

**CONSULTATION PAPER  
NO. 3 2009**

**FINANCIAL SERVICES (JERSEY) LAW  
1998 – FUND SERVICES BUSINESS FEES**

ISSUED 3 APRIL 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 co-ordinating an industry response that will incorporate any matters raised by local businesses. Comments should reach Jersey Finance by no later than 1 May 2009.

Responses should be sent to:

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Alternatively, responses may be sent directly to Bruce Horwood at the Commission by no later than 1 May 2009. If you require any assistance, clarification or wish to discuss any aspect of the proposal prior to formulating a response then please 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.**

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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 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 persons registered to conduct Fund Services Business as defined by Article 2(10) of the Financial Services (Jersey) Law 1998 (“**registered persons**”) which:

1.2.1.1 act exclusively for unregulated funds<sup>1</sup>; or

1.2.1.2 where the number of pools of assets in all collective investment funds in relation to which the person carries on fund services business under its registration is zero as at 1 July.

## 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 registered persons.

1.3.2 Comments should be provided by no later than 1 May 2009.

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<sup>1</sup> “Unregulated fund” means an unregulated fund within the meaning of the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008.

## **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;

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; and

2.2.1.5 such other functions as are conferred on the Commission by any other law or enactment.

### **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 persons carrying on the business of financial services in or from within Jersey;

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 need to counter financial crime both in Jersey and elsewhere.

# 3 PROPOSALS

## 3.1 Overview

- 3.1.1 The policy of the Commission is for each of the regulated business sectors to be self-funding and, consequently, that the regulatory fee income of each division should cover its operating expenses.
- 3.1.2 The Commission does not currently raise an annual fee in the following circumstances:
  - 3.1.2.1 where a registered person is not acting for any “pools of assets” on the date on which the annual fee is assessed (the “**assessment date**”); and
  - 3.1.2.2 where a registered person acts solely in relation to unregulated funds.
- 3.1.3 Whilst there is no intention to increase the fund services business fee levels in 2009, the Commission considers it appropriate that all registered persons should contribute to the cost of their supervision and therefore be subject to an annual fee. For this reason, it is proposed that an annual fee will apply to all registered persons in respect of which the Commission has supervisory responsibility irrespective of whether they are acting for a regulated fund on the assessment date.
- 3.1.4 In order to achieve this, it is proposed that the current minimum fee £2,000 that applies where a registered person acts for one pool of assets will now also apply to registered persons acting for zero pools of assets on the assessment date.

## 3.2 Fund Services Business Fees

- 3.2.1 Fees for registered persons were first introduced on 14 November 2007 when the supervision of certain fund functionaries was transferred from the Collective Investment Funds (Jersey) Law 1988 to the Financial Services (Jersey) Law 1998.
- 3.2.2 The Fees Notice was subsequently amended on 1 September 2008 to incorporate changes in relation to late payment and late filing fees.
- 3.2.3 The annual fee levels are not being altered other than the extension of the minimum £2,000 annual fee to persons acting for zero pools of assets.
- 3.2.4 Details of the proposed fee schedule for fund services business registrations are contained in the draft Fees Notice, which forms Appendix B to this paper.

## 3.3 Question

- 3.3.1 Do you have any comment to make in relation to the proposals outlined in this Consultation Paper?

# APPENDIX A

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

- Jersey Finance Limited
- Jersey Funds Association

# APPENDIX B

## JERSEY FINANCIAL SERVICES COMMISSION FUND SERVICES 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 July 2009.

### Interpretation

In this notice –

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

“registered person” means a person registered under the Law to carry on fund services business.

“pools of assets” means the number of constituent parts in relation to which the registered person acts.

### Application Fee

For the purposes of Article 8(3)(c) of the Law (which Article allows fees that are to accompany applications for registration to be published), a fee of £1,000 is published in respect of applications for registration in relation to the carrying on of fund services business.

### Annual fee

- (1) For the purposes of Article 9(6) of the Law (which Article allows fees to be paid by a registered person to be published), a person who, on 1st July in any year, is a registered person shall, on that day, pay the fee determined in accordance with the Schedule, in respect of the number of pools of assets in all the collective investment funds in relation to which the person is registered to carry on fund services business under his or her registration.
- (2) In the event that the registered person only acts for unregulated funds, the annual fee payable for persons acting for zero pools of assets shall apply.
- (3) Where a person is first registered, on a day other than 1st July, to carry on fund services business, the person shall pay, on the day the person is registered, one twelfth of the fee described in paragraphs (1) and (2) for each complete month between the day the person is registered and the 1st July next.

### Late payment of fees

For the purposes of Article 9(7) of the Law (which Article allows a late payment fee to be published), the fee payable by a person if the person fails to pay, on or before the date it

becomes due, the whole or any part of a fee is 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 the 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 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**

### **ANNUAL FEES**

An annual fee is payable by each registered person.

<b>Number of pools of assets</b>	<b>Annual Fee</b>
0-1	£2,000
2-4	£2,500
5-9	£3,000
10-19	£4,000
20-49	£5,000
50-99	£7,000
100-149	£10,000
150-199	£15,000
200 or more	£20,000