

**CONSULTATION PAPER  
NO.2 2009**

**FINANCIAL SERVICES (JERSEY)  
LAW 1998 - INVESTMENT  
BUSINESS REGISTRATION FEES**

ISSUED MARCH 2009



# CONSULTATION PAPER

The Jersey Financial Services Commission (the “**Commission**”) invites comments on this consultation paper. Robert Kirkby at Jersey Finance Limited (“**Jersey Finance**”) is coordinating an industry response that will incorporate any matters raised by local businesses. Comments should reach Jersey Finance by 7 April 2009.

Responses should be sent to:

**Robert Kirkby**

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Alternatively, responses may be sent directly to Chris Jordan at the Commission by 7 April 2009. 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:

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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.**

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# 1 CONSULTATION

## 1.1 Basis for consultation

- 1.1.1 The Commission is issuing this consultation paper in accordance with Article 8(3) of the Financial Services Commission (Jersey) Law 1998, as amended (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 the Island as it considers appropriate*”.
- 1.1.2 In addition, Article 15(3) of the Commission Law, as amended, requires that before the Commission may introduce and publish any fee “*..the Commission must first publish a report that must include -*
- (a) details of the duty or power for or in respect of which the fee is to be determined;*
  - (b) details of the proposed fee;*
  - (c) a request for comments on the level of the proposed fee; and*
  - (d) a date, that is at least 28 days after the publication of the report, before which those comments may be made to the Commission”*
- 1.1.3 The Commission considers that this consultation paper may be taken to constitute such a report as required by the Commission Law.

## 1.2 Who will be affected by the proposed changes

- 1.2.1 These new provisions will affect all investment businesses registered under the Financial Services (Jersey) Law 1998.

## 1.3 Responding to the consultation

- 1.3.1 The Commission invites comments in writing from interested parties on the content of this consultation paper and its likely impact on regulated financial services businesses carrying on investment business in or from within Jersey.
- 1.3.2 Comments should be provided by no later than 7 April 2009.
- 1.3.3 This consultation paper is also being circulated to members of the Jersey Branch of the Personal Finance Society. Members may provide comments to Mr Ryan Lewis, Chairman of the local branch, who will collate comments and provide a consolidated response to the Commission.

## **2 THE COMMISSION**

### **2.1 Overview**

2.1.1 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.

### **2.2 Commission's functions**

2.2.1 The Commission Law prescribes that the Commission shall be responsible for:

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

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

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

2.2.1.4 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 may, by Regulations, transfer.

### **2.3 Guiding principles**

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

2.3.1.1 the reduction of risk to the public of financial loss due to dishonesty, incompetence, malpractice, or the financial unsoundness of financial service providers;

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

2.3.1.3 the best economic interests of Jersey; and

2.3.1.4 the countering of financial crime both in Jersey and elsewhere.

# 3 PROPOSALS

## 3.1 Overview

- 3.1.1 The policy of the Commission is for each Supervision Division to be self-funding, consequently, the fees collected from those persons undertaking investment business should cover the operating expenses of the Investment Business Team operating as part of the Securities Division.
- 3.1.2 The 2009 operating expenses for the Investment Business Team are forecast to be £1,265,000 and the fee income generated from investment businesses in 2008 amounted to £1,137,198 in 2008. Consequently, were investment business fees to continue at current levels, the Securities Division would incur an income shortfall of £127,802 this year, rising to £165,802 in 2010 with regard to the Investment Business Team.
- 3.1.3 Since May 2006, there has been no increase in the Investment Business Team's headcount. However, it is intended that two Supervision Managers will be recruited in 2009 in order to enhance the Team's on-site supervision capability and assist the Team in delivering an investor education programme.
- 3.1.4 Included within the Commission's 2008 expenditure figures relating to persons registered to undertake investment business are:
  - 3.1.4.1 £ 119,354 - expenditure on enforcement activity; and
  - 3.1.4.2 £ 85,217 - investigation and litigation costs.
- 3.1.5 The Commission considers it appropriate to propose an increase in regulatory fees for businesses supervised by the Investment Business Team, with a view to covering the operating costs of this Team.

## 3.2 Investment Business Fees

- 3.2.1 Fees in respect of investment business, as defined by Article 2(2) of the Financial Services (Jersey) Law 1998, were last revised on 1 May 2006.
- 3.2.2 This consultation paper has been issued as the Commission is proposing an overall increase of 18% in the current investment business fee structure, which if agreed, will take effect from 1 May 2009 and would set the fees for the next three years.
- 3.2.3 The proposed Fee Schedule for investment business, which is appended to this consultation paper as part of the draft Fees Notice (Appendix B), provides the detail of the proposed fees. **Note:** the individual application and registration fees have not been increased by an exact 18%, as the fees have been rounded to the nearest five pounds.
- 3.2.4 Should the proposed increase in fees be agreed, as detailed in 3.2.3, the next review of the investment business fees would be scheduled for 2012. The Commission believes that this provides persons registered for the conduct of

investment business with some degree of certainty in respect of this element of their budgeting.

- 3.2.5 As an alternative to increasing the investment business fees by 18% from 1 May 2009 and fixing the fees at that level for the next three years, the Commission has the option of increasing the investment business fees annually for each of the next three years with the aim of achieving the same overall income.
- 3.2.6 By way of example, the overall increase in fees could be achieved by way of an 8% increase in 2009, followed by further 9% increases in each of 2010 and 2011.

Would you prefer to have an 18% increase to the current investment business fees which is next reviewed in 2012 or would you prefer to have a phased approach such that the investment business fees are increased in each of the years 2009, 2010 and 2011?

# APPENDIX A

## List of representative bodies who have been sent this consultation paper

- Jersey Finance Limited
- The Personal Finance Society

# APPENDIX B

## Draft Investment Business Fees Notice

### JERSEY FINANCIAL SERVICES COMMISSION INVESTMENT BUSINESS FEES

Published in accordance with

Article 15 of the Financial Services Commission (Jersey) Law 1998 as amended

Articles 8(3) and 9(6) of the Financial Services (Jersey) Law 1998 as amended

#### Commencement date

The fees set out in this notice and the attached schedule are effective from 1 May 2009.

#### Interpretation

In this notice -

“Commission” means the Jersey Financial Services Commission;

“investment employee”, in respect of a registered person, means -

- (a) a person employed on the relevant date either under a contract of service or a contract for services by the registered person as -
  - (i) a dealer,
  - (ii) a discretionary investment manager,
  - (iii) an adviser, or
  - (iv) a supervisor; and
- (b) a person employed on the relevant date either under a contract of service or a contract for services in any of the categories of work specified in paragraph (a) of this definition by a person who is himself or herself employed on the relevant date either under a contract of service or a contract for services by the registered person,

and if, on the relevant date, there exists a post in the service of the registered person that is vacant but would normally be occupied by a person to which paragraph (a) of this definition applies, includes that person;

“Law” means the Financial Services (Jersey) Law 1998 as amended;

“registered person” means a person registered under the Law to carry on investment business;

“relevant date”, in respect of a year of registration of a registered person, means 1st April in that year except in the year the person applied to be registered when it means the date of the application for registration;

“supervisor” means a person who is responsible, either alone or jointly with one or more other persons, for the management, supervision and control of an investment employee who is not a supervisor.

### **Application fee**

The fee to accompany an application for registration to carry on investment business shall be the amount calculated in accordance with the table set out in the Schedule.

### **Registration fees**

- (1) A registered person shall pay a registration fee of an amount calculated in accordance with the table set out in the Schedule.
- (2) The registration fee is payable –
  - (a) on registration; and
  - (b) on each subsequent 1st May.
- (3) If a person is registered after 31st December but before the following 1st May the registration fee payable on registration shall be half the fee otherwise payable.
- (4) The Commission may remit in whole or in part any fee payable under this Article if –
  - (a) in its opinion the person liable to pay the fee is a member of an associated group of registered persons; and
  - (b) another member of that group has paid a like fee.

### **Late payment of registration fees**

If a registered person fails to pay the whole or any part of a registration fee on or before the date it becomes due the person shall be liable to pay an additional late payment fee of 5% of the amount unpaid for each complete month it remains unpaid.

### **Late filing fees**

If a registered person fails to file or deliver any document to the Commission under the provisions of the Law or under any provisions of any Order issued in accordance with the Law on or before the date that the document becomes due, the registered person shall be liable to pay a fee of £100 for each complete month or part thereof that the document remains un-filed or undelivered unless the registered person has given the Commission prior written notice of the reasons for the late filing or delivery of a document and the Commission has agreed in writing that the filing may be late. Any such later agreed date shall become the due date for the purposes of the calculation and the payment of late filing fees.

**SCHEDULE****Fees**

<b>Classes of investment business</b>	<b>Application fee</b>	<b>Registration fee</b>
Class A, B or C or any combination of these classes –	£1,415	(i) £1,595; (ii) £1,595 for each of the first 10 investment employees; and (iii) £825 for each additional investment employee up to a maximum of 20 additional investment employees.
Class D only –	£710	(i) £1,475; (ii) £825 for each of the first 10 investment employees; and (iii) £415 for each additional investment employee up to a maximum of 20 additional investment employees.
Class E only –	£710	£825 for each fund in respect of which the applicant or registered person carries on investment business on the relevant date.