



## Jersey Financial Services Commission

Chief Executives (or equivalent)  
of all persons registered  
to conduct investment business  
under the Financial Services  
(Jersey) Law 1998

26 April 2010

Dear Sir or Madam

**Jersey Financial Services Commission (the "Commission")  
Financial Services (Jersey) Law 1998, as amended (the "Law")  
Investment Business – Priorities for 2010**

This letter is sent to the Chief Executive (or equivalent) of all businesses registered to conduct investment business under the Law in order to explain the Commission's key priorities for 2010 and share with you some of the key findings from on-site examinations last year.

### **1. The Investment Business team**

You may have noticed some change in the composition of the investment business team over the last 6 months and we have therefore taken this opportunity to re-introduce the team by way of the attached contact list (**Appendix A**). Each registered investment business is assigned a dedicated supervision manager at the Commission; if you are in any doubt as to the identity of your principal contact, please contact the Senior Manager, Chris Jordan.

### **2. Key findings from on-site examinations last year**

The key themes that emerged from the 2009 on-site examination programme were as follows:

- i/ Recommendations given by advisers for a client to switch from one product to an alternative product were insufficiently comprehensive and balanced. A common failing was that any disadvantages or loss of benefits that would arise as a result of following the recommendation to switch were not brought to the client's attention in the written recommendation. This finding was common across several product types, including lump sum investments, protection policies and vehicles used for retirement planning;



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- ii/ compliance arrangements were on occasion found to be either inadequate (in terms of their resources or scope) or insufficiently independent from the front office activity;
- iii/ disclosure of commissions and fees earned by the investment business or underlying charges were often insufficiently transparent. Reliance was placed upon an illustration or information provided by a product provider, as opposed to the percentage or monetary figure of the commission or fees earned being disclosed in the adviser's written recommendation; and
- iv/ the Commission was concerned to note instances where AML/CFT risk ratings had either not been undertaken for some clients, or that such ratings had been completed with little or no documented rationale.

### 3. Our priorities for 2010

#### Themed visits / Mystery Shopping

The Investment Business team intends to complete its ongoing programme of themed examinations of independent financial advisers ("IFAs") and to report key themes and findings by way of a separate summary report that will be published on the Commission's website. This work will be augmented by a "mystery shopping"<sup>1</sup> exercise on retail banks and IFAs along similar lines to the exercise conducted by the Commission in 2007/08. A copy of the report issued by the Commission following its last mystery shopping exercise is published on our website at:

[http://www.jerseyfsc.org/pdf/I\\_B\\_Mystery\\_Shopping\\_Summary\\_Findings\\_20\\_May\\_2008.pdf](http://www.jerseyfsc.org/pdf/I_B_Mystery_Shopping_Summary_Findings_20_May_2008.pdf)

#### The FSA's Retail Distribution Review (the "RDR")

The Investment Business team continue to monitor the RDR in conjunction with local trade associations and intend to issue a position paper setting out the Commission's view of the proposals and what, if any, consequential amendments may be appropriate for our own regulatory regime.

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<sup>1</sup> The Market Research Society defines "mystery shopping" or "mystery customer research" as: "The use of individuals trained to experience and measure any customer service process, by acting as potential customers and in some way reporting back on their experience in a detailed and objective way."



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### **Financial Capability**

As previously reported, the Commission intends to launch a financial capability initiative this year that will initially take the form of a website operating under the brand of "MoneyMaster". We are now in the process of assembling a draft version of the website and will be consulting interested parties including the Jersey Bankers Association, Personal Finance Society and Jersey Finance Limited prior to launch.

### **Pension products**

Finally, the Commission intends to publish guidance on the use of pension products. Whilst pensions are not subject to direct product regulation in Jersey, advice given in relation to a pension product is regulated activity. It is important that financial advisers are suitably qualified and experienced to advise on such products, that they take a client's full circumstances into account before making any recommendation, and that, where advice is being given in relation to a Retirement Annuity Trust, the adviser pays proper regard to the following Practice Note issued by the Comptroller of Income Tax.

<http://www.gov.je/TaxesMoney/IncomeTax/Pension/Pages/RetirementAnnuityTrustScheme.aspx>

#### **4. Foreign funds marketed in the Island**

The Commission is aware that a number of non-Jersey fund promoters actively market their products to local investment advisers and intermediaries. Whilst we recognize such activity as an important means of providing choice to local investors, the Commission would urge advisers to undertake appropriate due diligence prior to including such funds on their product "white lists", and to not place overreliance on the fact that a fund has been authorised or registered by an overseas regulatory authority. We have provided some outline questions that you may wish to pose in such situations and would encourage any person harbouring concerns about a fund being marketed in the Island to contact the Commission.

- i/ Has the fund sought and obtained relevant consent from the Commission to market itself in Jersey?

Non-Jersey funds that are being actively marketed in the Island may need consent from the Commission in accordance with the Control of Borrowing (Jersey) Order 1958. It is



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important to establish whether the fund has sought and obtained such consents. Some funds, for example authorised retail schemes established in the UK and Guernsey, may be exempt from obtaining consent from the Commission, however if you are in any doubt we would urge you to contact the Commission for guidance.

ii/ To what extent has the fund been vetted and approved by the home state regulator?

It is important to establish to what extent a particular fund is subject to vetting by an overseas regulatory authority. Many jurisdictions, including Jersey, operate a spectrum of fund products ranging from retail funds, which are subject to detailed authorisation and vetting procedures, through to "registered" or unregulated products which are subject to little or no regulatory oversight. Advisers should seek to understand which category a fund falls into by studying the prospectus or offering document and the relevant regulator's website and then calibrate their own due diligence accordingly.

iii/ Is the fund appropriate for the type of investor being targeted?

It is critical to establish which type of investor a given fund is permitted to market to and then consider this in the context of your client base. Retail investors may inadvertently become invested into funds which are inappropriate through the use of feeder funds, insurance wrappers and investment adviser certification. In the case of insurance bonds and similar type products which allow investments into a wide variety of funds, the bond provider may be relying on the investment adviser to perform the due diligence and to determine the suitability of a particular fund for the underlying investor. Reliance should not be placed purely on the fact that a particular fund is included within a list of eligible funds produced by the insurance product provider. In such cases, it is important to consider whether these arrangements offer any meaningful additional investor protection and whether the fund is appropriate for the client.

iv/ What corroborating evidence is available?

Most firms should already have an established policy for vetting a product for inclusion on their white list. Whilst not wishing to limit the scope of such due diligence, the Commission would highlight the increasing usefulness of internet searches and online investor forums as a means of locating independent research, investor comments and regulatory statements and sanctions in relation to funds and their promoters.



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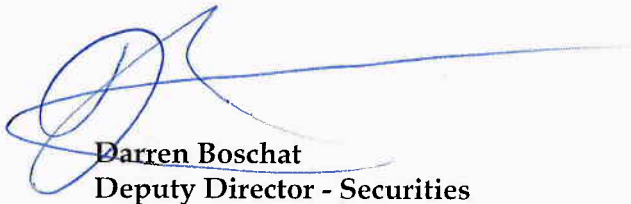
**5. Annual Registration Renewal**

The annual renewal date for investment business registrations is 1 May 2010. The 2010 Investment Business Annual Registration Fee Form can be located on the Investment Business section of the Commission's website, in the Guide to Applications and Fees section.

The form should be completed and submitted to the Commission, together with any supporting documentation and a cheque for the relevant fees, prior to 1 May 2010.

In closing, we hope that you have found this update helpful and would be happy to consider any comments or questions that you might have.

Yours faithfully,



**Darren Boschat**  
**Deputy Director - Securities**



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**Appendix A - The Investment Business team**

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<b>Senior Examiner -</b>	Gail Hesten	<b>Manager -</b>	Helen Wakefield
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<b>Manager -</b>	Eilish Baird (Starts May 2010)	<b>Trainee -</b>	Juliette Morris
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