authorised to carry on its activity, is subject to *AML/CFT* requirements, and is overseen for compliance with those requirements.

5.4.3.3 A lawyer or accountant in the *UK*, Channel Islands or Isle of Man that is authorised to carry on its activity, is subject to *AML/CFT* requirements, and is overseen for compliance with those requirements.

5.4.4 In order to place reliance on a third party, a combination of regulation 10 of the *Guernsey Regulations* and Chapter 4.10 of the *Guernsey Handbook* provide that a financial services business must:

5.4.4.1 Be satisfied that the third party:

- has appropriate risk-grading procedures in place; and

- conducts appropriate and effective *CDD* procedures in respect of its customers, including enhanced *CDD* measures for a *PEP* and other higher risk relationships.

5.4.4.2 Immediately obtain written confirmation of identity from the third party, by way of a certificate or summary sheet, detailing elements of the *CDD* process (including information on beneficial owners and underlying principals).

5.4.4.3 Assess the risk in placing reliance on the certificate or summary sheet.

5.4.4.4 Require the third party to supply, upon request and without delay, certified copies or originals of identification data and other evidence that it has collected under the *CDD* process, and take adequate steps to be satisfied that data and other evidence will be supplied.

5.4.4.5 Have in place a programme of testing to ensure that third parties are able to fulfil the obligation that certified copies or originals of identification data are provided upon request and without delay. This will involve the financial services business adopting on-going procedures to ensure it has the means to obtain identification data and documentation.

5.4.5 Chapter 4.11 of the *Guernsey Handbook* does not permit a financial services business to place reliance on a third party that does not hold underlying documentation (e.g. where there is a reliance "chain") to support the identity of its customer.

5.4.6 Whilst Chapter 4.10.1 of the *Guernsey Handbook* does provide separately for group entities to act as third parties, the extent of the additional concession that is provided is limited to allowing some greater flexibility concerning the country of residence of the group entity that is relied upon.

5.4.7 There are a number of differences between legislation and practice in Jersey and *Guernsey*.

5.4.7.1 Regulation 10 and Chapter 4.10 of the *Guernsey Handbook* do not permit reliance to be placed on estate agents and high value goods dealers, nor on accountants or lawyers outside the *UK*, Channel Islands or Isle of Man. Subject to an assessment of risk, Article 16 of the *Money Laundering Order* allows reliance to be placed on any third party that is subject to *AML/CFT* requirements and overseen for compliance with those requirements.

5.4.7.2 Whilst Article 16 of the *Money Laundering Order* and Section 4.10.1 of the *AML/CFT Handbook* (and equivalent provisions in the *Handbook for the Accountancy Sector* and *Handbook for the Legal Sector*) provide that a *relevant person* must assess the risk in placing reliance on identification measures applied by a third party and think it "fit" to place reliance, unlike in *Guernsey*, neither provision specifies the matters that a *relevant person* must satisfy itself about.

5.4.7.3 Unlike in *Guernsey*, there is no express provision in the *Money Laundering Order* that a *relevant person* take steps to satisfy itself that a third party will provide, upon request and without delay, identification data and other evidence, though this will often be the effect of provisions set out in Section 4.10.1 of the *AML/CFT Handbook* (and equivalent provisions in the *Handbook for the Accountancy Sector* and *Handbook for the Legal Sector*).

5.4.7.4 Unlike in *Guernsey*, there is no requirement that a third party relied upon must itself hold underlying documentation to support the identity of its customer.

5.4.7.5 Provisions for placing reliance on group entities are more narrowly drawn in *Guernsey*.

5.5 Position in the UK

5.5.1 Under regulation 17 of the *UK Regulations*, a firm may rely on:

5.5.1.1 A credit or financial institution (excluding a money service business) which is authorised under the Financial Services and Markets Act 2000, or equivalent.

5.5.1.2 An auditor, insolvency practitioner, external accountant, tax adviser or independent legal professional who is supervised for compliance with the *UK Regulations*, or equivalent.

5.5.2 "Equivalent" in this context means a person that is: subject to mandatory professional registration recognised by law; subject to requirements equivalent to those laid down in the *Money Laundering Directive*; and supervised for compliance with those requirements in a manner equivalent to the *Money Laundering Directive*.

5.5.3 Regulation 19(6) of the *UK Regulations* provides that, where a third party is outside the UK or the *EEA*, a firm that places reliance must take steps to ensure that the third party relied upon will, *if requested* to do so (for a period of five years beginning on the date on which the third party is relied upon):

5.5.3.1 as soon as reasonably practicable, make available information about the customer (and any beneficial owner) which the third party obtained when applying *CDD* measures; and

5.5.3.2 as soon as reasonably practicable, forward copies of any identification and verification data and other relevant documents on the identity of the customer (and any beneficial owner) which the third party obtained when applying those measures.

5.5.4 According to section 5.6.7 of the *UK Guidance Notes*, there is no absolute requirement for a firm to expressly indicate that it is placing reliance on another (though often this will be done).

5.5.5 Nor is there an absolute requirement that the matters referred to in paragraph 5.5.3 above need be confirmed in writing by the third party before a relationship may be established or one-off transaction carried out. However, section 5.6.15 of the *UK Guidance Notes* states that, in practice, a firm relying on a third party will need to know the identity of the customer or beneficial owner whose identity has been verified, the level of *CDD* that has been carried out, and have confirmation of the third party's understanding of its obligation to make available, on request, copies of the verification data, documents or other information.

5.5.6 Section 5.6 of the *UK Guidance Notes* places some restrictions on the concept of reliance. Under section 5.6.10, a firm may not place reliance on simplified *CDD*, e.g. where verification uses source of funds as evidence of identity. Under section 5.6.11, it also appears that another party can be relied on only where that party has itself verified identity (and has not relied on measures carried out by another).

5.5.7 Whilst there is reference to reliance on group entities at sections 5.6.25 to 5.6.28 of the *UK Guidance Notes*, there appears to be no provision made for reliance where a group entity is not itself subject to national *AML/CFT* requirements or overseen for compliance with those requirements by a national supervisor.

5.5.8 There are a number of differences between legislation and practice in Jersey and the *UK*.

5.5.8.1 The *UK Regulations* do not permit reliance to be placed on domestic credit and financial institutions that are not authorised by the *FSA*, or trust and company services providers, estate agents or high value goods dealers. Subject to an assessment of risk, Article 16 of the *Money Laundering Order* allows reliance to be placed on any third party that is subject to *AML/CFT* requirements and overseen for compliance with those requirements by the *Commission* (or carries on *equivalent business*).

5.5.8.2 Unlike in the *UK*, there is no express provision in the *Money Laundering Order* that a *relevant person* take steps to satisfy itself that a third party will provide, upon request and without delay, identification data and other evidence, though this will often be the effect of provisions set out in Section 4.10.1 of the *AML/CFT Handbook* (and equivalent provisions in the *Handbook for the Accountancy Sector* and *Handbook for the Legal Sector*).

5.5.8.3 Unlike regulation 19 of the *UK Regulations*, Article 16 of the *Money Laundering Order* does not limit the period of time that reliance may be placed on a third party.

5.5.8.4 Unlike in the *UK*, there is nothing in place in Jersey to stop a *relevant person* placing reliance on a third party, where that party has itself placed reliance on the identification measures of another. Nor is it expressly said in the *Money Laundering Order* or *Three Handbooks* that reliance cannot be placed on a third party that has applied simplified identification measures.

5.5.8.5 Unlike in Jersey, there is no additional concession for "group" reliance in the *UK*.

5.5.9 However, unlike Article 16 of the *Money Laundering Order*, the *UK Regulations* do not include an absolute requirement that certain matters must be confirmed in writing by the third party before a relationship may be established or one-off transaction carried out. In particular, Regulation 19(6) provides that customer information must be made available if requested (and not immediately before the business relationships is established or one-off transaction completed).

5.6 Position in the Isle of Man

5.6.1 In the Isle of Man, paragraph 10 of the *IoM Code* and section 4.10 of the *IoM Handbook* govern reliance.

5.6.2 These provide that, so long as certain criteria are satisfied, a licence-holder ("A") can place reliance on a regulated person, lawyer or accountant ("B") to have verified the identity of a customer (and customer's beneficial owners), where an existing customer of B wishes to establish a direct business relationship (or carry out a one-off transaction) with A.

5.6.3 In the Isle of Man, a third party can be:

5.6.3.1 A regulated person (a person who is prudentially supervised under the Financial Services Act 2008 or Insurance Act 2008, and trustees and administrators of some retirement benefit schemes). This definition includes trust and company services providers.

5.6.3.2 A lawyer or accountant in the Isle of Man that is subject to rules that are equivalent to the *IoM Code*.

5.6.3.3 A business outside the Isle of Man which is regulated and supervised for *AML/CFT* purposes under law and regulations by an authority in a country listed in the schedule to the *IoM Code*.

5.6.4 In order to place reliance on a third party, paragraph 10(6) of the *IoM Code* provides that written terms of business must be in place between the licence-holder and the third party, and those terms of business require the third party to:

5.6.4.1 Verify the identity of all customers sufficiently to comply with "money laundering requirements" (presumably in the Isle of Man). [There is no reference in the terms to the collection of information on identity of the customer or beneficial owner.]

5.6.4.2 Verify the identity of the beneficial owner (presumably if different to the customer).

5.6.4.3 Establish and maintain a record of the evidence of identity for at least 5 years.

5.6.4.4 Supply to the licence-holder forthwith upon request, copies of the evidence verifying the identity of the customer and beneficial owner and all other *CDD* information held.

5.6.4.5 Supply to the licence-holder forthwith, copies of the evidence verifying the identity of the customer and beneficial owner and all other *CDD* information held where the third party is to cease trading, ceases to do business with the customer, or where the licence-holder informs the third party that it no longer intends to rely on the terms of business.

5.6.4.6 Inform the licence-holder specifically of each case where the third party is not required or has been unable to verify the identity of the customer or the beneficial owner.

5.6.4.7 Inform the licence-holder where the third party is no longer able to comply with the provisions of the written terms of business.

5.6.4.8 Cooperate with random and periodic testing to ensure that evidence of identity is produced upon demand and without undue delay.

5.6.5 Whilst the terms of business focus on the verification of identity, section 4.10.2 of the *IoM Handbook* provides that *CDD* information may also be obtained from a third party (rather than the underlying customer).

5.6.6 There appears to be no provision made for reliance to be placed on other parts of the same financial group as a licence-holder – where a group entity is not itself subject to national *AML/CFT* requirements or overseen for compliance with those requirements by a national supervisor.

5.6.7 There are a number of differences between legislation and practice in Jersey and the Isle of Man.

5.6.8 In the case of a person that is resident in the Isle of Man, paragraph 10 of the *IoM Code* allows reliance to be placed only on prudentially supervised persons, lawyers and accountants. Subject to an assessment of risk, Article 16 of the *Money Laundering Order* allows reliance to be placed on any third party that is subject to *AML/CFT* requirements and overseen for compliance with those requirements by the Commission.

5.6.9 Unlike in the Isle of Man, there is no express provision in the *Money Laundering Order* that a *relevant person* take steps to satisfy itself that a third party will provide, upon request and without delay, evidence of identity, though this will often be the effect of provisions set out in Section 4.10.1 of the *AML/CFT Handbook* (and equivalent provisions in the *Handbook for the Accountancy Sector* and *Handbook for the Legal Sector*).

5.6.10 Unlike in the Isle of Man, the written assurance that is required under Article 16 of the *Money Laundering Order* does not set out the circumstances where a third party must provide the evidence of identity that it holds.

5.6.11 There appear to be no special provisions dealing with group reliance in the Isle of Man.

5.6.12 Unlike in the Isle of Man, there is no explicit recognition in the *AML/CFT Handbook* or *Handbook for the Accountancy Sector* that reliance can be placed on general "terms of business" rather than specific assurances in each case when reliance is placed (though there is such a provision in the *Handbook for the Legal Sector*).

5.6.13 However, whilst *CDD* information may be obtained from a third party, terms of business do not require identification measures (other than verification of identity) to be carried out in line with requirements in the Isle of Man. In contrast, the written assurance that is a feature of Article 16(4) of the *Money Laundering Order* provides that a third party must confirm that identification measures have been applied which comply with the *Money Laundering Order* or international standards.

5.7 Findings

5.7.1 Provisions dealing with reliance on third parties are more onerous in *Guernsey* and the Isle of Man than in Jersey.

5.7.2 Provisions in place in Jersey and the *UK* are more closely aligned.

5.8 Proposals

5.8.1 In light of the approach followed in *Guernsey*, the *UK* and the Isle of Man, it is proposed to more tightly regulate the circumstances in which a third party might be relied upon.

Non-group third parties

5.8.2 An amendment to Article 11 or Article 16 of the *Money Laundering Order* is proposed to require a *relevant person* to:

5.8.2.1 Periodically test that third parties have appropriate policies and procedures in place to apply the identification measures set out in Articles 13(1)(a) and 15 of the *Money Laundering Order* (or measures that are consistent with those in the *FATF* Recommendations), to the extent that reliance is placed by the *relevant person* on the application of those measures[6]; and

[6] The meaning of identification measures is explained in Article 3(2) of the *Money Laundering Order* and Sections 3.3.1, 4.3, 4.4 and 4.5 of the *AML/CFT Handbook* (and equivalent provisions in the *Handbook for the Accountancy Sector* and *Handbook for the Legal Sector*).

5.8.2.2 Periodically test that third parties that are relied on do keep and will provide a copy of evidence of identity without delay. Testing will require evidence of identity to be provided.

5.8.3 In order to place reliance on a third party under Article 16 of the *Money Laundering Order*, it is proposed that a *relevant person* must, in addition to existing provisions:

5.8.3.1 Periodically record its assessment of the risk of placing reliance on that party to have applied identification measures and why it is "fit" for it to do so[7]. This assessment of risk will take into account the risk that a third party does not:

- apply the necessary identification measures;
- disclose complete and accurate information collected through the application of those measures; and
- keep records, or does not keep them for the necessary period.

5.8.3.2 Obtain assurance in writing from that party that it has applied the identification measures in Articles 13(1)(a) and 15 of the *Money Laundering Order* (or measures that are consistent with those in the *FATF* Recommendations).

5.8.3.3 Obtain assurance in writing from that party that it will provide notice when it ceases trading, subsequently terminates its relationship with a customer, or no longer consents to being relied upon. This will allow the *relevant person* to call for evidence of identity to be provided without delay (or seek to place reliance on another third party).

5.8.4 In assessing risk, it may also be appropriate to take account of the particular product or service that is to be provided by the *relevant person* and how it is to be delivered. The effect of this is that it may be possible to place reliance on a particular third party to have applied identification measures for some customers but not for others.

5.8.5 It is proposed to prohibit reliance on a third party in a particular case:

5.8.5.1 Where to do so would present a higher risk of money laundering because a *relevant person* is not satisfied that the necessary identification or record-keeping measures will have been applied by a third party (on the basis of the assessment outlined at paragraphs 5.8.3.1 and 5.8.4 above).

5.8.5.2 Where the third party has a relevant connection[8] with a country that is subject to a *FATF* call to apply countermeasures – currently Iran and North Korea.

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7 Section 4.10.1 of the *AML/CFT Handbook* explains the factors to be taken into account when assessing such a risk. Similar factors are listed in Sections 5.10.1 of the *Handbook for the Accountancy Sector* and *Handbook for the Legal Sector*.

8 The term "connection" is now defined in Section 3.4.2 of the *AML/CFT Handbook*.

5.8.5.3 Where the third party has not verified identity of the customer by reference to documentary evidence (including the use of suitable certification) or external data sources. The effect of this is that it would no longer be possible to rely upon a third party that in turn has placed reliance on a written assurance (a so called reliance "chain") or on a third party that has applied the so-called "source of funds" concession to verify identity.

5.8.6 It is proposed to recognise in legislation that the written assurance that is required by Article 16 of the *Money Laundering Order* may be provided through general "terms of business" – so that there is no need for a third party to provide an assurance each time that it is relied upon. However, each time that the written assurance is provided through general "terms of business", confirmation should be requested from the third party that those terms are to apply.

5.8.7 It is important to note that it is not proposed to limit any further the third parties that may be relied on under Article 16 of the *Money Laundering Order* nor to explicitly prevent reliance being place on a third party resident in a "secrecy jurisdiction" (though secrecy legislation will have this effect where it is absolute) or with limited experience in performing *CDD* measures. This is on the basis of the changes that are proposed above which will provide for steps to be taken to test that a third party has kept and can provide satisfactory evidence of identity on request.

Group third parties

5.8.8 In one particular case, it is also proposed to allow reliance to be placed under Article 16 of the *Money Laundering Order* on a third party that carries on business outside Jersey that, if carried on in Jersey, would be financial services business, but which:

5.8.8.1 does not trigger a registration or authorisation requirement in that country; or

5.8.8.2 is not subject to *AML/CFT* requirements that are consistent with those in the *FATF* Recommendations; or

5.8.8.3 is not overseen by an overseas regulatory authority.

5.8.9 This case is where a third party is part of the same financial group as a *relevant person*, where it is proposed that reliance might be placed on that group third party, so long as:

5.8.9.1 the financial group applies *CDD* and record-keeping requirements in line with: (i) the *Money Laundering Order* or (ii) revised *FATF* Recommendations 10, 11 and 12, and programmes against money laundering and terrorist financing, in accordance with revised *FATF* Recommendation 18; and

5.8.9.2 the effective implementation of those group *CDD* and record-keeping requirements and *AML/CFT* programmes is supervised at a group level by an overseas regulatory authority.

5.8.10 As part of Jersey's review of the revised *FATF* Recommendations, it may be necessary to consider limiting the application of this group concession to circumstances in which there is also confirmation from an overseas regulatory authority that it supervises the group for compliance with *AML/CFT* requirements. This confirmation might be provided to the Commission or more generally publicised.

Trust and company services providers

5.8.11 Finally, it is proposed to streamline the treatment of trust and company services providers under Article 16 of the *Money Laundering Order*, such that it would not make a difference whether the *relevant person* forms a relationship with:

5.8.11.1 a trustee or general partner that is a trust and company services provider (in Jersey or elsewhere); or

5.8.11.2 a legal person that is administered by a trust and company services provider (in Jersey or elsewhere).

5.8.12 Except in the limited cases identified at paragraph 6.8.10 below, it is proposed that a trust and company services provider would be treated as a third party that is relied upon under provisions in Article 16 of the *Money Laundering Order*.

5.8.13 Currently, different provisions apply: a trustee or general partner that is a trust and company services provider will be treated as an "intermediary" under Article 16 of the *Money Laundering Order* where it establishes a relationship with a *relevant person* (and able to benefit from simplified identification measures), whereas the same services provider will be considered to have "introduced" business and be relied upon under Article 16 when a company that it administers establishes a relationship with a *relevant person*.

5.9 Question

5.9.1 **Do you consider that the proposals address the *IMF's* recommendations on reliance on third parties in an effective and proportionate way? If not, please explain why, and, if possible, offer alternatives.**

6 SIMPLIFIED IDENTIFICATION MEASURES – INTERMEDIARIES

6.1 Overview

6.1.1 This section proposes changes to Article 17 (simplified identification measures) of the *Money Laundering Order*.

6.1.2 In considering recommendations made by the *IMF*, regard has been had to:

6.1.2.1 The implementation of former *FATF* Recommendation 5 in *Guernsey* – which has been assessed as "largely compliant" by the *IMF*[9].

6.1.2.2 The implementation of former *FATF* Recommendation 5 in the *UK* – which has been assessed as "largely compliant" by the *FATF*[10].

6.1.2.3 The Isle of Man's response to the *IMF's* assessment that it "partially complies" with former *FATF* Recommendation 5.

6.1.3 Former *FATF* Recommendation 5 is a "core" recommendation.

6.2 CDD measures in place in Jersey

6.2.1 The requirement to perform *CDD* measures – in line with former *FATF* Recommendation 5 – is set out in Article 13 of the *Money Laundering Order*. *CDD* measures comprise of "identification measures" and "on-going monitoring".

6.2.2 Under Article 3 of the *Money Laundering Order*, "identification measures" is to be understood to cover the collection of information on identity ("identification" information), verification of that information, and the collection of wider relationship information (e.g. source of funds) ("relationship" information).

6.2.3 Subject to an assessment of the risk of applying simplified identification measures to an intermediary, Article 17 of the *Money Laundering Order* allows (but does not require) such measures to be applied where a customer is acting for one or more underlying customers (as an intermediary) and is:

6.2.3.1 A *relevant person* who is carrying on deposit-taking, insurance business or fund services business that is prudentially supervised by the *Commission*.

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9 No recommendations are made in *Guernsey's* Detailed Assessment of Observance of *AML/CFT* with respect to simplified *CDD* measures. It follows that *Guernsey's* application of simplified *CDD* measures "complies" with *FATF* Recommendation 5.

10 The conclusion in the *UK's* fourth follow-up report is that compliance with former *FATF* Recommendation 5 is at a level that is "essentially equivalent" to "largely compliant".

6.2.3.2 A permit holder or certificate holder under the *CIF Law*.

6.2.3.3 A person who carries on business that is equivalent to any category of business listed in 6.2.3.1 and 6.2.3.2.

6.2.4 Under Article 17 of the *Money Laundering Order*, a *relevant person* need not collect information on, or evidence to verify the identity of, the underlying customers of its intermediary customer. Except in this particular respect, identification measures and on-going monitoring must be applied.

6.2.5 However, Article 17 of the *Money Laundering Order* may not be applied in any case where the *relevant person* suspects money laundering.

6.3 IMF report

6.3.1 As stated above, the *IMF's* view is that concessions from applying full *CDD* measures represent an "overly-generous" implementation of the *FATF's* facility to apply reduced or simplified measures for certain low-risk scenarios. The assessment does not clearly spell out why this is so, but is likely to be because of the following factors.

6.3.1.1 Former *FATF* Recommendation 5 is understood by the *IMF* to require reasonable steps to be taken to obtain sufficient identification data to verify the identity of each person – underlying customer – on whose behalf an intermediary is acting, except perhaps in the case of "comingled" [or "pooled"] accounts where it is not feasible to do so. [See paragraphs 400 and 418 of the *IMF* assessment.]

6.3.1.2 The *IMF* considers that the full rigour of former *FATF* Recommendation 5 should be applied to "designated" intermediary accounts and any relationship or one-off transaction capable of being disaggregated by underlying customer (the effect of which would be to limit the application of Article 17 of the *Money Laundering Order* to "pooled" intermediary accounts). [See paragraph 420 of the *IMF* assessment.]

6.3.1.3 Article 17 of the *Money Laundering Order* does not require underlying customers to be identified at the time that a business relationship is established or one-off transaction carried out. As a result:

- It could be difficult for a *relevant person* to fulfil its obligation to obtain information on the purpose and intended nature of a business relationship or one-off transaction, to apply on-going *CDD* measures, and to apply enhanced *CDD* measures in any situation which, by its nature, can present a higher risk. [See paragraphs 404 and 408 of the *IMF* assessment.]

- It might not be possible for a *relevant person* to obtain information on the beneficial ownership of funds that are held by an intermediary on behalf of its customers – when needed. This creates an "underlying risk of misuse", particularly where an intermediary is based in a country that has banking secrecy. [See paragraph 417 of the *IMF* assessment.]

6.3.1.4 The *IMF* considers that provisions for the application of simplified *CDD* measures to intermediaries should be benchmarked against former *FATF* Recommendation 9 rather than former *FATF* Recommendation 5. [See paragraphs 415 and 420 of the *IMF* assessment.]

6.3.1.5 There is no express provision in Article 17 of the *Money Laundering Order* to prevent the application of simplified measures "in any situation which by its nature can present a higher risk of money laundering". [See paragraph 432 of the *IMF* assessment.]

6.3.1.6 Article 18 of the *Money Laundering Order* can be read to grant a complete exemption from the identification requirements of former *FATF* Recommendation 5, rather than only a reduction in the level of requirements.

6.3.2 The report recommends that:

6.3.2.1 The authorities should conduct a risk-based review of the current scope of the concessions allowing reliance on third parties to conduct *CDD* and limit their availability to be strictly consistent with the *FATF* Recommendations.

6.3.2.2 The authorities should amend their requirements to ensure that all concessions from conducting full identification measures are conditioned on the absence of specific higher risk scenarios.

6.4 Position in Guernsey

6.4.1 Regulation 4(3)(d) of the *Guernsey Regulations* requires a person carrying on financial services business to take steps to determine whether a customer is acting on behalf of another person, and, if so acting, to take reasonable measures to obtain identification data to identify and verify the identity of that other person.

6.4.2 In *Guernsey*, provisions for simplified *CDD* are governed by regulation 6 of the *Guernsey Regulations* and Chapter 6.5 of the *Guernsey Handbook*.

6.4.3 Regulation 6(1) of the *Guernsey Regulations* provides that, where a financial services business is required to carry out *CDD* in relation to a business relationship or occasional transaction with an intermediary which has been assessed as a low risk relationship pursuant to regulation 3(1)(c), it may treat the intermediary "as if it were the customer" (i.e. there is no requirement to identify or verify the identity of the persons on whose behalf the intermediary acts). Discretion in regulation 6(1) may only be exercised:

6.4.3.1 in accordance with the requirements set out in Chapter 6 of the *Guernsey Handbook*; and

6.4.3.2 provided that the customer and every beneficial owner and underlying principal is established or situated in *Guernsey* or a country listed in Appendix C to the *Guernsey Handbook*[11].

6.4.4 Simplified *CDD* measures may be applied only to an intermediary that is:

6.4.4.1 an appendix C business (see paragraph 5.4.3 above), other than a trust and company services provider;

6.4.4.2 a person licensed under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000; or

6.4.4.3 a lawyer or estate agent operating in *Guernsey*, where underlying funds relate to *Guernsey* immovable property transactions and have been received from a bank operating in *Guernsey* or a prescribed country.

6.4.5 In order to use regulation 6, a financial services business must first:

6.4.5.1 Undertake a risk assessment and conclude that a relationship is low risk (and not high risk). It must keep a record of the process that it has followed, along with support for the conclusion that it has reached.

6.4.5.2 Obtain written confirmation that the intermediary:

- operates appropriate risk-grading procedures;
- has an appropriate and effective *CDD* procedure in respect of its customers, including enhanced *CDD* measures for *PEPs* and other high risk relationships; and
- has ultimate, effective control over the relationship.

6.4.5.3 Obtain sufficient information to enable the purpose and intended nature of the business relationship to be understood.

6.4.5.4 Be satisfied that the business relationship is to be used to provide one or more of the products and services listed in Chapter 6.5.2 of the *Guernsey Handbook*. The effect of this list is to:

- allow some life companies, insurance brokers and insurers to operate relationships without having to disclose underlying customers;

[11] It is understood that *Guernsey* is shortly to withdraw this particular provision.

- allow persons carrying on investment business to invest in a *Guernsey CIS*, carry out investment management and to execute transactions on a nominee basis, without having to disclose underlying customers (but only where funds are returned to the bank account from which they originated); and
- allow some trust and company services providers, law firms and accountants to maintain client accounts – so long as funds therein are held on a short-term basis and are necessary to facilitate a transaction[12].

6.4.6 The *Guernsey Handbook* also provides that a financial services business "should always consider whether it feels risk would be better managed" if it undertook *CDD* on the beneficial owners and underlying principal(s) for whom the intermediary is acting, rather than treating the intermediary as the customer.

6.4.7 There are a number of differences between legislation and practice in Jersey and *Guernsey*.

6.4.7.1 Whilst the application of Article 17 of the *Money Laundering Order* is already limited to activity conducted by an intermediary that is prudentially supervised in Jersey or outside the Island (except trust company and money service business), the *Guernsey Handbook* specifies which parts of prudentially supervised activities may benefit from the concession for intermediary relationships.

6.4.7.2 Unlike in *Guernsey*, there is nothing to prevent the application of Article 17 of the *Money Laundering Order* to an intermediary that is assessed as presenting a higher risk, where a *relevant person* considers it fit to do so.

6.4.7.3 Unlike in *Guernsey*, there is no requirement in Article 17 of the *Money Laundering Order* for a written assurance to be provided to a *relevant person* covering any matter.

6.4.7.4 In the case of paragraph 6.4.5.4 above, it is difficult to say what practical difference there is between the two regimes.

6.4.8 However, unlike in Jersey, the *Guernsey Regulations* make explicit provision for simplified *CDD* measures to be applied to intermediaries that are trust and company services providers, lawyers or estate agents[13].

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[12] Note that *Guernsey* does not also provide for the so called "treasury account" concession that is explained in paragraph 200 of Section 4 of the *AML/CFT Handbook*.

[13] Section 4.10.5 of the *AML/CFT Handbook* (and equivalent provision in the *Handbook for the Accountancy Sector*) does provide for simplified *CDD* measures to be applied to an intermediary that is a trust and company services provider or lawyer in certain cases.

6.5 Position in the UK

6.5.1 Regulation 5 of the *UK Regulations* provides that *CDD* measures must include identifying a customer's beneficial owner (inter alia, the person on whose behalf a transaction is being conducted – regulation 6(9)).

6.5.2 Inter alia, regulation 13 of the *UK Regulations* provides that *CDD* measures need not be applied where there are reasonable grounds for believing that a customer is a credit or financial institution which is subject to the requirements of the *Money Laundering Directive* (or equivalent provisions).

6.5.3 Guidance on the application of the *UK Regulations* (approved by the *UK* government) explains (at section 5.4.1 of Part I) that simplified *CDD* means not having to apply *CDD* measures. In practice, this means not having to verify the customer's identity, or, where relevant, that of a beneficial owner, nor having to obtain information on the purpose or intended nature of the business relationship. Section 5.6.38 adds that (depending on jurisdiction), "where the customer is an intermediary carrying on appropriately regulated business, and is acting on behalf of another, there is no obligation on the product provider to carry out *CDD* measures on the customer, or the underlying party".

6.5.4 By virtue of regulation 13(4) of the *UK Regulations*, a firm that operates a client account for an independent legal professional is not required to identify the beneficial owners of such funds, provided that the information on the identity of the beneficial owner is available, on request, to the firm. Similarly, a firm may reasonably apply this approach to pooled accounts maintained by landlords or property managers in respect of tenants' service charges or security deposits.

6.5.5 There are two differences between legislation and practice in Jersey and the *UK*:

6.5.5.1 In the *UK* it is possible to apply simplified *CDD* measures to any credit institution or financial institution which is subject to the *Money Laundering Directive* (or equivalent provisions). In Jersey, Article 17 of the *Money Laundering Order* limits application of simplified identification measures to activity conducted by an intermediary that is prudentially supervised in Jersey or outside the Island, following an assessment of risk.

6.5.5.2 In the *UK*, where simplified *CDD* measures are applied to intermediaries that are lawyers, or landlords or property managers in respect of tenants' service charges or security deposits, then the concession is dependent upon information on the identity of underlying customers being available, on request, to the firm. In Jersey, where it is possible to apply simplified *CDD* measures to a lawyer under Article 16 of the *Money Laundering Order*, there is no similar provision for information to be provided on request.

6.6 Position in the Isle of Man

6.6.1 Paragraph 6 of the *IoM Code* requires a licence-holder to determine whether a customer is acting on behalf of another person, and, if so, take reasonable measures to verify the identity of that other person.

6.6.2 In the Isle of Man, the application of simplified *CDD* measures to intermediaries is governed by paragraph 13(8) of the *IoM Code* and sections 4.11 and 4.12 of the *IoM Handbook*.

6.6.3 Paragraph 13(8) of the *IoM Code* provides that a licence-holder need not determine whether a customer is acting on behalf of another person or perform identification measures in respect of such persons where:

6.6.3.1 The customer is a *CIS* in the Isle of Man or in a jurisdiction that is listed in the schedule to the *IoM Code*; and

6.6.3.2 The scheme's manager is prudentially supervised in the Isle of Man or is regulated and supervised for *AML/CFT* purposes under law and regulations by an authority in a country listed in the schedule to the *IoM Code*.

6.6.4 Section 4.12 of the *IoM Handbook* provides that "pooled" accounts may also be operated on a non-disclosed basis where:

6.6.4.1 The intermediary relationship is between: (i) a banking licence-holder on the one hand; and (ii) a lawyer or accountant in the Isle of Man that is subject to rules that are equivalent to the *IoM Code* or a "private client stockbroker" on the other; and

6.6.4.2 The banking licence-holder obtains confirmation that all necessary checks have been conducted on underlying customers.

6.6.5 Paragraph 4.12 of the *IoM Handbook* also provides that the funds of higher risk customers must not be "pooled".

6.6.6 There are a number of differences between legislation and practice in Jersey and the Isle of Man.

6.6.6.1 Unlike in Jersey, it appears that it is not possible in the Isle of Man for a licence-holder to operate a "designated" intermediary account on a non-disclosed basis. Instead, it may be possible to rely on *CDD* measures carried out by the third party on its underlying customer (and beneficial owner) on a disclosed basis. In Jersey it is possible for a *relevant person* to operate a "designated" account on a non-disclosed basis, so long as the intermediary carries on an activity described in Article 17 of the *Money Laundering Order*.

6.6.6.2 The operation of "pooled" intermediary accounts on a non-disclosed basis is restricted in the Isle of Man to some banking relationships and relationships established with a *CIS*, whereas in Jersey it is possible for a *relevant person* to operate a "pooled" account on a non-disclosed basis, so long as the intermediary carries on an activity described in Article 17 of the *Money Laundering Order* (or circumstances set out at Section 4.10.5 of the *AML/CFT Handbook* or Section 5.10.5 of the *Handbook for the Accountancy Sector* are met).

6.6.6.3 Unlike in Jersey, the *IoM Handbook* provides that the funds of higher risk customers must not be pooled by a banking licence-holder.

6.6.6.4 In the case of paragraphs 6.6.3 and 6.6.4 above, it is difficult to say what the practical difference is between the two regimes.

6.6.7 However, unlike under the *Money Laundering Order*, the *IoM Code* makes explicit provision for simplified *CDD* measures to be applied to intermediaries that are trust and company services providers, lawyers and accountants.

6.7 Findings

6.7.1 Provisions dealing with simplified *CDD* measures are more onerous in *Guernsey* than in Jersey. The application of the intermediary concession to "designated" and "pooled" intermediary accounts is now very limited in the Isle of Man.

6.7.2 Provisions in place in Jersey and the *UK* are more closely aligned.

6.7.3 Provisions relating to simplification of *CDD* measures in *Guernsey* and the *UK* (operation of intermediary relationships on a non-disclosed basis) do not appear to make a distinction between "pooled" or "designated" accounts in the way that is recommended in Jersey's *IMF* report. Nor do they appear to require a customer that is an intermediary to immediately pass on information on the underlying customers for which the intermediary acts or to provide assurances that evidence of identity will be provided on request (as provided for under former *FATF* Recommendation 9) to the equivalent of a *relevant person*.

6.8 Proposals

6.8.1 It is proposed that simplified identification measures should continue to apply to both "designated" and "pooled" intermediary accounts and – subject to an assessment of risk – that such relationships might continue to be established without the upfront disclosure of underlying customers.

6.8.2 At this time, it is not proposed to follow the more prescriptive approach adopted in *Guernsey* or very limited approach applied in the Isle of Man when determining the particular regulated activities that may benefit from the concession for intermediary relationships – on the basis that the application of Article 17 of the *Money Laundering Order* is currently already restricted to intermediaries that: (i) are acting in the course of deposit-taking, fund services, insurance, or investment business; or (ii) hold certificates or permits for a *CIS* – a much more restrictive approach than is currently applied in the *UK*.

6.8.3 Nor is it proposed to make the use of Article 17 of the *Money Laundering Order* generally conditional upon the provision of a written assurance by an intermediary on certain matters[14]. This is because such an approach may not be practical in Jersey as it would be out of line with practice followed in the *UK* and elsewhere in the *EEA*.

6.8.4 However, in light of the above findings, it is proposed to more tightly regulate the circumstances in which simplified identification measures might be applied by a *relevant person* under Article 17 of the *Money Laundering Order*.

6.8.5 In order to apply simplified identification measures to an intermediary under Article 17 of the *Money Laundering Order*, it is proposed that a *relevant person* must, in addition to existing provisions, record its assessment of the risk of applying such measures to an intermediary and why it is "fit" for it to do so.

6.8.6 This assessment of risk of applying simplified identification measures will take into account:

6.8.6.1 the risk that an intermediary does not apply the necessary identification measures;

6.8.6.2 the risk that an intermediary does not keep records, or does not keep them for the necessary period; and

6.8.6.3 the nature of the intermediary's business.

6.8.7 Section 4.10.1 of the *AML/CFT Handbook* explains the factors to be considered when assessing such a risk. Equivalent provisions are to be found in the *Handbook for the Accountancy Sector* and *Handbook for the Legal Sector*.

6.8.8 This assessment of risk may also take account of the product or service that is to be provided by the *relevant person* and how it is to be delivered. The effect of this is that it may be possible to apply simplified identification measures to a particular intermediary in some cases, but not in others.

6.8.9 In addition, it is proposed to prohibit the application of simplified identification measures under Article 17 of the *Money Laundering Order* in a particular case where the intermediary:

[14] But see also paragraph 6.8.12 of this paper.

6.8.9.1 Is considered to present a higher risk of money laundering (on the basis of the assessment outlined at paragraphs 6.8.5 to 6.8.8 above).

6.8.9.2 Has a relevant connection with a country that is subject to a *FATF* call to apply countermeasures – currently Iran and North Korea.

6.8.9.3 Is the "respondent" - where a *relevant person* provides a "correspondent" banking service to a financial institution (where Article 15(4) of the *Money Laundering Order* applies)[15].

6.8.10 In line with the revised *FATF* Recommendations, it is also proposed to make explicit provision for trust and company services providers, lawyers and accountants that are regulated and supervised by the *Commission* (or carry on *equivalent business*) to be treated as intermediaries under Article 17 of the *Money Laundering Order* in some limited cases. It is proposed that a *relevant person* might apply simplified identification measures under Article 17 of the *Money Laundering Order* in the following cases:

6.8.10.1 Where a *relevant person* provides a product or service to a customer who is a trust and company services provider in respect of a certain type of investment product (in line with paragraph 217 of Section 4 of the *AML/CFT Handbook* and equivalent provisions in the *Handbook for the Accountancy Sector* and *Handbook for the Legal Sector*).

6.8.10.2 Where a *relevant person* is a bank and provides a "client" account to a customer who is a trust and company services provider (in line with paragraph 217 of Section 4 of the *AML/CFT Handbook*).

6.8.10.3 Where a *relevant person* is a bank and provides a "treasury" account[16] to a customer who is a trust and company services provider (in line with paragraph 218 of Section 4 of the *AML/CFT Handbook*).

6.8.10.4 Where a *relevant person* is an accountant or lawyer providing lower risk accounting or legal services to a customer who is a trust and company services provider (based on provisions that are currently only set out in the *Handbook for the Legal Sector*).

6.8.10.5 Where a *relevant person* is a bank and provides a "client account" to a customer who is a lawyer to facilitate a transaction in immovable Jersey property (in line with paragraph 217 of Section 4 of the *AML/CFT Handbook*).

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[15] It is not thought that any person that is registered under the Banking Business (Jersey) Law 1991 provides a correspondent service to a non-Jersey financial institution.

[16] A "treasury" account is an aggregated deposit of customer funds (or funds for investment) received from a bank account held in the name of a person carrying on financial services business that is a regulated person (or is regulated by the Guernsey Financial Services Commission or the Isle of Man Financial Supervision Commission), where the funds (and any income or profit generated) will only be returned to the bank account from which the funds originated.

6.8.11 For the avoidance of doubt, where a *relevant person* has determined that it is "fit" for simplified identification measures to be applied to an intermediary, it will not be required to identify any of the intermediary's underlying customer(s) before entering into a relationship with the intermediary (though, of course, it may be necessary to do so in the course of a continuing relationship).

6.8.12 However, it is proposed that the application of simplified identification measures in the cases listed at paragraph 6.8.10 above should be conditional upon:

6.8.12.1 the trust and company services provider, lawyer or accountant undertaking in writing to a *relevant person* to provide - on request - details of underlying customers and a copy of evidence of their identity; and

6.8.12.2 periodic testing that the trust and company services provider, lawyer or accountant will provide details of underlying customers and a copy of evidence of identity.

6.9 Questions

6.9.1 **Do you consider that the proposals address the *IMF's* recommendations on the application of simplified identification measures to intermediaries in an effective and proportionate way? If not, please explain why, and, if possible, offer alternatives.**

6.9.2 **Like in the *UK*, do you consider that simplified identification measures might be applied under paragraph 6.8.10.5 above in the case of any client account operated for a lawyer, covering e.g. property transactions, settlement of legal fees, dispute settlements, escrow arrangements and "stewardship" arrangements such as a curatorship?**

6.9.3 **The list of lower risk legal services referred to in paragraph 6.8.10.4 above has not been updated for some time. Do any of the services listed in Section 5.10.5 of the *Handbook for the Legal Sector* no longer present a lower risk, and should any be added? If so, please explain why.**

6.9.4 **The circumstances in which a *relevant person* that is a bank can provide a client account to a customer that is a trust and company services provider are described in paragraph 217 of Section 4 of the *AML/CFT Handbook*. This section has not been updated for some time. Do any of the circumstances described no longer present a lower risk, and should any be added? If so, please explain why.**

7 SIMPLIFIED IDENTIFICATION MEASURES – OTHER CASES

7.1 Overview

7.1.1 This section proposes changes to a provision often referred to as the "source of funds" concession which applies only to very low risk products and services, and concessions that are set out in Article 18 of the *Money Laundering Order*.

7.1.2 In considering recommendations made by the *IMF*, regard has been had to:

7.1.2.1 The implementation of former *FATF* Recommendation 5 in *Guernsey* – which has been assessed as "largely compliant" by the *IMF*[17].

7.1.2.2 The implementation of former *FATF* Recommendations 5 in the *UK* – which has been assessed as "largely compliant" by the *FATF*[18].

7.1.2.3 The Isle of Man's response to the *IMF's* assessment that it "partially complies" with former *FATF* Recommendation 5.

7.1.3 Former *FATF* Recommendation 5 is a "core" recommendation.

7.2 CDD measures in place in Jersey

Source of funds concession

7.2.1 Section 4.11 of the *AML/CFT Handbook* says that a *relevant person* may consider that it has verified the identity of a customer where initial funding for a particular product or service is received from an account at a bank that is regulated and supervised by the *Commission* (or equivalent).

7.2.2 This provision for simplified identification measures may be applied only to a product or service that:

7.2.2.1 does not permit payments to be received from, or made to, third parties; and

7.2.2.2 does not permit withdrawals to be made in cash; and

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[17] No recommendations are made in *Guernsey's* Detailed Assessment of Observance of *AML/CFT* with respect to simplified *CDD* measures. It follows that *Guernsey's* application of simplified *CDD* measures complies with *FATF* Recommendation 5.

[18] The conclusion in the *UK's* fourth follow-up report is that compliance with former *FATF* Recommendation 5 is at a level that is "essentially equivalent" to "largely compliant".

7.2.2.3 only accepts funds from (and returns funds to) an account held by the customer (solely or jointly with another person) at a bank that is regulated and supervised by the *Commission* (or equivalent).

7.2.3 This concession may not be applied in a case of a customer that is considered to present a higher risk.

7.2.4 Erroneously, a similar concession appears in Section 4.5.1 of the *Handbook for the Legal Sector*.

Other concessions

7.2.5 Article 18 of the *Money Laundering Order* provides for simplified identification measures to be applied where a customer is:

7.2.5.1 regulated and supervised by the *Commission* or carries on *equivalent business*;

7.2.5.2 a body corporate, the securities of which are listed on a regulated market in a Member State of the *EEA*, or a country that regulates its markets in a way that is equivalent to certain European directives; or

7.2.5.3 a Jersey public authority.

7.2.6 Under Article 18 of the *Money Laundering Order*, simplified identification measures may also be applied where:

7.2.6.1 A business relationship or one-off transaction relates to a pension, superannuation or similar scheme[19].

7.2.6.2 A product offered is a life insurance policy in connection with a pension scheme that contains no surrender value and may not be used as collateral.

7.2.6.3 In respect of insurance business, a premium is payable in one instalment of an amount not exceeding £1,750, or, where a periodic premium is payable, the total amount payable in a year does not exceed £750.

7.2.6.4 In respect of lawyers and estate agents only, the service provided is with respect to an immovable property transaction in Jersey that is regulated by legislation.

7.2.7 In the case of these "product" or "service" concessions, and subject to an assessment of risk, it is possible for a customer to reside in a country that is not in compliance with, or that has not effectively implemented, the *FATF* Recommendations. This is because it is the nature of the product or service offered that makes the relationship lower risk, rather than who the customer is and where the customer resides.

[19] See section 5.3 of Feedback on Consultation Paper No. 6 2011, and Consultation Paper No. 2 2013.

7.2.8 The simplified identification measures summarised at paragraphs 7.2.6.1 to 7.2.6.3 are based on similar provisions in the *Money Laundering Directive*. The concession that is available for lawyers and accountants is based on the regulated nature of Jersey's property market, whereby an application is made to a government department in respect of an immovable property transaction, and often effected through the Royal Court.

7.2.9 Article 18 of the *Money Laundering Order* may not be applied in any case where a *relevant person* suspects money laundering or in any situation which by its nature can present a higher risk of money laundering.

7.3 IMF report

7.3.1 The *IMF* report highlights that:

7.3.1.1 There is a provision for receipt of funds from an account at a bank that is supervised in Jersey or in a country that imposes requirements that are in line with the *FATF* Recommendations to be considered to provide satisfactory means of verifying the identity of a customer in some very limited lower risk cases. [See paragraph 400 of the *IMF* report.]

7.3.1.2 Article 18 of the *Money Laundering Order* may be applied to a customer that is resident in a country that does not apply, or insufficiently applies, the *FATF* Recommendations (where the product or service provided itself is assessed as presenting lower risk, e.g. payment of an insurance premium of £1,750 or less).

7.3.2 Inter alia, the report recommends that:

7.3.2.1 Should the authorities decide to continue allowing "source of funds" to be used as a principal basis for verification of identity in certain low-risk circumstances, the requirements should be tightened further to eliminate any remaining risk of abuse for money laundering or terrorist financing purposes.

7.3.2.2 The "source of funds" concession available for use by lawyers should be removed. [This recommendation was made under former *FATF* Recommendation 12.]

7.3.2.3 The authorities should review the permitted exemptions from *CDD* measures in Article 18 of the *Money Laundering Order* to ensure that financial institutions must determine that a customer's country of residence is in compliance with and has effectively implemented the *FATF* standards.

7.4 Position in Guernsey

Source of funds concession

7.4.1 No similar provision to the "source of funds" concession is to be found in *Guernsey*.

Other concessions

7.4.2 Chapter 3.5.3 of the *Guernsey Handbook* gives examples of low risk indicators for customers and products and services. For the purpose of preparing a customer risk profile, the following are considered to indicate a low risk:

7.4.2.1 Life insurance policies where the annual premium is no more than £1,000 or a single premium of no more than £2,500.

7.4.2.2 Insurance policies for pension schemes if there is no surrender clause and the policy cannot be used for collateral.

7.4.3 The same chapter says that, for the purpose of preparing a customer risk profile, customers based in, or conducting business in or through, a country or territory which does not apply, or insufficiently applies, the *FATF* Recommendations are considered to indicate a high risk.

7.4.4 Chapter 4.7 of the *Guernsey Handbook* says that where a product or service is in respect of an employee benefit scheme or arrangement, employee share option plan, pension scheme or arrangement, superannuation scheme, or a similar scheme where contributions are made by an employer or by way of a deduction from wages and the scheme rules do not permit assignment of a member's interests under the scheme, *CDD* measures must be applied only to the sponsoring employer, trustee or any other person who has control over the business relationship.

7.4.5 Under the *Guernsey Handbook*, it appears to be possible to apply simplified *CDD* to low risk products, where a customer resides in a country that is not in compliance with, or that has not effectively implemented, the *FATF* Recommendations.

7.4.6 Chapter 6.5.2 of the *Guernsey Handbook* provides that a financial services business that is a bank may operate a client account for a lawyer or estate agent on a non-disclosed basis (see also paragraph 6.4.5.4 above), where the professional firm is operating in *Guernsey*, and the funds being pooled are to be used for the purchase or sale of *Guernsey* real estate or leasehold property situated in *Guernsey* and where the funds received by the firm have been received from a bank operating in *Guernsey* or a bank from a country or territory listed in Appendix C of the *Guernsey Handbook*.

7.4.7 However, there is no provision for simplified *CDD* to be applied by lawyers or estate agents in respect of *Guernsey* property transactions.

7.5 Position in UK

Source of funds concession

7.5.1 Section 4.11 of the *AML/CFT Handbook* is based extensively on the approach followed in the *UK* – which is summarised at sections 5.3.92 to 5.3.97 of the *UK Guidance Notes*. However, the concession that is available in the *UK* is limited only to customers who are private individuals.

Other concessions

7.5.2 Regulation 13 of the *UK Regulations* provides that a firm is not required to apply *CDD* measures in the circumstances mentioned in that Regulation where it has reasonable grounds for believing that a customer, transaction or product related to such transaction, falls within a paragraph in that Regulation. This includes:

7.5.2.1 A listed company.

7.5.2.2 A domestic public authority.

7.5.2.3 A product that is a pension, superannuation or similar scheme.

7.5.2.4 A product offered that is a life insurance contract or insurance contract.

7.5.3 Under *UK* legislation, it appears to be possible to apply simplified *CDD* to lower risk products, where a customer resides in a country that is not in compliance with, or that has not effectively implemented, the *FATF* Recommendations.

7.5.4 There is no provision for simplified *CDD* to be applied by lawyers or estate agents in respect of *UK* property transactions – though property transactions may not be regulated to the same extent as in Jersey.

7.6 Position in Isle of Man

Source of funds concession

7.6.1 No similar provision to the "source of funds" concession is to be found in the Isle of Man.

Other concessions

7.6.2 Paragraph 13(7) of the *IoM Code* provides that, where the product or service relates to a pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages and the scheme rules do not permit the assignment of a member's interest under the scheme, a licence-holder may treat the employer, trustee and any other person who has control over the business relationship, as the applicant for business.

7.6.3 Paragraph 13(2) of the *IoM Code* provides that – having paid due regard to the money laundering or the financing of terrorism risk – an insurer need not comply with identification measures where:

7.6.3.1 The annual premium is less than €1,000 or a single premium, or series of linked premiums, is not greater than €2,500; or

7.6.3.2 A policy has neither a surrender value nor a maturity value (for example, term insurance).

7.6.4 Under Isle of Man legislation, it appears to be possible to apply simplified *CDD* to lower risk products, where a customer resides in a country that is not in compliance with, or that has not effectively implemented, the *FATF* Recommendations.

7.6.5 There is no provision for simplified *CDD* measures to be applied by lawyers or estate agents in respect of Isle of Man property transactions – though property transactions may not be regulated to the same extent as in Jersey.

7.7 Findings

Source of funds concession

7.7.1 *Guernsey* and the Isle of Man do not apply a "source of funds" concession. The *UK* does, but it is limited to customers who are private individuals.

Other concessions

7.7.2 Elsewhere in the British Isles, it appears to be possible to apply simplified *CDD* to lower risk products, where a customer resides in a country that is not in compliance with, or that has not effectively implemented, the *FATF* Recommendations.

7.7.3 Nowhere else in the British Isles provides for simplified *CDD* measures to be applied by lawyers or estate agents in respect of property transactions – though property transactions may not be regulated elsewhere to the same extent as in Jersey.

7.8 Proposals

Source of funds concession

7.8.1 It is proposed that use of the concession be further limited, so that it would not apply in any case where:

7.8.1.1 A *relevant person* is a lawyer.

7.8.1.2 A customer is not an individual.

Other concessions

7.8.2 It is proposed that use of any concession in Article 18 of the *Money Laundering Order* be further limited, so that simplified identification measures might not be applied in any case where the customer has a relevant connection with a country that is subject to a *FATF* call to apply countermeasures – currently Iran and North Korea.

7.8.3 In light of new legislation – the Control of Housing and Work (Jersey) Law 2012 - it is also proposed to reconsider the basis for the concession given to lawyers and estate agents under Article 18(8A) of the *Money Laundering Order*.

7.9 Question

7.9.1 **Do you consider that the proposals address the *IMF's* recommendations on other simplified *CDD* measures in an effective and proportionate way? If not, please explain why, and, if possible, offer alternatives.**

8 DELAY IN VERIFICATION OF IDENTITY

8.1 Overview

8.1.1 This section proposes changes to a provision that allows the verification of identity of a customer to be delayed until after the establishment of a business relationship.

8.1.2 In considering the recommendation made by the *IMF*, regard has been had to:

8.1.2.1 The implementation of former *FATF* Recommendation 5 in *Guernsey* – which has been assessed as "largely compliant" by the *IMF*[20].

8.1.2.2 The implementation of former *FATF* Recommendations 5 in the *UK* – which has been assessed as "largely compliant" by the *FATF*[21].

8.1.2.3 The Isle of Man's response to the *IMF's* assessment that it "partially complies" with former *FATF* Recommendation 5.

8.1.3 Former *FATF* Recommendation 5 is a "core" recommendation.

8.2 CDD measures in place in Jersey

8.2.1 Article 13(1)(a) of the *Money Laundering Order* provides that identification measures must be applied before a business relationship can be established.

8.2.2 Despite this, Article 13(4) of the *Money Laundering Order* provides that verification of the identity of a customer may be completed as soon as reasonably practicable after the establishment of a business relationship if:

8.2.2.1 that is necessary not to interrupt the normal conduct of business; and

8.2.2.2 there is little risk of money laundering occurring as a result of completing such identification after the establishment of that relationship.

8.2.3 Article 11(3)(f) of the *Money Laundering Order* says that appropriate policies and controls must be in place to address the risk that is involved in delaying completion of identification measures.

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[20] No recommendations are made in *Guernsey's* Detailed Assessment of Observance of *AML/CFT* with respect to delays in verification of identity. It follows that *Guernsey* complies with *FATF* Recommendation 5 in this area.

[21] The conclusion in the *UK's* fourth follow-up report is that compliance with former *FATF* Recommendation 5 is at a level that is "essentially equivalent" to "largely compliant".

8.3 IMF report

8.3.1 The report recommends that the *Commission* should conduct a risk-based review of the use by *relevant persons* of the scope to defer completion of full identification requirements under Article 13(4) of the *Money Laundering Order* and issue further guidance as needed to limit the practice.

8.3.2 This is because it appeared to assessors that some *relevant persons* were making routine use of the provision, on the basis that it was "necessary not to interrupt the normal course of business". It observed that some adopted a very liberal interpretation of the word "necessary" and were relaxed with regard to the length of time allowed before completing identification measures.

8.4 Position in Guernsey

8.4.1 Under Regulation 7 of the *Guernsey Regulations*, verification of the identity of the customer and of any beneficial owners and underlying principals may be completed following the establishment of a business relationship provided that:

8.4.1.1 It is completed as soon as reasonably practicable thereafter.

8.4.1.2 The need to do so is essential not to interrupt the normal conduct of business.

8.4.1.3 Appropriate and effective policies, procedures and controls are in place which operate so as to manage risk.

8.4.2 Chapter 4.13 of the *Guernsey Handbook* says that, where verification has been delayed, a financial services business must have appropriate and effective policies, procedures and controls in place so as to manage the risk which must include:

8.4.2.1 Establishing that it is not a high risk relationship.

8.4.2.2 Monitoring by senior management of these business relationships to ensure verification of identity is completed as soon as reasonably practicable.

8.4.2.3 Ensuring funds received are not passed to third parties.

8.4.2.4 Establishing procedures to limit the number, types and/or amount of transactions that can be undertaken.

8.5 Position in UK

8.5.1 Under Regulation 9(2) of the *UK Regulations*, the verification of the identity of the customer and, where applicable, the beneficial owner, must take place before the establishment of a business relationship or the carrying out of an occasional transaction.

8.5.2 Regulation 9(4) of the *UK Regulations* provides that the verification of the identity of the beneficiary under a life assurance policy may take place after the business relationship has been established provided that it takes place at, or before, the time of pay-out or at, or before, the time the beneficiary exercises a right vested under the policy.

8.5.3 Regulation 9(5) of the *UK Regulations* provides that the verification of the identity of a bank account holder may take place after the bank account has been opened, provided that there are adequate safeguards in place to ensure that the account is not closed and transactions are not carried out by or on behalf of the account holder (including any payment from the account to the account holder) before verification has been completed.

8.5.4 Under Regulation 9(3) of the *UK Regulations*, in any other case, verification of the identity of the customer, and where there is one, the beneficial owner, may be completed during the establishment of a business relationship if:

8.5.4.1 This is necessary not to interrupt the normal conduct of business.

8.5.4.2 There is little risk of money laundering or terrorist financing occurring

8.5.4.3 Verification is completed as soon as practicable after the initial contact.

8.6 Position in Isle of Man

8.6.1 Like in Jersey, a licence-holder must complete identification and verification procedures before a business relationship is entered into.

8.6.2 Identification information about the applicant for business and underlying principals, information about the purpose and intended nature of the business relationship and source of funds must always be obtained before a business relationship is entered into.

8.6.3 However, paragraph 7(3) of the *IoM Code* provides that, in exceptional circumstances, verification of identity may be delayed until after the establishment of a business relationship provided that:

8.6.3.1 This occurs as soon as reasonably practicable.

8.6.3.2 This is essential not to interrupt the normal course of business (e.g. securities transactions where companies may be required to perform transactions very rapidly, according to the market conditions at the time the customer is contacting them, and the performance of the transaction may be required before verification of identity is completed).

8.6.3.3 The money laundering and the financing of terrorism risks are effectively managed (e.g. there must be no payment from the account or return of proceeds on disposal of property).

8.6.3.4 Senior management sign-off is obtained for each business relationship and any subsequent activity until identity has been verified.

8.6.3.5 The amount, type and number of transactions over a relationship are limited and monitored.

8.6.4 A licence-holder must satisfy itself that the primary motive for the use of this concession is not for the circumvention of *CDD* procedures.

8.7 Findings

8.7.1 The *UK* does permit identification measures to be routinely delayed, and also specifically regulates the operation of a bank account until verification measures have been completed.

8.7.2 The Isle of Man permits identification measures to be delayed only in exceptional circumstances.

8.7.3 Provisions in place in Jersey and *Guernsey* are closely aligned.

8.8 Proposals

8.8.1 It is proposed to amend the *Money Laundering Order* to make separate provision for, and regulate, cases when verification of identity is most likely to be delayed, so that:

8.8.1.1 With respect to the verification of the identity of a beneficiary under a life assurance policy, this may take place after the business relationship has been established provided that it takes place:

- at, or before, the time of pay-out or at, or before, the time the beneficiary exercises a right vested under the policy; and
- as soon as is reasonably practicable if a beneficiary is considered by a *relevant person* to present a higher risk.

8.8.1.2 With respect to the verification of the identity of a person who, in line with Article 3(7) of the *Money Laundering Order*, is considered to have a beneficial interest in a "third party" such as a trust, this may take place after the business relationship has been established provided that it takes place:

- at the time of, or before, distribution of trust property or income[22]; and
- as soon as is reasonably practicable if a person with a beneficial interest is considered by a *relevant person* to present a higher risk (in line with existing provisions).

[22] In line with paragraph 67 of Section 4 of the *AML/CFT Handbook*.

8.8.1.3 With respect to the verification of the identity of a bank account holder, this may take place after the bank account has been opened, provided that: (i) there are adequate safeguards in place to ensure that the account may not be closed solely on the basis of an instruction from the customer; and (ii) payments may not be made to, or received from, third parties, before verification has been completed.

8.8.2 In all other cases, verification of identity may be delayed in line with existing provisions in Article 13(4) of the *Money Laundering Order*.

8.8.3 For cases falling under paragraphs 8.8.1.3 and 8.8.2 above, it is proposed that the policies and procedures referred to in Article 11(3)(f) of the *Money Laundering Order* must include periodic reporting to the senior management of a *relevant person* in order that it may be satisfied that there are appropriate policies and procedures in place to address the risk that is involved in delaying completion of identification measures.

8.8.4 In practice, it is proposed that periodic reporting referred to in paragraph 8.8.3 above would highlight:

8.8.4.1 The number of customers for which verification has been delayed during a period (also expressed as a percentage of the total number of business relationships and one-off transactions (excluding life assurance and trust relationships) that have been established or carried out during that particular period).

8.8.4.2 In any case where verification has been delayed for more than 90 days, the name of the customer, the reason for the delay, the extent to which verification is incomplete, and action that is to be taken to complete identification measures or terminate the relationship (and by when).

8.9 Question

8.9.1 **Do you consider that the proposals address the *IMF's* recommendation on delaying the verification of identity of a customer in an effective and proportionate way? If not, please explain why, and, if possible, offer alternatives.**

9 EXISTING CUSTOMERS

9.1 Overview

9.1.1 This section proposes that a *relevant person* must hold:

9.1.1.1 Information on a customer ("identification" information and "relationship" information) that takes into account the *relevant person's* assessment of the risk of that relationship, where such information has not already been collected. It proposes that this should be done by 31 December 2014, except where agreed otherwise with the *Commission*.

9.1.1.2 A written assurance that is in line with Article 16(4) of the *Money Laundering Order*, where reliance is placed on a third party and such an assurance is not already held. It proposes that this should be done as soon as is reasonably practicable.

9.1.2 However, it proposed that the collection of evidence to verify identity might continue to be delayed in many cases.

9.1.3 This section also proposes removing a concession that permits lawyers and accountants to "self-certify" the identity of an existing client.

9.1.4 In considering the *IMF's* observation, regard has been had to:

9.1.4.1 The implementation of former *FATF* Recommendation 5 in *Guernsey* – which has been assessed as "largely compliant" by the *IMF*[23].

9.1.4.2 The implementation of former *FATF* Recommendation 5 in the *UK* – which has been assessed as "largely compliant" by the *FATF*[24].

9.1.5 For the purpose of consistency, implementation of former *FATF* Recommendation 5 in the Isle of Man has also been considered, notwithstanding that it has been assessed as "partially compliant" by the *IMF*.

9.1.6 Former *FATF* Recommendation 5 is a "core" recommendation.

9.2 Measures in place in Jersey

9.2.1 The timing and scope of the application of identification measures to *existing customers* varies.

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[23] No recommendations are made in *Guernsey's* Detailed Assessment of Observance of *AML/CFT* with respect to existing customers. It follows that *Guernsey's* application of *CDD* measures to existing customers complies with *FATF* Recommendation 5.

[24] The conclusion in the *UK's* fourth follow-up report is that compliance with former *FATF* Recommendation 5 is at a level that is "essentially equivalent" to "largely compliant".

AML/CFT Handbook – no reliance

9.2.2 A *relevant person* is required to apply the *CDD* measures set out in Article 13 of the *Money Laundering Order* to any relationship established or one-off transaction conducted on or after 4 February 2008 (later for *DNFBPs*).

9.2.3 In line with Article 13 of the *Money Laundering Order* and Section 9 of the *AML/CFT Handbook*, where a relationship pre-dates the introduction of such *CDD* measures, then identification measures will also be applied to such an *existing customer*:

9.2.3.1 When a *relevant person* suspects money laundering.

9.2.3.2 As soon as is practicable after customer risk is assessed as being "higher".

9.2.3.3 When a transaction of significance has taken place or when a customer documentation standard has changed significantly.

9.2.4 However, in the case of identification measures performed as a result of a transaction of significance or change to documentation standards, the collection of evidence to verify identity may be delayed until such time as one of paragraphs 9.2.3.1 or 9.2.3.2 above apply.

9.2.5 Section 9 of the *AML/CFT Handbook* anticipates that the "identification" information that is collected under Article 13 of the *Money Laundering Order* for an *existing customer* may differ to the information that is collected for a new relationship.

9.2.6 In a report on themed examinations published in May 2010, the *Commission* observed that remediation of information held on *existing customer* relationships was on-going at the time in most banks. In that report, the *Commission* encouraged timely progress in this area in line with Section 9 of the *AML/CFT Handbook*.

AML/CFT Handbook – reliance and simplified identification measures (intermediaries)

9.2.7 Section 9 of the *AML/CFT Handbook* (and equivalent provisions in the *Handbook for the Accountancy Sector* and *Handbook for the Legal Sector*) also makes separate provision for cases where reliance has been placed on identification measures conducted by a third party, and for intermediary relationships which are operated on a disclosed basis.

9.2.8 Where reliance is placed on a third party, identification measures (collection of information and certain assurances) may be delayed until such time as one of paragraphs 9.2.3.1 or 9.2.3.2 applies, when:

9.2.8.1 if money laundering is suspected, "identification" information and "relationship" information held must be updated and the identity of the customer (and any underlying customers) verified directly by the *relevant person*; and

9.2.8.2 if customer risk is assessed as being "higher", "identification" information and "relationship" information held must be updated and confirmation received that the third party has applied identification measures to its customer (and any underlying customers). It is not necessary to obtain a written assurance that follows Article 16(4) of the *Money Laundering Order*.

9.2.9 The effect of this is that identification measures may be delayed for some customers until such time (if any) that the relationship is assessed as presenting a "higher risk".

9.2.10 In the case of an intermediary relationship which is operated on a disclosed basis, identification measures (collection of information and certain assurances) must be conducted:

9.2.10.1 forthwith if money laundering is suspected, when "identification" information and "relationship" information on the intermediary and its underlying customers must be updated and the identity of the customer and underlying customers must be verified directly by the *relevant person*; and

9.2.10.2 as soon as is practicable in all other cases, when "identification" information and "relationship" information on the intermediary and its underlying customers must be updated[25] and confirmation received that the intermediary has applied identification measures to its customers. It is not necessary to obtain a written assurance that follows Article 16(4) of the *Money Laundering Order*.

Handbooks for accountants and lawyers

9.2.11 Similar provisions apply in the *Handbook for the Accountancy Sector* and *Handbook for the Legal Sector*, except that:

9.2.11.1 It is not possible to delay the collection of evidence to verify identity in the way that is outlined at paragraph 9.2.4 above.

9.2.11.2 A lawyer or accountant may verify identity on the basis of information that is already held, publicly available information, or self-certification.

9.2.12 Section 4.5 of the *Handbook for the Accountancy Sector* and Section 4.6 of the *Handbook for the Legal Sector* provide that – in the case of an "existing client" – it may be appropriate for a fee earner or partner who has known a client for a long time to place a certificate on that client's file that has the effect of verifying the identity of that client.

[25] However, in the case of an intermediary relationship that is assessed as presenting a lower or standard risk, then only the name of underlying customers need be collected.

9.3 IMF report

9.3.1 The *IMF* report observes that tighter implementation is needed regarding the timing of completion of *CDD* measures to *existing customers*, and says that it may be appropriate to establish a specific period for updating customer identification, graduated on a risk basis.

9.3.2 The report recommends that the concession that allows lawyers and accountants to self-certify the identity of existing clients should be removed. [This recommendation was made under former *FATF* Recommendation 12.]

9.4 Position in Guernsey

General

9.4.1 Regulation 4 of the *Guernsey Regulations* provides that *CDD* requirements must be carried out in relation to a business relationship established prior to the coming into force of the Regulations to the extent that such steps have not already been carried out, at appropriate times on a risk-sensitive basis.

9.4.2 Chapter 8 of the *Guernsey Handbook* provides rules and guidance in respect of the *CDD* measures to be undertaken in respect of business relationships established with customers taken on before the coming into force of the *Guernsey Regulations*. Chapter 8 includes a requirement for a financial services business to ensure that policies, procedures, and controls in place in respect of existing customers are appropriate and effective and provide for:

9.4.2.1 its customers to be identified;

9.4.2.2 the assessment of risk of its customer base;

9.4.2.3 the level of *CDD* to be appropriate to the assessed risk of the business relationship;

9.4.2.4 the level of *CDD*, where the business relationship has been identified as a high-risk relationship, to be sufficient to allow the risk to be managed;

9.4.2.5 the business relationship to be understood; and

9.4.2.6 the application of such policies, procedures, and controls to be based on materiality and risk.

9.4.3 In November 2009, the Guernsey Financial Services Commission issued Instruction Number 6. This required the board of each financial services business to:

9.4.3.1 review the policies, procedures and controls in place in respect of existing customers to ensure compliance with regulations 4 and 8 of the *Guernsey Regulations* (relating to *CDD* and the setting up and maintenance of accounts, respectively) and each of the Rules in Chapter 8 of the *Guernsey Handbook*; and

9.4.3.2 have taken any necessary action by close of business on 31 March 2010 to have remedied any identified deficiencies and to have satisfied itself that *CDD* information appropriate to the assessed risk is held in respect of each business relationship.

Self-certification

9.4.4 There is no equivalent provision in place in *Guernsey's* Handbook for Legal Professionals, Accountants and Estate Agents on Countering Financial Crime and Terrorist Financing that allows a fee earner or partner who has known a client for a long time to place a certificate on that client's file that has the effect of verifying the identity of that client.

9.5 Position in the UK

General

9.5.1 Under regulation 7(2) of the *UK Regulations*, a firm must apply *CDD* measures at appropriate times to existing customers on a risk-sensitive basis.

9.5.2 As risk dictates, firms must take steps to ensure that they hold appropriate information to demonstrate that they are satisfied that they know all their customers. Where the identity of an existing customer has already been verified to a previously applicable standard then, in the absence of circumstances indicating the contrary, the risk is likely to be low. A range of trigger events, such as an existing customer applying to open a new account or establish a new relationship, might prompt a firm to seek appropriate evidence.

9.5.3 In July 2003, senior management of *FSA*-regulated firms were reminded of their regulatory responsibilities to maintain effective systems and controls for countering the risk that they may be used to further financial crime.

9.5.4 Firms that do not seriously address these risks (including the risk that they have not confirmed the identity of existing customers) are said to be exposing themselves to the possibility of action for breach of the *FCA* Rules or *UK Regulations*.

Self-certification

9.5.5 There is a provision in place in the Law Society's AML Practice Note that allows a fee earner or partner who has known a client for a long time to place a certificate on that client's file that has the effect of verifying the identity of that client. This is not identified as a factor contributing to the *UK's* "partially compliant" rating against former *FATF* Recommendation 12.

9.5.6 There is no reference to self-certification in the anti-money laundering guidance for the accountancy sector issued by the Consultative Committee of Accountancy Bodies.

9.6 Position in the Isle of Man

General

9.6.1 Paragraph 8(2) of the *IoM Code* requires a licence-holder to carry out *CDD* measures - in line with paragraph 7(4) of that Code - on an existing customer as soon as reasonably practicable.

9.6.2 Under paragraph 8(5) of the *IoM Code*, this will include a case where:

9.6.2.1 a "suspicious transaction trigger event" occurs; and

9.6.2.2 there are transactions that are complex, both large and unusual, or of an unusual pattern, that have no apparent economic or visible lawful purpose.

Self-certification

9.6.3 There is no equivalent provision in place in the Isle of Man Law Society's Guidance Notes that allows a fee earner or partner who has known a client for a long time to place a certificate on that client's file that has the effect of verifying the identity of that client.

9.6.4 Guidance says that, if evidence of identity was not produced at the time that a relationship was established, a licence-holder must implement the identification procedures required in relation to a new business relationship under paragraph 7 of the *IoM Code*.

9.7 Findings

General

9.7.1 In *Guernsey,* financial services businesses were required to complete their remediation programmes for the collection of information on customers by 31 March 2010. By that date, businesses were required to hold a level of i appropriate to the assessed risk of the business relationship.

9.7.2 No completion date has been set in the *UK* or the Isle of Man.

9.7.3 No separate provision is made in *Guernsey*, the *UK* or Isle of Man for cases where reliance has been placed on third parties to have conducted identification measures, nor where simplified measures have been applied to intermediaries.

Self-certification

9.7.4 Self-certification by lawyers of *existing customers* is based on established practice in the *UK*. It is not applied in *Guernsey* or the Isle of Man, or to accountants in the *UK*.

9.8 Proposals

9.8.1 Given that identification measures have applied to *existing customers* since February 2008, it is proposed to amend Article 13 of the *Money Laundering Order*.

9.8.2 In formulating these proposals, it has been assumed that identification measures will already have been applied to all higher risk customers.

General – collection of "identification" information and "relationship" information

9.8.3 By 31 December 2014, it is proposed that a *relevant person* must:

9.8.3.1 hold "identification" information and "relationship" information for every continuing business relationship that takes into account the *relevant person's* assessment of the risk of that relationship; or

9.8.3.2 in line with Article 14(7) of the *Money Laundering Order*, have started to terminate any business relationship to which it has been unable to apply the necessary identification measures. Where it holds assets for a customer that it has lost contact with, then a *relevant person* should block access to those assets until such time as it is possible to return them to the customer.

9.8.4 Alternatively, it will be possible to agree a bespoke remediation plan with the *Commission* by 31 December 2014 that, inter alia, identifies:

9.8.4.1 the number of business relationships that are covered by the plan;

9.8.4.2 the risk assessment for those relationships; and

9.8.4.3 the date by which the necessary "identification" information and "relationship" information will be held or termination of relationships started.

9.8.5 In addition to applying to "direct" business relationships, this proposal applies also to those where reliance is placed on a third party to have carried out identification measures and those which are currently treated as intermediary accounts that are operated on a disclosed basis.

9.8.6 The "identification" information to be held by a *relevant person* will include information on the beneficial owners and controllers of legal bodies, and on persons concerned with trusts and foundations, e.g. the settlor of a trust or founder of a foundation.

General – timing of the collection of evidence to verify identity

9.8.7 It is proposed that a *relevant person* (except one that is a lawyer or accountant) might continue to permit the timing of the collection of evidence to verify identity to take account of the risk of money laundering or terrorist financing. The effect of this is that, for lower or standard risk customers, verification of identity may continue to be delayed.

General – reliance on third parties

9.8.8 In cases where reliance is placed on identification measures undertaken by a third party (including cases where a relationship is formed with a trustee or general partner in line with proposals set out in paragraph 5.8.11 above), it is proposed that a written assurance that is in line with Article 16(4) (as in force at that time) of the *Money Laundering Order* should be collected for continuing business relationships as soon as is reasonably practicable, where such an assurance is not already held. This may take the form of the general "terms of business" that is proposed at paragraph 5.8.6 above.

9.8.9 In line with proposals set out in paragraph 5.8.5.1 above, it would no longer be possible to place reliance on a third party in any situation which by its nature can present a higher risk of money laundering.

Self-certification

9.8.10 It is proposed to remove the provision for self-certification of identity by lawyers and accountants on the basis that:

9.8.10.1 The concession is not a feature of the *AML/CFT Handbook*.

9.8.10.2 A lawyer or accountant may already demonstrate that it has satisfactorily verified the identity of an existing client on the basis of information that it already holds, or information that is in the public domain.

9.8.11 Separately, the *Commission* will write to all lawyers and accountants registered under the *Supervisory Bodies Law*, requesting that they identify accounts where reliance is currently placed on self-certification, and verify identity before 31 December 2013 in line with other provisions of the two applicable Handbooks.

9.9 Questions

General

9.9.1 **Do you consider that the proposals address the *IMF's* observation on *existing customers* in an effective and proportionate way? If not, please explain why, and, if possible, offer alternatives.**

9.9.2 **If you support the proposals, do you consider that the suggested cut-off date – 31 December 2014 - for the collection of information should be extended or brought forward? If so, what date do you suggest?**

9.9.3 **Do you consider that cut-off dates should also be considered for:**

9.9.3.1 **the collection of evidence to verify identity for lower and standard risk customers – where verification is to be carried out by a *relevant person*; and**

9.9.3.2 **the collection of written assurances where these are not held - in cases where reliance has been placed on a third party?**

9.9.4 **If so, what dates do you suggest?**

Self-certification

9.9.5 **Where lawyers and accountants have relied on self-certification to verify the identity of a client, do you consider that it is reasonable to re-verify the identity of such clients by the end of 2013? If not, please explain why.**

10 DISCLOSURE OF RECORDS

10.1 Overview

10.1.1 This section makes proposals to extend the circumstances in which a *relevant person* might pass on customer records (including information) for *AML/CFT* purposes.

10.1.2 In considering the recommendation made by the *IMF*, regard has been had to:

10.1.2.1 The implementation of former *FATF* Recommendation 4 in *Guernsey* – which has been assessed as "compliant" by the *IMF*.

10.1.2.2 The implementation of former *FATF* Recommendation 4 in the *UK* –which has been assessed as "compliant" by the *FATF*.

10.1.2.3 The Isle of Man's response to the *IMF's* assessment that it "largely complies" with former *FATF* Recommendation 4.

10.2 Measures in place in Jersey

10.2.1 In common with the *UK* and other jurisdictions, Jersey's common law (law established by the courts) protects the rights of the legitimate customers of a relevant person to have their information protected from unauthorised disclosure. However, in certain circumstances, as is the position in other jurisdictions, that obligation of confidentiality may be lifted. These circumstances, known as the Tournier principles (Tournier v. National Provincial and Union Bank of England (1924)), are where:

10.2.1.1 the disclosure is pursuant to statute (i.e. through a statutory compulsion to disclose or through statutory permission for disclosure);

10.2.1.2 there is a public duty to disclose;

10.2.1.3 it is in the *relevant person's* interest to disclose; or

10.2.1.4 there is express or implied customer consent for disclosure.

10.2.2 Legislation in Jersey includes a requirement to report knowledge or suspicion of money laundering or terrorist financing to the Joint Financial Crimes Unit. In addition, in the case of a *relevant person* that is part of a financial group, Article 22A of the *Money Laundering Order* permits that person to disclose information contained in any record that it is required to keep under the Order to another part of the same financial group, where disclosure is appropriate for the purpose of preventing and detecting money laundering.

10.2.3 Elsewhere, where a *relevant person* is:

10.2.3.1 A third party who is relied on under Article 16 of the *Money Laundering Order*, then it must provide evidence of identity when requested to do so by another *relevant person* in line with Article 19(5) of the *Money Laundering Order*.

10.2.3.2 An originating payment service provider, then it must provide complete information on the payer within three days when requested to do so by the payee's payment service provider in line with the Community Provisions (Wire Transfers) (Jersey) Regulations 2007.

10.3 IMF report

10.3.1 The *IMF* report observes that there is no comprehensive exclusion from the common law duty of client confidentiality to permit financial institutions to exchange information for the purposes of former *FATF* Recommendation 7 (correspondent banking) and former *FATF* Recommendation 9 (reliance on third parties) - other than with a *relevant person* in the same financial group.

10.3.2 The *IMF* recommends providing explicitly that financial institutions do not breach their confidentiality duty in exchanging customer information between themselves for *AML/CFT* purposes.

10.4 Position in Guernsey

10.4.1 There is no provision that explicitly permits the sharing of confidential information between financial institutions.

10.5 Position in the UK

10.5.1 The *UK* does not provide for the sharing of information amongst financial institutions, except in the limited case where a firm has placed reliance on a third party under Regulation 17(2)(a) or (b) of the *UK Regulations*.

10.6 Position in the Isle of Man

10.6.1 Section 147 of the Proceeds of Crime Act 2008 allows for disclosures between institutions and advisers where:

10.6.1.1 the disclosure relates to a client or former client of both institutions or advisers;

10.6.1.2 the disclosure relates to a transaction involving them both; or

10.6.1.3 the disclosure relates to the provision of a service involving them both.

10.6.2 The disclosure must be for the purpose only of preventing a money laundering or terrorist financing offence. The institutions and advisers on each side must be subject to equivalent duties of confidentiality and the protection of personal data (section 147(2)(d)). The institution or adviser to whom the disclosure is made must also be situated in a country prescribed by the Department of Home Affairs.

10.6.3 However, the operation of section 147 is very specific. It relates to only four types of disclosures, those between the same type of institution or adviser:

10.6.3.1 By a credit institution to another credit institution.

10.6.3.2 By a financial institution to another financial institution.

10.6.3.3 By a professional legal adviser to another professional legal adviser.

10.6.3.4 By a relevant professional adviser of a particular kind to another relevant professional adviser of the same kind.

10.6.4 This may create difficulties in practice. A disclosure by a professional legal adviser to an accountant, for example, will not be covered.

10.6.5 These provisions are meant to encourage the exchange of information between professionals, with the aim of combating money laundering

10.7 Findings

10.7.1 There is no comprehensive exclusion from the common law duty of client confidentiality in *Guernsey* or the *UK*.

10.7.2 The Isle of Man comes nearest to having such exclusion; however it is necessarily limited by the need to protect personal data.

10.8 Proposals

10.8.1 There are two alternatives proposals.

10.8.2 First, it is proposed to allow a *relevant person* to make records available (including information) that are kept by it under the *Money Laundering Order* where it is requested to:

10.8.2.1 Provide evidence of identity to a third party in any case where the *relevant person* has provided confirmation in writing that it will do so (under provisions in place outside Jersey that are equivalent to Article 16 of the *Money Laundering Order*). This is to facilitate the exchange of information for the purpose of implementing former *FATF* Recommendation 9 (reliance on third parties).

10.8.2.2 Provide evidence, documents, data and information obtained when applying identification measures in any case where requested to do so by a correspondent bank (which will be outside Jersey) in respect of any "payable-through account" operated by the *relevant person*. This is to facilitate the exchange of information for the purposes of implementing former *FATF* Recommendation 7 (correspondent banking).

10.8.3 Second (as an alternative to the first proposal), it is proposed to follow the approach that is taken in the Isle of Man, except that:

10.8.3.1 It would be possible for a *relevant person* to make records available to any other *relevant person*, or a person carrying on *equivalent business* (for the purpose of preventing money laundering or terrorist financing).

10.8.3.2 There would be no list of prescribed countries.

10.9 Questions

10.9.1 **Do you consider that the two proposals address the *IMF's* recommendation on disclosure of information in an effective and proportionate way? If not, please explain why, and, if possible, offer alternatives.**

10.9.2 **Which proposal do you prefer:**

10.9.2.1 **Option 1 which is to allow a *relevant person* to make records available in two particular cases: when it is being relied upon to do so (under provisions in place outside Jersey that are equivalent to Article 16 of the *Money Laundering Order*); and when it is a respondent bank that offers "payable-through accounts"; or**

10.9.2.2 **Option 2 which is to allow a *relevant person* to make records available more generally, but subject to explicit data protection safeguards?**

11 INDEPENDENT AUDIT FUNCTION

11.1 Overview

11.1.1 This section proposes changes to the *Money Laundering Order* to clarify how a *relevant person* must maintain adequate procedures for monitoring and testing the effectiveness of its *AML/CFT* policies and procedures.

11.1.2 In considering the recommendation made by the *IMF*, regard has been had to:

11.1.2.1 The implementation of former *FATF* Recommendation 15 in *Guernsey* – which has been assessed as "largely compliant" by the *IMF*.

11.1.2.2 The implementation of former *FATF* Recommendation 15 in the *UK* – which has been assessed as "largely compliant" by the *FATF*.

11.1.2.3 The implementation of former *FATF* Recommendations 15 in the Isle of Man – which has been assessed as "largely compliant" by the *FATF*.

11.2 Measures in place in Jersey

11.2.1 Article 11(11) of the *Money Laundering Order* provides that a person must maintain effective procedures for monitoring and testing the effectiveness of *AML/CFT* policies and procedures.

11.2.2 Section 2.5 of the *AML/CFT Handbook* (and equivalent provisions in the *Handbook for the Accountancy Sector* and *Handbook for the Legal Sector*) suggests that it is a responsibility of a *MLCO* with appropriate independence to test compliance with such policies and procedures.

11.3 IMF report

11.3.1 The report observes that there is no requirement for a *relevant person* to maintain an adequately resourced and independent audit function. The report does accept that the role of the *MLCO* would typically cover at least some of the functions of an independent audit function, but says that the *MLCO* would not necessarily do so with the same degree of independence (presumably on the basis that the *MLCO* will also be involved with the development and maintenance of systems and controls (including policies and procedures).

11.3.2 The report recommends the introduction of a requirement that, having regard to the size and nature of its business, a *relevant person* maintains an adequately resourced and independent audit function to test compliance with *AML/CFT* procedures.

11.4 Position in Guernsey

11.4.1 There is no requirement to maintain an adequately resourced and independent audit function.

11.4.2 However, regulation 15 of the *Guernsey Regulations* requires a financial services business to establish and maintain an effective policy for the review of its compliance with the requirements of the *Guernsey Regulations*, and such policy must include provisions as to the extent and frequency of such reviews.

11.4.3 Chapter 2.3 of the *Guernsey Handbook* also requires a financial services business to ensure that it has appropriate and effective policies, procedures and controls in place which provide for the board to meet its obligations relating to compliance review. In particular, the board must consider whether it would be appropriate to maintain a separate audit function to assess the adequacy and effectiveness of compliance with the *Guernsey Regulations*.

11.5 Position in UK

11.5.1 There is no requirement to maintain an adequately resourced and independent audit function.

11.5.2 SYSC 3.1.1 R of the Combined View of the *FCA* Handbook and *PRA* Handbook requires that "A firm must take reasonable care to establish and maintain such systems and controls as are appropriate to its business."

11.5.3 SYSC 3.2.16(1) G of the Combined View of the *FCA* Handbook and *PRA* Handbook expands on how financial institutions may meet this obligation. It says: "Depending on the nature, scale and complexity of its business, it may be appropriate for a firm to delegate much of the task of monitoring the appropriateness and effectiveness of its systems and controls to an internal audit function. An internal audit function should have clear responsibilities and reporting lines to an audit committee or appropriate senior manager, be adequately resourced and staffed by competent individuals, be independent of the day-to-day activities of the firm and have appropriate access to a firm's records".

11.5.4 Whilst this is not a requirement, the *FCA* does expect a firm to consider having an independent audit function, where that is appropriate, taking into account the nature, scale and complexity of that firm's business. In practice, it expects that large and medium-sized firms would usually have an internal audit function.

11.6 Position in Isle of Man

11.6.1 There is no requirement to maintain an adequately resourced independent audit function dealing with *AML/CFT*.

11.6.2 However, in accordance with the *Isle of Man Handbook*, a licence-holder must have procedures to ensure that it regularly monitors and sample tests the implementation and operation of all *AML/CFT* procedures and controls. If appropriate, having regard to the risk of money laundering and terrorist financing and the size of the business, this may be undertaken by compliance and internal auditing departments.

11.7 Findings

11.7.1 Whilst no British jurisdiction mandates the maintenance of an adequately resourced and independent audit function, *Guernsey*, the *UK* and the Isle of Man all require consideration to be given to making use of such a department.

11.8 Proposals

11.8.1 It is proposed to amend Article 11(11) of the *Money Laundering Order* to provide that testing of compliance with *AML/CFT* policies and procedures must be carried out by an independent audit function[26].

11.8.2 In determining what form that audit function should take, a *relevant person* must have regard to:

11.8.2.1 the risk of money laundering and terrorist financing, taking into account the types of customers, business relationships, products or transactions with which the *relevant person's* business is concerned; and

11.8.2.2 its size (e.g. number of employees, number of branches etc.).

11.8.3 In a smaller *relevant person*, it is expected that testing may continue to be carried out by the *MLCO*. In a medium-sized and larger *relevant person*, it is expected that it would usually have an internal audit function that is separate to the *MLCO*.

11.8.4 Where the function is separate to the *MLCO*, use may be made of part-time employees, external resources, and, where relevant, resources that are available elsewhere in a financial group.

11.8.5 In addition, it is proposed to set an additional regulatory requirement through Codes of Practice issued under Article 22 of the *Supervisory Bodies Law*: that the audit function should have adequate resources.

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[26] A function that is independent of the day-to-day activities of the *relevant person*.

11.9 Question

11.9.1 **Do you consider that the proposals address the *IMF's* recommendation to maintain an adequately resourced and independent audit function in an effective and proportionate way? If not, please explain why, and, if possible, offer alternatives.**

11.9.2 **What factors do you consider should be taken into account in determining the size of a *relevant person*?**

12 APPLICATION OF GROUP POLICIES AND PROCEDURES

12.1 Overview

12.1.1 This section proposes changes to the *Money Laundering Order* to require a *relevant person* to maintain policies and procedures in respect of any financial services business carried on by a subsidiary, that are consistent with those applied directly by the *relevant person*.

12.1.2 In considering the recommendation made by the *IMF*, regard has been had to:

12.1.2.1 The implementation of former *FATF* Recommendation 22 in *Guernsey* – which has been assessed as "compliant" by the *IMF*.

12.1.2.2 The implementation of former *FATF* Recommendation 22 in the Isle of Man – which has been assessed as "compliant" by the *IMF*.

12.1.3 For the purpose of consistency, implementation of former *FATF* Recommendation 22 in the *UK* has also been considered, notwithstanding that is has been assessed as "non-compliant" by the *FATF*.

12.2 Measures in place in Jersey

12.2.1 Article 10A of the *Money Laundering Order* clarifies that the *Money Laundering Order* applies to financial services business carried on outside Jersey by a *relevant person* that is a Jersey body corporate or limited liability partnership, including through a branch (to the extent that the law of a country permits).

12.2.2 Article 10A also provides that a *relevant person* that is a Jersey body corporate or limited liability partnership must ensure that any subsidiary applies measures that are at least equivalent to the requirements of the *Money Laundering Order* in respect of any financial services business carried on outside Jersey by that subsidiary (to the extent that the law of a country permits).

12.2.3 Article 11(8) of the *Money Laundering Order* requires a *relevant person* with a subsidiary or branch that carries on financial services business to communicate to that subsidiary or branch that person's policies and procedures (though there is currently no requirement to apply policies and procedures to a subsidiary of a *relevant person*).

12.3 IMF report

12.3.1 Former *FATF* Recommendation 22 provides that financial institutions subject to the Core Principles[27] should be required to apply consistent *CDD* measures at group level, taking into account the activity of customers with various branches and majority owned subsidiaries worldwide.

12.3.2 The report recommends the introduction of a requirement that financial institutions must apply consistent *AML/CFT* requirements at group level to customers doing business with different parts of the group.

12.4 Position in Guernsey

12.4.1 Regulation 15(d) of the *Guernsey Regulations* requires a financial services business to ensure that any of its branch offices which is a financial services business in any country outside *Guernsey* complies with requirements of the *Guernsey Regulations*, and any requirements under the law applicable in that country which are consistent with the *FATF* Recommendations, in each case to the extent that the law of that country permits.

12.4.2 The same requirement applies to any body corporate that is a financial services business in a foreign country or territory, of which a *Guernsey* financial services business is the majority shareholder.

12.4.3 Typically, financial services businesses which are part of a financial services group are subject to a group policy, but there is no requirement in law, regulation, or other enforceable means to set such a policy.

12.5 Position in UK

12.5.1 Regulation 20(5) of the *UK Regulations* provides that a credit or financial institution must communicate, where relevant, the policies and procedures that it establishes and maintains to its branches and subsidiary undertakings outside the *UK*.

12.5.2 Section 1.45 of the *UK Guidance Notes* says that a group policy must ensure that all non-*EEA* branches and subsidiaries carry out *CDD* measures, and keep records, at least to the standards required under *UK* law or, if the standards in the host country are more rigorous, to those higher standards. Reporting processes must nevertheless follow local laws and procedures.

[27] Core Principles refers to the Core Principles for Effective Banking Supervision issued by the Basel Committee on Banking Supervision, the Objectives and Principles for Securities Regulation issued by *IOSCO*, and the Insurance Supervisory Principles issued by the International Association of Insurance Supervisors.

12.6 Position in Isle of Man

12.6.1 Paragraph 15 of the *IoM Code* provides that a financial institution must ensure that any branch or subsidiary outside the Isle of Man take measures consistent with the *IoM Code* and guidance issued by a competent authority, to the extent permitted by the laws and regulations of the country in which the subsidiary or branch is located.

12.6.2 There is no specific requirement in law, regulation, or other enforceable means to apply group policies, taking into account the activity of the customer with the various branches and majority owned subsidiaries worldwide.

12.6.3 Regulation 3(1) of the Insurance (Anti-Money Laundering) Regulations 2008 provides that, where an insurer has branches or subsidiaries in other jurisdictions, practices and procedures consistent with those Regulations must be operated throughout all parts of the organisation.

12.7 Findings

12.7.1 Provisions in place in Jersey are very similar to *Guernsey* and the Isle of Man, and already more extensive than in the *UK*.

12.8 Proposals

12.8.1 It is proposed to amend Article 11(1) of the *Money Laundering Order* so that a *relevant person* must also maintain appropriate policies and procedures in respect of any financial services business carried on by a subsidiary, that are consistent with those applied by the *relevant person* in respect of that person's financial services business.

12.8.2 However, a *relevant person* need not comply with this requirement where its business falls within paragraphs 1 to 5 of Part B of Schedule 2 of the *Proceeds of Crime Law* – since the former *FATF* Recommendations did not require *DNFBPs* to apply measures, or policies and procedures to group entities.

12.9 Question

12.9.1 **Do you consider that the proposals address the *IMF's* recommendation on the application of group policies in an effective and proportionate way? If not, please explain why, and, if possible, offer alternatives.**

13 TECHNOLOGICAL DEVELOPMENTS

13.1 Overview

13.1.1 This section proposes changes to the *Money Laundering Order* to require a *relevant person* to maintain policies and procedures to prevent technological developments from assisting money launderers and terrorist financiers.

13.1.2 In considering the recommendation made by the *IMF*, regard has been had to:

13.1.2.1 The implementation of former *FATF* Recommendation 8 in *Guernsey* – which has been assessed as "compliant" by the *IMF*.

13.1.2.2 The implementation of former *FATF* Recommendation 8 in the *UK* – which has been assessed as "compliant" by the *FATF*.

13.1.2.3 The implementation of former *FATF* Recommendation 8 in the Isle of Man – which has been assessed as "largely compliant" by the *IMF*.

13.2 Measures in place in Jersey

13.2.1 Article 11(3)(b) of the *Money Laundering Order* requires a *relevant person* to have policies and procedures for taking additional measures, where appropriate, to prevent the use of money laundering of products and transactions which are susceptible to anonymity, including measures to prevent the misuse of technological developments in money laundering.

13.2.2 In addition, Section 7.6 of the *AML/CFT Handbook* (and equivalent provisions in the *Handbook for the Accountancy Sector* and *Handbook for the Legal Sector*) provides for relevant employees to receive training on money laundering and terrorist financing developments, including techniques, methods, trends and typologies.

13.3 IMF report

13.3.1 The report observes that neither the *Money Laundering Order* nor the *Three Handbooks* refer specifically to any particular technological risks such as internet banking, the use of debit and credit cards, and security of computer systems.

13.3.2 The report recommends the provision of more detailed guidance on specific money laundering and terrorist financing risks of new and developing technologies, e.g. in respect of e-money and e-commerce.

13.4 Position in Guernsey

13.4.1 Rules contained in Chapter 2 of the *Guernsey Handbook* on corporate governance require that a financial services business must ensure that it has appropriate and effective policies, procedures, and controls in place that provide for the board to meet its obligations. In particular, the board must take appropriate measures to keep abreast of, and guard against, the use of technological developments in money laundering and terrorist financing schemes.

13.4.2 In addition, Chapter 11 of the *Guernsey Handbook* require a financial services business to ensure that relevant employees receive training to keep them informed of new developments, including information on current money laundering and terrorist financing methods, trends, and typologies. At a minimum, training must be provided to all relevant employees at least every two years, but will need to be more frequent if new legislation or significant changes to the Handbook are introduced, or where there have been significant technological developments within the financial services business.

13.4.3 No guidance is published on new and developing technologies that may present a risk in *Guernsey*.

13.5 Position in UK

13.5.1 *FCA* Handbook, SYSC 3.2.6G G (4) provides that a firm should ensure that its systems and controls include…appropriate measures to ensure that money laundering risk is taken into account in its day-to-day operation, including in relation to:

13.5.1.1 the development of new products;

13.5.1.2 the taking-on of new customers; and

13.5.1.3 changes in its business profile.

13.5.2 Regulation 20(5A) of the *UK Regulations* provides that a firm who is an issuer of e-money must appoint an individual to monitor and manage compliance with, and the internal communication of, policies and procedures, and, in particular to:

13.5.2.1 identify any situations of higher risk of money laundering and terrorist financing;

13.5.2.2 maintain a record of its policies and procedures, risk assessment and risk management, including the application of such policies and procedures;

13.5.2.3 apply measures to ensure that such policies and procedures are taken into account in all relevant functions including in the development of new products, dealing with new customers, and in changes to business activities; and

13.5.2.4 provide information to senior management about the operation and effectiveness of such policies and procedures at least annually.

13.5.3 In addition, Part II of the *UK Guidance Notes* includes detailed guidance on the risks involved with issuing credit cards and e-money, and managing that risk.

13.6 Position in Isle of Man

13.6.1 Paragraph 23 of the *IoM Code* requires a licence-holder to "maintain appropriate procedures and controls for the purpose of preventing the misuse of technological developments for the purpose of money laundering or the financing of terrorism".

13.6.2 In addition, section 2.8 of the *IoM Handbook* highlights that:

13.6.2.1 Technological developments are most likely to be in the fields of electronic payment systems, electronic banking and electronic money.

13.6.2.2 Technological developments present operational, reputational and legal risk.

13.6.2.3 E-money schemes may be attractive to money launderers, if systems offer liberal balance and transaction limits and provide for limited auditability of transactions.

13.6.3 Guidance suggests that senior management should:

13.6.3.1 Conduct a comprehensive review before commencing an activity that involves technological advances.

13.6.3.2 Upgrade skills and knowledge consistent with the pace of technological innovation and use, taking account of money laundering methodologies identified by the *FATF*.

13.6.4 Guidance is also provided on the management of operational, reputational and legal risk.

13.7 Findings

13.7.1 Provisions in place in other British jurisdictions are more extensive than those currently in place in Jersey.

13.8 Proposals

13.8.1 It is proposed to split Article 11(3)(b) of the *Money Laundering Order* so that there must be policies and procedures in place for:

13.8.1.1 Taking additional measures, where necessary, to prevent the use for money laundering of products and transactions which are susceptible to anonymity.

13.8.1.2 Identifying and assessing risks that may arise in relation to: the development of new products and services, and new business practices, including new delivery mechanisms; and the use of new or developing technologies for both new and existing products and services.

13.8.2 To support this change, it is also proposed to:

13.8.2.1 Amend guidance provided in Section 2.3.1 of the *AML/CFT Handbook* (and equivalent provisions in the *Handbook for the Accountancy Sector* and *Handbook for the Legal Sector*) so that, in order to demonstrate that it has considered the business' exposure to money laundering and financing of terrorism, the board also considers the use of new or developing technologies for both new and existing products and services.

13.8.2.2 Amend guidance in Section 2.5 of the *AML/CFT Handbook* (and equivalent provisions in the *Handbook for the Accountancy Sector* and *Handbook for the Legal Sector*), so that the *MLCO's* regular reviews of compliance with policies and procedures, considers whether they are taken into account:

- in the development of new products and services and new business practices; and
- in the application of new or developing technologies for both new and existing products and services.

13.8.2.3 Extend guidance on training that is provided in Section 7.6 of the *AML/CFT Handbook* (and equivalent provisions in the *Handbook for the Accountancy Sector* and *Handbook for the Legal Sector*) so that, in order to demonstrate that it has provided adequate training, bespoke training is provided to employees who are responsible for developing:

- New products and services, and new business practices, including new delivery mechanisms.
- The use of technologies for both new and existing products and services.

13.8.2.4 Amend guidance on training that is provided in Section 7.6 of the *AML/CFT Handbook* (and equivalent provisions in the *Handbook for the Accountancy Sector* and *Handbook for the Legal Sector*) to explain that a *relevant person* may demonstrate the provision of training at appropriate frequencies, where it takes account of the development of new products and services and new business practices, and use of new and developing technologies.

13.8.3 In the absence of evidence to suggest that extensive use is made of technology outside deposit-taking activities (online banking), it is not proposed to provide specific guidance on the money laundering and terrorist financing risks present in products and services that make use of new and developing technologies, such as credit cards, prepaid Internet payment products, digital currencies, and mobile payment services.

13.8.4 However, a number of *relevant persons* do issue pre-paid cards, and it is therefore proposed to publish guidance in this area, based extensively on a report published in 2010 by the *FATF* on new payment methods[28] and local typologies.

13.9 Questions

13.9.1 **Do you consider that the proposals address the *IMF's* recommendation on product and technological developments in an effective and proportionate way? If not, please explain why, and, if possible, offer alternatives.**

13.9.2 **Is technology, in fact, being used extensively in areas other than online banking, where it is necessary to provide guidance? If so, please provide further details.**

[28] http://www.fatf-gafi.org/topics/methodsandtrends/documents/moneylaunderingusingnewpaymentmethods.html

14 APPLICATION OF IDENTIFICATION MEASURES TO SECONDARY MARKET TRADES

14.1 Overview

14.1.1 This section proposes that identification measures should not apply to a person that becomes an investor in a *relevant person* that is a *CIS* through a secondary market transaction, where that scheme (whether open or closed ended) is satisfied that a person carrying on investment business in Jersey or *equivalent business* has already conducted identification measures in respect of that particular transaction.

14.1.2 In considering this matter, regard has been had to:

14.1.2.1 The scope of the revised *FATF* Recommendations.

14.1.2.2 Guidance published by *IOSCO*.

14.1.2.3 How other jurisdictions apply the above international standards.

14.1.3 For the avoidance of doubt, this section does not cover the application of identification measures at the time of creation of shares or units by a *Jersey CIS*.

14.2 Measures in place in Jersey

14.2.1 Schedule 2 of the *Proceeds of Crime Law* includes *CIS* and operators of such schemes in the definition of "financial services business".

14.2.2 Inter alia, the following activities are considered to be "financial services business":

14.2.2.1 The business of a recognized fund and of an unclassified fund (terms defined in the *CIF Law*) – under Paragraph 3 of part A of Schedule 2 of the *Proceeds of Crime Law*.

14.2.2.2 The business of an unregulated fund (as defined in the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008) – under Paragraph 6 of part B of Schedule 2 of the *Proceeds of Crime Law*.

14.2.2.3 The business of a non-public fund commonly referred to as a "COBO-only" fund – under Paragraph 7(1)(h) of part B of Schedule 2 of the *Proceeds of Crime Law*.

14.2.2.4 The business of being a functionary of a recognized fund – under Paragraph 3 of part A of Schedule 2 of the *Proceeds of Crime Law*.

14.2.3 A *relevant person* that is a *CIS* is required to apply identification measures to an investor (its customer) under Article 13 of the *Money Laundering Order*. As described at paragraph 5.2.3 above, a *relevant person* may place reliance on identification measures already applied by a third party which is an investment firm (under Article 16 of the *Money Laundering Order*).

14.2.4 A *relevant person* that is a *CIS* is also required to apply "on-going monitoring" to investors under Article 13 of the *Money Laundering Order*. This includes scrutinising transactions.

14.2.5 Competitive and practical difficulties have been highlighted in the application of identification measures in Article 13 of the *Money Laundering Order* to secondary market trading by a closed-ended *CIS*.

14.2.6 It is said that:

14.2.6.1 Jersey has placed itself at a competitive disadvantage by implementing regulations that are not similarly applied in other jurisdictions.

14.2.6.2 Where ownership of shares or units in a *CIS* changes "on market", the customer relationship that exists in relation to the secondary market trade is conducted entirely separately from the *CIS*.

14.2.6.3 The subsequent application of identification measures by a *CIS* to secondary market trades disrupts the registration of ownership and is duplicative of measures already applied by an investment firm.

14.2.6.4 Whilst Article 16 of the *Money Laundering Order* allows a *CIS* to place reliance, in certain specified circumstances, on identification measures that have already been performed by a third party (an investment firm) current provisions are said not to work because:

- Investment firms in other jurisdictions, e.g. the *UK*, are not accustomed to being relied upon or providing written assurances that information and evidence concerning the identity of an investor will be provided to the *CIS* on request and without delay.
- The *CIS* has no control over which investment firm may broker trades in its shares or units – and so it will not be possible to determine in advance whether it is appropriate to place reliance on the identification measures applied by that third party.

14.3 International standards

FATF Recommendations

14.3.1 Under the *FATF* Recommendations, financial institutions and *DNFBPs* are required to apply identification measures when establishing a business relationship or carrying out an occasional transaction.

14.3.2 Inter alia, the *FATF* definition for "financial institution" means any person who conducts as a business one or more of the following activities or operations for or on behalf of a customer:

14.3.2.1 Trading in: money market instruments; foreign exchange; exchange, interest rate and index instruments; transferable securities; and commodity futures.

14.3.2.2 Participation in securities issues and the provision of financial services related to such issues.

14.3.2.3 Individual and collective portfolio management.

14.3.2.4 Safekeeping and administration of cash or liquid securities on behalf of other persons.

14.3.2.5 Otherwise investing, administering or managing funds or money on behalf of other persons.

14.3.3 What is missing is any clear reference to the extent to which a *CIS* is included within the scope of the definition of "financial institution".

IOSCO

14.3.4 *IOSCO's* Objectives and Principles of Securities Regulation apply to open-ended *CIS* that redeem shares or units (whether on a continuous or periodic basis) and closed-ended schemes whose shares or units are traded on regulated or organised markets.

14.3.5 *CDD* is a key component of securities regulatory requirements intended to achieve the principal objectives of securities regulation. Accordingly, in May 2004, *IOSCO* published the *CIBO principles*" – which apply to *ASSPs*, which includes broker-dealers and *CIS*.

14.3.6 In particular:

14.3.6.1 Principle 1 says that *ASSPs* should identify and verify the identity of a client when establishing a business relationship with a client.

14.3.6.2 Principle 3 says that *ASSPs* should conduct "the KYC process" from the moment a business relationship is established and on an on-going basis thereafter.

14.3.7 The *CIBO principles* were followed in October 2005 by the *AML Guidance for CIS* – the purpose of which is to explain how the *FATF* Recommendations and *CIBO principles* should be applied to the operation of a *CIS*.

14.3.8 Inter alia, the *AML Guidance for CIS* addresses the difference between an open-ended *CIS* and exchange-listed *CIS*.

14.3.9 An open-ended *CIS* is described as one that publicly offers and redeems its shares or units to investors without the shares or units being listed or traded on a securities exchange. Open-ended *CIS* may sell and redeem their shares or units directly or through brokers/dealers, investment advisors or other intermediaries.

14.3.10 It is said that an exchange listed *CIS* publicly offers its shares or units to the investing public primarily through trading on a securities exchange and generally does not sell or redeem its shares or units directly with investors. Rather, an exchange-listed *CIS* lists the company's shares on an exchange, and offers shares or units through an underwriting syndicate of investment banks. After the initial public offering is completed, investors purchase or sell exchange-listed *CIS* shares or units through brokers who execute these transactions – not with the *CIS* itself.

14.3.11 Exchange-listed *CIS* do not open accounts for investors, while open-ended *CIS* do. The shares or units of the exchange-listed *CIS* are not sold or redeemed directly with investors, but are issued in large blocks and distributed through brokers/dealers and other market intermediaries. As a result, exchange-listed *CIS* do not have the same opportunity to engage in investor identification and verification prior to accepting an investment or permitting redemption of shares or units, while open-ended *CIS* do.

14.3.12 For the reasons outlined above, and because – in some countries – exchange-listed *CIS* are treated like any other public company that lists its shares on a stock exchange (and such companies do not have specific money laundering responsibilities), the scope of the *AML Guidance for CIS* is limited to open-ended *CIS*[29].

14.3.13 The *AML Guidance for CIS* also refers to open-ended *CIS* listed on exchanges – which have the attributes of open-ended and exchange-listed *CIS*. It provides that these "hybrid" *CIS* should be treated as open-ended *CIS* to the extent that transactions in shares and units occur off an exchange.

14.4 Position outside Jersey

14.4.1 Appendix B considers how international standards are applied in France, Germany, *Guernsey*, Hong Kong, Ireland, the Isle of Man, Luxembourg, Switzerland, the *UK* and the US.

[29] However, in the case of countries that do impose anti-money laundering obligations on exchange-listed *CIS*, the *AML Guidance for CIS* states that exchange-listed *CIS* may rely on investment banks, brokers, dealers or other market intermediaries who also have responsibilities with respect to investors, consistent with former *FATF* Recommendation 9. This is the approach that Jersey has (so far) followed in its application of the *FATF* Recommendations.

14.5 General findings

14.5.1 The extent to which the *FATF* Recommendations should apply to *CIS* (as distinct from operators of *CIS*) is not clear. Some jurisdictions set obligations on *CIS*, some on *CIS* operators, and some on both. Some jurisdictions apply the *FATF* Recommendations only to open-ended *CIS*.

14.5.2 *IOSCO* presents a case that exchange-listed *CIS* should not have specific anti-money laundering responsibilities (except to the extent that such a *CIS* makes a "separate or related private placement of its securities"). However, it recognises that some countries do apply *CDD* obligations to exchange-traded *CIS* and permit those *CIS* to place reliance on *CDD* measures already undertaken by market intermediaries.

14.5.3 No country reviewed appears to publish guidance on the application of identification measures by *CIS* in secondary markets. The conclusion drawn is that this is because:

14.5.3.1 *CDD* obligations apply only to open-ended *CIS* – the case it seems in Germany and the *US*; or

14.5.3.2 A *CIS* (or its management company) is "in scope" only to the extent that it markets shares and units itself (and so secondary market transactions are by implication outside scope) – the case it seems in France, *Guernsey*, Hong Kong, Ireland, Luxembourg, Switzerland, and the *UK*.

14.5.4 It is said that *Guernsey* does not apply *CDD* requirements to secondary market transactions. *Guernsey* has been assessed by the *IMF* as "largely complying" with former *FATF* Recommendation 5.

14.6 Proposals

14.6.1 Regardless of regulatory status, it is proposed that a *relevant person* that is an open-ended or closed-ended *CIS* should continue to be required to conduct *CDD* measures on its investors. *CDD* measures include identification measures and on-going monitoring.

14.6.2 However, it is proposed that identification measures should not apply to a person that becomes an investor through a secondary market transaction, where a *Jersey CIS* is satisfied that a person carrying on investment business in Jersey or *equivalent business* has already applied identification measures in respect of that particular transaction.

14.6.3 In this respect, the regulatory status of the secondary market is unimportant. What matters is whether the investment business, such as a broker, is required to apply identification measures on its customer under *AML/CFT* legislation. This should always be the case in the *EU* under the *Money Laundering Directive* and, as a result of the *FATF* Recommendations, is likely to be so in most other jurisdictions.

14.6.4 In summary:

14.6.4.1 A *relevant person* that is a *CIS* would continue to have responsibility for identification measures where it (or its agent) creates shares or units.

14.6.4.2 A *relevant person* that is a *CIS* would not be required to perform identification measures in a case where it does not create shares or units, and merely registers a change in ownership of an existing share or unit (so long as it is satisfied that a person carrying on investment business in Jersey or *equivalent business* has already applied identification measures in respect of that particular transaction).

14.6.4.3 A *relevant person* that is a *CIS* will continue to be required to apply "on-going monitoring" to all of its investors under Article 13 (though, in practice, this will be limited to part (a) of paragraph 3(3) of the *Money Laundering Order*).

14.6.5 It is argued that these proposals are in line with provisions in the *FATF* Recommendations for simplified *CDD* measures, and would bring Jersey more into line with practice in the *EU* and other countries considered.

14.7 Questions

14.7.1 **Do you agree that a *relevant person* that is a *CIS* should not be required to apply identification measures to a person that becomes an investor through a secondary market transaction (i.e. in a case where the *CIS* does not create shares or units)? If not, please explain why.**

14.7.2 **Do you consider that a *relevant person* that is a *CIS* should continue to be required to apply "on-going monitoring" to all of its investors? If not, please explain why?**

15 REVISED FATF RECOMMENDATIONS

15.1 Overview

15.1.1 In February 2012, the *FATF* published a revised set of 40 Recommendations.

15.1.2 The effect of the revision will be quite wide-ranging, covering the way that Jersey coordinates the development of its "national" *AML*, *CFT* and anti-proliferation policies, and necessitating a number of changes to *AML/CFT* legislation and wider financial services legislation. However, the risk-based approach to implementing *AML/CFT* measures remains intact and has been clarified and more fully elaborated.

15.1.3 This section highlights some of the more important changes that that are relevant to financial institutions and *DNFBPs*.

15.2 AML/CFT policies and coordination

Recommendation 2 – National cooperation and coordination

15.2.1 Countries will be required to designate an authority or have a mechanism to coordinate actions to address money laundering and terrorist financing risks, and apply resources aimed at ensuring risks are mitigated effectively.

15.2.2 Countries will be expected to have national *AML/CFT* policies, informed by risks identified, and these should be regularly reviewed.

15.3 Money laundering and confiscation

Recommendation 3 – Money laundering offence

15.3.1 Tax offences have been added to the list of predicate offences for money laundering.

15.4 Preventative measures

Recommendation 10 – CDD

15.4.1 When performing *CDD* measures in relation to customers that are legal persons or legal arrangements, financial institutions are already required to: (i) identify and verify the identity of the person or arrangement; (ii) understand the nature of its business; (iii) understand its ownership and control structure; and (iv) identify the beneficial owners and controllers of the person or arrangement and take reasonable measures to verify the identity of such persons.

15.4.2 However, the revision to Recommendation 10 provides greater clarity on what is to be understood by the term beneficial ownership and control.

15.4.3 It is said that identification of the customer will include the collection of the names of the relevant people having a senior management position in the legal person or arrangement (e.g. senior managing directors in a company, or the trustee of a trust).

15.4.4 In the case of a legal person, the revision to Recommendation 10 clarifies that the beneficial owners and controllers are:

15.4.4.1 The natural persons who ultimately have a controlling ownership interest in a legal person (if any).

15.4.4.2 To the extent that there is doubt that the person(s) with the controlling ownership interest are the beneficial owner(s), or where no natural person exerts control through ownership interests, the natural persons (if any) exercising control through other means.

15.4.4.3 Where no natural persons are identified under 15.4.4.1 and 15.4.4.2, the natural person who holds the position of senior managing official.

15.4.5 Recommendation 10 also provides greater clarity on the circumstances where the risk of money laundering or terrorist financing may be lower. An example of a potentially lower risk situation given is a customer that is a financial institution or *DNFBP* which: (i) is subject to requirements to combat money laundering and terrorist financing consistent with the *FATF* Recommendations; (ii) has effectively implemented the Recommendations; and (iii) is effectively supervised or monitored in accordance with the Recommendations, to ensure compliance with those requirements.

15.4.6 In Jersey, the effect of this may be to extend the application of simplified *CCD* measures to a customer that is a trust and company services provider, in the same or a similar way to the case where a customer is a bank, insurance company, fund services business or investment business (without need to identify and verify the identity of the third parties on whose behalf the trust and company services provider acts).

Recommendation 12 - PEPs

15.4.7 The definition of *PEPs* has been broadened to include domestic *PEPs* and persons entrusted with a prominent function by an international organisation.

15.4.8 In cases of a higher risk business relationship with individuals who are or have been entrusted domestically with prominent public functions (and their family and close associates), there will be a requirement to:

15.4.8.1 obtain senior management approval for establishing or continuing business relationships;

15.4.8.2 take reasonable measures to establish source of wealth and source of funds; and

15.4.8.3 apply enhanced on-going monitoring of business relationships.

15.4.9 With the greater focus on domestic *PEPs*, there may be some pressure for countries to list what may be considered to be prominent public functions, e.g. ministers, senior politicians, senior government and judicial officials, and senior executives of state-owned corporations.

Recommendation 15 – New technologies

15.4.10 Financial institutions (as well as countries) will be required to identify and assess the money laundering or terrorist financing risks that may arise in relation to the development of new products and new business practices, and the use of new or developing technologies for both new and pre-existing products.

15.4.11 Such a risk assessment should take place prior to the launch of new products, business practices or the use of new or developing technologies.

Recommendation 16 - Wire transfers

15.4.12 The transparency of wire transfers has been enhanced. Countries should ensure that:

15.4.12.1 financial institutions include required and accurate originator information and required beneficiary information on wire transfers and related messages; and

15.4.12.2 information remains with the wire transfer or message through the payment chain.

Recommendation 17 – Reliance on third parties

15.4.13 When a financial institution or *DNFBP* is part of the same financial group as a third party, that group applies *CDD* and record-keeping requirements and programmes against money laundering and terrorist financing in line with the *FATF* Recommendations, and when those requirements and programmes are checked at a group level by a competent authority, then it may be possible to place reliance on *CDD* measures applied by that third party, even where the third party does not itself meet the criteria for reliance set out in the Recommendation.

Recommendation 18 – Internal control and foreign branches and subsidiaries

15.4.14 The scope for financial group (or consolidated) supervision has been elaborated and enhanced. Financial groups, including lawyers and accountants, are now required to implement group-wide *AML/CFT* programmes.

15.4.15 Group programmes against money laundering and terrorist financing should be applicable to all branches and wholly owned subsidiaries. This will include:

15.4.15.1 The development of internal policies, procedures and controls and adequate screening of staff.

15.4.15.2 On-going employee training.

15.4.15.3 An independent audit function to test the system.

15.4.16 In the case of foreign operations, *DNFBPs* will be required for the first time to ensure that branches and subsidiaries implement "home" country requirements, where "host" country requirements are less strict. If the host country does not permit the proper implementation of "home" requirements, the group should apply appropriate measures to manage risk and inform their "home" supervisor.

15.4.17 If the additional measures are not sufficient, competent authorities in the "home" country should consider additional supervisory actions, including closure of operations.

15.5 Transparency and beneficial ownership of legal persons and arrangements

Recommendation 24 - Transparency and beneficial ownership of legal persons

15.5.1 Countries must identify and describe the different types, forms and basic features of legal persons in the country, and identify and describe the processes for creating those persons and obtaining and recording basic and beneficial ownership information. A description of types, forms, features and processes must be publicly available.

15.5.2 Companies' registries must record each company's name, legal form and status, registered office address, and the name of all directors. They must also hold proof of incorporation and memorandum and articles of association. Information and documents must be available to the public.

15.5.3 In addition, there will be a requirement for a company incorporated in Jersey to designate one of the following to provide basic and beneficial ownership information and otherwise assist the authorities:

15.5.3.1 one or more natural persons resident in Jersey; or

15.5.3.2 a *DNFBP* resident in Jersey.

15.5.4 Countries are also required to take measures to prevent the misuse of nominee shares, for example by:

15.5.4.1 requiring nominee shareholders to disclose the identity of their nominator (i.e. the beneficial owner) to the company and to any relevant registry, and for this information to be included in the share register; or

15.5.4.2 requiring nominee shareholders to be licensed (but not necessarily in Jersey), to maintain information identifying their nominator (i.e. the beneficial owner), to make this information available to the competent authorities upon request, and for their nominee status to be recorded in the register of shareholders.

Recommendation 25 - Transparency and beneficial ownership of legal arrangements

15.5.5 Countries should also require the trustee of any express trust governed under their law to obtain and hold adequate, accurate and current beneficial ownership information regarding the trust. This should include information on the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising effective control over the trustee.

15.5.6 In addition, trustees will be required to:

15.5.6.1 Hold basic information on regulated agents of, and service providers to, the trust, including investment advisors or managers, accountants and tax advisors.

15.5.6.2 Disclose their status to financial institutions and *DNFBPs* when, as trustee, they form a business relationship or carry out a one-off transaction.

15.5.6.3 Finally, when forming a relationship, a trustee should not be prevented by law (statue or otherwise) from providing financial institutions and *DNFBPs* with information on the beneficial ownership and assets of a trust to be held or managed under the terms of the business relationship.

15.6 Powers and responsibilities of competent authorities and other institutional measures

Recommendation 28 - Regulation and supervision of DNFBPs

15.6.1 Under the revised Recommendations, the supervisor(s) of accountants, lawyers, and estates agents will be required to take measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, or holding a management function, e.g. through evaluating persons on the basis of a "fit and proper" test.

16 COST BENEFIT ANALYSIS

16.1 Costs to Industry

Reliance on third parties

16.1.1 Proposals to require a *relevant person* to periodically test assurances that are provided by third parties, and that would no longer allow reliance to be placed on a third party that has itself relied on an assurance or relied on the so-called "source of funds" exemption are likely to increase costs.

16.1.2 The proposal to recognise in legislation that a written assurance may be provided by a third party through general "terms of business" may help to reduce costs.

16.1.3 Proposals to rationalise provisions that permit reliance to be placed on trust and company services providers may help to reduce costs.

16.1.4 Other proposals are thought to be cost neutral.

Simplified identification measures – intermediaries

16.1.5 It is thought that the *Commission's* proposals to more tightly regulate the circumstances in which simplified identification measures might be applied will be largely cost neutral, except in the unlikely case of a *relevant person* who has hitherto:

16.1.5.1 not recorded its assessment of the risk of applying simplified identification measures to a customer who is an intermediary; or

16.1.5.2 applied simplified identification measures to an intermediary that has been assessed as presenting a higher risk.

Simplified identification measures – other cases

16.1.6 The proposal to place further limits on the use of the "source of funds" concession is not expected to materially affect costs.

16.1.7 Proposals to reconsider the basis for the application of simplified identification measures by lawyers and estate agents - in light of new legislation – may increase costs, but will be the subject of later consultation.

Delay in verification of identity

16.1.8 It is thought that proposals to further regulate cases in which the timing of verification of identity might be delayed will be largely cost neutral, except in cases where a *relevant person* routinely delays verification of identity in accordance with existing provisions.

Existing customers

16.1.9 In the case of a *relevant person* that has a significant number of *existing customers* on its books that have been assessed as presenting a "lower" or "standard" risk, the cost of proposals to hold "identification" and "relationship" information for every continuing business relationship that takes into account risk may be significant - if the effect of its remediation programme has so far been limited.

16.1.10 However, it is possible that alternative proposals that will allow "bespoke" remediation plans to be agreed with the *Commission* might spread such costs over a longer period of time.

16.1.11 It is not thought that the proposal to remove the provision for self-certification of identity by lawyers and accountants will materially affect costs.

Disclosure of records

16.1.12 It is thought that proposals to facilitate (but not require) the sharing of customer records will be largely cost neutral.

Independent audit function

16.1.13 It is thought that proposals to provide that testing of compliance with *AML/CFT* policies and procedures should be carried out by an independent audit function will be cost neutral for larger and smaller *relevant persons*.

16.1.14 Many larger *relevant persons* will already have a separate audit function and it is expected that testing may continue to be carried out by the *MLCO* in smaller *relevant persons*. However, additional costs may be incurred in medium-sized entities that are not a part of a larger group and which do not already have an internal audit function that is separate to the *MLCO*.

Application of group policies and procedures

16.1.15 It is thought that proposals to require policies and procedures to be maintained in respect of any financial services business carried on by a subsidiary of a *relevant person* will be largely cost neutral on the basis of existing requirements in the *Money Laundering Order*.

Technological developments

16.1.16 It is not thought that proposals to require policies and procedures to be in place to identify and assess risks presented by new products and services, new business practices, and new technology will materially affect costs.

Application of identification measures to secondary market trades

16.1.17 It is thought that proposals to limit the application of identification measures by a *Jersey CIS* may help to reduce costs.

16.1.18 Certainly the proposals are intended to address the concern that Jersey has placed itself at a competitive disadvantage by implementing requirements that are not similarly applied in other jurisdictions.

16.2 Costs to the Commission

16.2.1 It is not expected that the *Commission* will incur any additional costs as a result of the proposals in this paper.

16.3 Benefits

16.3.1 The proposals are intended to address recommendations made by the *IMF* in 2009 and to demonstrate to MONEYVAL and others that the Island is committed to preventing its financial system from being used by money launderers and terrorist financiers.

17 SUMMARY OF QUESTIONS

REFERENCE	QUESTION
5.9.1	Do you consider that the proposals address the *IMF's* recommendations on reliance on third parties in an effective and proportionate way? If not, please explain why, and, if possible, offer alternatives.
6.9.1	Do you consider that the proposals address the *IMF's* recommendations on the application of simplified identification measures to intermediaries in an effective and proportionate way? If not, please explain why, and, if possible, offer alternatives.
6.9.2	Like in the *UK*, do you consider that simplified identification measures might be applied under paragraph 6.8.10.5 above in the case of any client account operated for a lawyer, covering e.g. property transactions, settlement of legal fees, dispute settlements, escrow arrangements and "stewardship" arrangements such as a curatorship?
6.9.3	The list of lower risk legal services referred to in paragraph 6.8.10.4 above has not been updated for some time. Do any of the services listed in Section 5.10.5 of the *Handbook for the Legal Sector* no longer present a lower risk, and should any be added? If so, please explain why.
6.9.4	The circumstances in which a *relevant person* that is a bank can provide a client account to a customer that is a trust and company services provider are described in paragraph 217 of Section 4 of the *AML/CFT Handbook*. This section has not been updated for some time. Do any of the circumstances described no longer present a lower risk, and should any be added? If so, please explain why.
7.9.1	Do you consider that the proposals address the *IMF's* recommendations on other simplified *CDD* measures in an effective and proportionate way? If not, please explain why, and, if possible, offer alternatives.
8.9.1	Do you consider that the proposals address the *IMF's* recommendation on delaying the verification of identity of a customer in an effective and proportionate way? If not, please explain why, and, if possible, offer alternatives.
9.9.1	Do you consider that the proposals address the *IMF's* observation on *existing customers* in an effective and proportionate way? If not, please explain why, and, if possible, offer alternatives.
9.9.2	If you support the proposals, do you consider that the suggested cut-off date – 31 December 2014 - for the collection of information should be extended or brought forward? If so, what date do you suggest?
9.9.3	Do you consider that cut-off dates should also be considered for: • the collection of evidence to verify identity for lower and standard risk customers – where verification is to be carried out by a *relevant person*; and • the collection of written assurances where these are not held - in

	cases where reliance has been placed on a third party?
9.9.4	**If so, what dates do you suggest?**
9.9.5	**Where lawyers and accountants have relied on self-certification to verify the identity of a client, do you consider that it is reasonable to re-verify the identity of such clients by the end of 2013? If not, please explain why.**
10.9.1	**Do you consider that the two proposals address the *IMF's* recommendation on disclosure of information in an effective and proportionate way? If not, please explain why, and, if possible, offer alternatives.**
10.9.2	**Which proposal do you prefer:** • **Option 1 which is to allow a *relevant person* to make records available in two particular cases: when it is being relied upon to do so (under provisions in place outside Jersey that are equivalent to Article 16 of the *Money Laundering Order*); and when it is a respondent bank that offers "payable-through accounts"; or** • **Option 2 which is to allow a *relevant person* to make records available more generally, but subject to explicit data protection safeguards?**
11.9.1	**Do you consider that the proposals address the *IMF's* recommendation to maintain an adequately resourced and independent audit function in an effective and proportionate way? If not, please explain why, and, if possible, offer alternatives.**
11.9.2	**What factors do you consider should be taken into account in determining the size of a *relevant person*?**
12.9.1	**Do you consider that the proposals address the *IMF's* recommendation on the application of group policies in an effective and proportionate way? If not, please explain why, and, if possible, offer alternatives.**
13.9.1	**Do you consider that the proposals address the *IMF's* recommendation on product and technological developments in an effective and proportionate way? If not, please explain why, and, if possible, offer alternatives.**
13.9.2	**Is technology, in fact, being used extensively in areas other than online banking, where it is necessary to provide guidance? If so, please provide further details.**
14.7.1	**Do you agree that a *relevant person* that is a *CIS* should not be required to apply identification measures to a person that becomes an investor through a secondary market transaction (i.e. in a case where the *CIS* does not create shares or units)? If not, please explain why.**
14.7.2	**Do you consider that a *relevant person* that is a *CIS* should continue to be required to apply "on-going monitoring" to all of its investors? If not, please explain why?**

APPENDIX A

List of representative bodies who have been sent this consultation paper.

The consultation paper has been sent to all members of the *Commission's* AML/CFT Steering Group. Members are listed on the *Commission's* website under AML/CFT Steering Group.

In addition, copies of this paper have been sent to:

- Association of English Solicitors Practising in Jersey
- Association of Investment Companies
- Chartered Institute for Securities & Investment – Jersey branch
- Institute of Directors – Jersey branch
- Jersey Association of Trust Companies
- Jersey Bankers' Association
- Jersey Chamber of Commerce and Industry Incorporated
- Jersey Compliance Officers Association
- Jersey Estate Agents Association
- Jersey Finance Limited
- Jersey Funds Association
- Jersey International Insurance Association
- Jersey Motor Traders Association
- Jersey Society of Chartered and Certified Accountants
- Law Society of Jersey
- Personal Finance Society - Jersey branch

APPENDIX B

1 Application of international standards on CIS outside Jersey

1.1 This appendix considers how international standards are applied in France, Germany, *Guernsey*, Hong Kong, Ireland, the Isle of Man, Luxembourg, Switzerland, the *UK* and the *US*.

France

1.2 In France, obligations are placed not on the *CIS* itself but on the management company of the *CIS* (*'société de gestion'*) – on the basis that, in France, *CIS* are not incorporated (referred to as '*fonds commun de placement'*).

1.3 Article L. 561-2 of the Monetary and Financial Code imposes obligations on a management company where it has responsibility for distributing shares or units (with regard to the marketing of shares or units in a *CIS*, whether or not the management company also manages a *CIS*)[30].

1.4 On the other hand, when *CIS* shares or units are marketed through distributors, such as financial investment advisers, which do not act as the asset management company's agent, then the asset management company is not subject to *AML/CFT* requirements[31].

1.5 Whilst there is no specific reference to secondary markets in the Autorité des Marchés Financiers' guidance, it is possible to conclude from the Monetary and Financial Code that identification obligations apply to a management company only where it is responsible for the distribution of shares or units.

Germany

1.6 The German AML Act applies inter alia to investment stock corporations (a form of *CIS*) and investment management companies (*CIS* operator).

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[30] According to guidance published by the Autorité des Marchés Financiers, the notion of marketing is explained in Article 315-50 of the AML General Regulation, which stipulates that it relates to marketing conducted by the management company itself or through an agent. This means that, in addition to cases where a management company markets *CIS* shares or units itself and is in direct contact with customers (investors), the asset management company is also subject to *AML/CFT* regulations each time that it uses an agent to market *CIS* shares or units in its name and on its behalf.

[31] If the distributor is not part of the French anti-money laundering system or equivalent system of a Member State of the *EU* or country that France recognises as "equivalent", the depository of the *CIS* must ensure that the agreement with the distributor stipulates that it will apply customer identification procedures that are equivalent to those applied in Member States of the *EU* and that it has access to information to identify the beneficial owner.

1.7 According to the German Investment Act 2003, an investment stock corporation is an enterprise whose corporate object is restricted to the investment and management of its assets in accordance with the principle of risk diversification, for the collective investment of capital in assets, and in respect of which investors have the right to redeem their shares (open-ended).

1.8 Inter alia, an investment management company manages:

1.8.1 domestic investment asset pools (*CIS* which are invested in assets in accordance with the principle of risk diversification) for the account of investors, in respect of which investors have the right to redeem their units (i.e. they are open-ended); and

1.8.2 undertakings for collective investment in transferable securities – which will be open-ended.

1.9 No obligation is placed on investment stock corporations or investment management companies to identify or verify the identity of investors who purchase shares or units on a secondary market.

Guernsey

1.10 The *Guernsey Regulations* provide for *CDD* requirements to apply to persons carrying on "controlled investment business" as defined in the Protection of Investors (Bailiwick of Guernsey) Law, 1987.

1.11 That law provides that a person carries on a "controlled investment business" if, by way of business, he engages in a "restricted activity" in connection with a "controlled investment".

1.12 The following activities constitute "restricted activities" when carried on in connection with a "controlled investment". Inter alia, a *CIS* is considered to be a "controlled investment".

1.12.1 Promotion, that is to say advertising, issuing a prospectus, application form or proposal form, or circulating or making available promotional material.

1.12.2 Subscription, that is to say receiving funds or assets for the purposes of investment.

1.12.3 Registration, that is to say recording the particulars of a specified investor, and issuing a certificate or policy to a specified investor or bearer.

1.12.4 Management, that is to say exercising any managerial function in relation to an investment or in relation to the assets underlying an investment.

1.12.5 Administration, that is to say providing administrative, secretarial or clerical services in relation to an investment.

1.12.6 Advising, that is to say giving advice as to the purchase, sale etc. of particular investments.

1.13 On the basis of the above, it seems that *CDD* obligations will apply to a *CIS* (open and closed-ended) that is a company issuing units, a unit trust (through the trustee), and a limited partnership (through the general partner) – in respect of the investors in that *CIS*. Like in Jersey, it seems that the *CDD* obligations will also apply at operator level – so that a person that is in the business of, say, acting as a distributor to a number of *CIS*, is required to apply *CDD* on its customers (the schemes that it provides services to).

1.14 However, in the case of a closed-ended listed *CIS* when shares are traded through a regulated exchange, responsibility for performing identification measures on investors is said to lie firmly with brokers (wherever they may operate and may be regulated) and not with the *CIS* itself or its agents.

Hong Kong

1.15 In Hong Kong, the definition of "financial institution" covers institutions that are authorised by the Hong Kong Monetary Authority, licensed by the Securities and Futures Commission, or regulated by the Office of the Commissioner of Insurance, or that are licenced money service operators.

1.16 Depending on its arrangement/ operation, a *CIS* may or may not be a "financial institution". However, to the extent that a self-managed *CIS* (which must be a company or corporation) or management company of a *CIS* performs an activity that is regulated under Part V of the Securities and Futures Ordinance, that person will be required to comply with *CDD* requirements.

1.17 The following are regulated activities:

1.17.1 Dealing in securities and futures contracts[32].

1.17.2 Leveraged foreign exchange trading.

1.17.3 Advising on securities, futures contracts and corporate finance.

1.17.4 Providing automated trading services.

1.17.5 Securities margin financing.

1.17.6 Asset management.

1.17.7 Providing credit rating services.

[32] "Dealing in securities" is defined as, whether as principal or agent, making or offering to make an agreement with another person, or inducing or attempting to induce another person, to enter into or to offer to enter into an agreement: (i) for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or (ii) the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities.

1.18 In a case where a *CIS* or its management company issues shares on the primary market, this would amount to dealing in securities and, as a financial institution, it will generally be the case that identification measures must be performed on investors under the *2011 Ordinance*.

1.19 In a case where shares in a *CIS* are traded on a secondary market, then the *CIS* or its management company would not itself be making or offering to make an agreement with a third party to acquire its shares, and would not be subject to the *2011 Ordinance*.

Ireland

1.20 Ireland has transposed the *Money Laundering Directive* in a way that deems a *CIS* to be a form of financial institution. Section 24(1)(e) of the *2010 Act* defines financial institution to include "a collective investment undertaking that markets or otherwise offers its units or shares".

1.21 No specific reference to secondary markets has been found in the *2010 Act*, presumably because obligations are stated to apply to a *CIS* only when marketing or offering shares or units itself.

Isle of Man

1.22 The Isle of Man now applies *CDD* obligations to *CIS* by virtue of paragraph 1(1)(m) of the Proceeds of Crime (Business in the Regulated Sector) Order 2013.

1.23 That Order also provides for "business in the regulated sector" to include the provision of services to a *CIS* as defined in section 3 of the Financial Services Act 2008 and Class 3 of Schedule 1 to the Regulated Activities Order 2011 (ignoring any exclusions).

1.24 Regulated activities include:

1.24.1 Acting as a manager of a *CIS*.

1.24.2 Acting as an administrator of a *CIS*.

1.24.3 Acting as a trustee of a *CIS*.

1.24.4 Acting as a fiduciary custodian of a *CIS*.

1.24.5 Acting as a custodian of a *CIS*.

1.24.6 Acting as an asset manager of a *CIS*.

1.24.7 Acting as an investment adviser to a *CIS*.

Luxembourg

1.25 In Luxembourg, the *2004 Law* applies to undertakings for collective investment and investment companies in risk capital, which market their shares or units and to which certain regulatory laws apply.

1.26 The *2004 Law* also imposes *CDD* requirements on management companies relating to *CIS* which market units or shares of *CIS*, managers and advisors of *CIS* and investment companies in risk capital, and on persons that are listed in an annex which is derived from the activities listed in points 2 to 14 of Annex I to the Banking Consolidation Directive.

1.27 In Luxembourg, guidance on best practice for the funds industry is published by the Association of the Luxembourg Fund Industry, Luxembourg Bankers' Association, the Association of Luxembourg Compliance Officers, and the Association of Professionals in Risk Management. It provides "practices and recommendations" for due diligence measures to be applied to customers (investors), and on setting up distribution networks outside Luxembourg.

1.28 That guidance is currently under review, but it is understood that it will say that, whilst professionals (e.g. registrar and distributors) may assist a *CIS* to fulfil its *AML/CFT* obligations, the ultimate responsibility for such measures remains with the *CIS*. In the case of an unincorporated *CIS* (e.g. *'fond commun de placement'*) a management company represents the *CIS*, and the *CIS* and the management company form one legal entity.

1.29 The review also considers the case of an "indirect" investor which sends an order to purchase shares or units in a *CIS* (and payment) to an intermediary, e.g. a distributor, which then instructs the *CIS*. Notwithstanding that the *CIS* enters the name of the "indirect" investor into its share register, it is understood that guidance will provide that there is no requirement for the *CIS* to carry out identification measures on the "indirect" customer provided that:

1.29.1 the order comes from the intermediary; and

1.29.2 payment comes from the intermediary or a regulated *EU* or *EEA* (or equivalent) financial institution.

1.30 No specific reference to secondary markets has been found in legislation or guidance, presumably because obligations are stated to apply to a *CIS* only when marketing shares or units itself. However, draft guidance does recognise the principle – in a particular case - that identification obligations should not apply to a *CIS* where an intermediary has already conducted identification measures in relation to a particular acquisition of shares or units.

Switzerland

1.31 Inter alia, the Federal Act on Combatting Money Laundering and Terrorist Financing in the Financial Sector 1997 applies to:

1.31.1 Investment companies with variable capital, limited partnerships for collective capital investments, and investment companies with fixed capital, provided that they offer or distribute shares in collective capital investments.

1.31.2 Fund managers, provided they manage share accounts and they offer or distribute shares in collective capital investments. It seems that this provision will apply to a contractual fund (open-ended) that operates through a fund management company.

1.32 No specific reference to secondary markets has been found in the Federal Act, presumably because obligations are stated to apply to a *CIS* only when offering or distributing shares itself.

UK

1.33 The *UK Regulations* apply (inter alia) through: regulation 3(3)(d) to a "collective investment undertaking, when marketing or otherwise offering its units or shares"; and through regulation 3(3)(a) to an undertaking when it carries out one or more of the activities listed in points 2 to 14 of Annex I to the Banking Consolidation Directive, which include

1.33.1 Trading for the account of customers (investors) in money market instruments, foreign exchange, financial futures and options, exchange and interest-rate instruments, or transferrable securities.

1.33.2 Participation in securities issues and the provision of services related to such issues.

1.33.3 Portfolio management and advice.

1.33.4 Safe-keeping and administration of securities.

1.34 It has been said that the effect of regulation 3(3)(d) is not to identify times when a *CIS* should be treated as within the scope of the *UK Regulations*. Instead, it describes the type of *CIS* which is within scope. If this was not the case, it is said that the *UK Regulations* could simply have read a "collective investment undertaking", as all *CIS* will - at some point - raise money from investors. It is said that the effect of this is to:

1.34.1 limit the application of identification measures to self-managed open-ended *CIS* that create and redeem shares on their own behalf – where no other party carries out identification measures; or

1.34.2 limit the application of identification measures to open-ended *CIS*, on the basis of the characteristics of an exchange-listed *CIS*.

1.35 It is said that this is possible because secondary market activity is conducted via regulated entities which are already within the scope of the *UK Regulations*.

US

1.36 The *BSA* establishes the basic framework for anti-money laundering obligations imposed on financial institutions. Among other things, it authorises the Secretary of the Treasury to issue regulations requiring financial institutions to keep records and file reports on financial transactions.

1.37 The Treasury has determined that mutual funds (open-ended companies) should be considered "financial institutions" for certain purposes and specific *BSA* rules are applicable to mutual funds.

1.38 Closed-end companies and unit investment trusts are not subject to such rules.