JFSC

FEEDBACK ON 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 dis-apply the application of customer due diligence measures to secondary market trading in collective investment schemes

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CONSULTATION FEEDBACK

This paper reports on the responses received by the *Commission* on Consultation Paper No. 7 2013: Revision to the Money Laundering (Jersey) Order 2008.

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Glossary of terms

For the purposes of this paper, the following terms should be understood to have the meaning shown by this table. The terms and their meanings are intended only to aid clarity to the feedback paper: they are not formal definitions.

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
CDD	means customer due diligence
CIS	means a collective investment scheme
Commission	means the Jersey Financial Services Commission
Commission Law	means the Financial Services Commission (Jersey) Law 1998
Consultation Paper No. 7	means Consultation Paper No. 7 2013: Revision to the Money Laundering (Jersey) Order 2008
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
Guernsey	means the Bailiwick of Guernsey
Guernsey Handbook	means the Handbook for Financial Services Businesses on Countering Financial Crime and Terrorist Financing
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
Isle of Man Handbook	means the Isle of Man Anti-Money Laundering and Countering the Financing of Terrorism Handbook
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
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

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1 OVERVIEW

1.1 Background

1.1.1 In 2009, the *IMF* published a "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.

1.1.3 Accordingly, *Consultation Paper No. 7*:

1.1.3.1 considered recommendations that had yet to be addressed in respect of *FATF* Recommendations that apply to financial institutions and *DNFBPs*; and

1.1.3.2 in order to address these recommendations, proposed changes to the *Money Laundering Order* and the *Three Handbooks*.

1.1.4 The paper also considered 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 *CIS* which is effected through a secondary market.

1.1.5 *Consultation Paper No. 7* may be found on the *Commission's* website[1].

1.2 What is proposed and why?

1.2.1 *Consultation Paper No. 7* proposed a number of changes to existing provisions in the *Money Laundering Order* and *Three Handbooks* that allow a *relevant person* to: (i) place reliance on identification measures already applied by a third party; and (ii) apply simplified identification measures in certain limited cases.

1.2.2 Other changes were proposed to better enable the senior management of a *relevant person* to monitor *AML/CFT* risk. In particular:

1.2.2.1 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*.

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

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

[1] http://www.jerseyfsc.org/pdf/Consultation_Paper_No7_2013_ML_Order.pdf

1.2.3 There are also proposals to:

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

1.2.3.2 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*.

1.2.3.3 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.

1.2.3.4 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.

1.2.4 *Consultation Paper No. 7* also included proposals to bring the treatment of secondary market trades of shares or units in a Jersey *CIS* more into line with other jurisdictions, including *Guernsey*. 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 effected through a stockbroker (or similar) that applies identification measures in line with, or equivalent to, the *Money Laundering Order*.

1.3 Responses

1.3.1 A full list of respondents to *Consultation Paper No. 7* is provided in Appendix A to this feedback paper. In total, 18 responses were received, directly or through *Jersey Finance*.

1.3.2 The *Commission* is grateful to respondents for taking the time to consider and comment on the proposals contained in *Consultation Paper No. 7*. Each respondent has been sent a copy of this feedback paper.

1.3.3 This feedback paper follows the structure of *Consultation Paper No. 7*. Separate sections contain:

1.3.3.1 questions posed;

1.3.3.2 a summary of the responses received to those questions; and

1.3.3.3 the *Commission's* response.

1.3.4 All of the responses presented in this paper that involve an amendment to the *Money Laundering Order* must first be agreed by the Chief Minister.

1.3.5 Some respondents also made some more general points about Jersey's *AML/CFT* framework. Whilst not specifically addressed in responses in this paper, those points will be considered at a later point.

1.4 Next steps

1.4.1 Law drafting instructions have been delivered to the Law Draftsman in order to give effect to the changes that are proposed to the *Money Laundering Order*.

1.4.2 Consequential changes will also be made to the *Three Handbooks*.

2 RELIANCE ON THIRD PARTIES

2.1 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.

2.2 Summary of Responses

2.2.1 Thirteen responses were received to this question.

2.2.2 Four respondents thought that the proposals addressed the *IMF's* recommendations in an effective and proportionate way. However, they suggested:

2.2.2.1 a need for additional guidance to be provided on the periodic testing of assurances provided by third parties, basing the frequency and depth of such testing on risk; and

2.2.2.2 testing should be random and based on volume.

2.2.3 Another of the four looked for confirmation that agreement of terms of business would be a one-off exercise (which is, indeed the case, though such terms would need to be reviewed by both sides from time to time).

2.2.4 A fifth considered the proposals acceptable, so long as the effect of the changes would be to continue lower risk concessions for lawyers (set out in Section 5.10.5 of the *Handbook for the Legal Sector)*. Based on its experience, however, it suggested that third parties would not provide notice to a relevant party when they ceased to trade, terminated a relationship with a customer, or no longer wished to be relied on (as proposed in paragraph 5.8.3.3 of *Consultation Paper No. 7)*. Instead, it suggested that a *relevant person* that had placed reliance on a third party should be required to seek annual confirmation that it may continue to do so (for as long as reliance is placed on that third party).

2.2.5 A sixth agreed with the proposals but observed that one effect would be to prohibit a *relevant person* ("A") from placing reliance on a third party ("B"), where that third party had in turn relied on another party ("C") to have carried out identification measures. It thought that the effect of this would be overly onerous in certain circumstances and likely to result in duplicated measures being taken where there are multiple *relevant persons* providing services to the same customer. It was also concerned that a *relevant person* (A) could not place reliance on a third party (B), where B had placed reliance on another (C) in one limited aspect, but had otherwise performed identification measures itself.

2.2.6 As a result, this sixth respondent thought that A should be permitted to rely on B where B had, in turn, relied on C provided that: (i) B disclosed to A that it had relied on C; and (ii) C had agreed in writing to permit A to rely on the same assurances that it had provided to B (or had provided those assurances directly to Person A).

2.2.7 A seventh respondent highlighted some difficulty using current provisions, where it found some third parties reluctant to provide a copy of evidence of identity within five working days. It also asked for some guidance to be provided on: the application by managed entities of the requirement to periodically record an assessment of the risk of placing reliance on third parties; and testing of written assurances where a restriction is placed by a third party on the release of evidence of identity outside its home jurisdiction.

2.2.8 This seventh and an eighth respondent asked for Appendix C of the *AML/CFT Handbook* to be updated to reflect proposals for written assurances to be tested.

2.2.9 In addition, the eighth respondent suggested that it would be helpful to provide guidance on how a *relevant person* would test that a third party had appropriate policies and procedures in place covering identification measures. It suggested, for example, use of questionnaires, reviewing the third party's policies and procedures and sample file checking.

2.2.10 A ninth wished to have clarification about the proposals to prohibit reliance on a third party where to do so would present a higher risk of money laundering. It felt that reliance should be prohibited only when a *relevant person* considered a third party to present a higher risk. It considered that it should be possible to place reliance on a third party assessed as presenting a lower risk, notwithstanding that its customer had been assessed as presenting a higher risk. It also sought clarification as to whether reliance "chains" might be permitted where reliance had been placed on a group third party.

2.2.11 A tenth thought that, like in the *UK*, a *relevant person* should not be required to take steps to ensure that a third party relied upon would provide, upon request and without delay, identification data and evidence of identity if the third party is based in the *UK* or *EEA*. It thought that the *Commission's* proposals went further than required in other major jurisdictions such as the *UK* and could impose a disproportionate burden on *relevant persons*.

2.2.12 An eleventh respondent said that it would prefer the proposals to be closer to *Guernsey's* requirements, especially those in the *Guernsey Handbook* which do not permit a financial services business to place reliance on a third party that does not itself hold the underlying documentation to support the identity of its customers. Based on the *Guernsey Handbook* it thought that a clearer message could be given: that a *relevant person* could not place reliance on a third party (including a group third party) that does not itself hold underlying documentation (e.g. where there is a reliance "chain") to support the identity of its customer.

2.2.13 This eleventh respondent added that it would like to see further alignment with the *Guernsey Handbook* and the *Isle of Man Handbook*. It highlighted the significant cost implication of applying three sets of requirements across operations in the Crown Dependencies and thought that a common pan-island approach to managing *AML/CFT* risk would also eliminate any potential arbitrage between the Islands, whilst ensuring a consistent risk-based approach is applied to a common standard.

2.2.14 This eleventh respondent noted that it was proposed that the degree of reliance that could be placed on a third party would be based on the outcome of a risk assessment of that third party alone, and not necessarily take account of the risk assessment of the *relevant person's* customer. It thought that the extent to which reliance might be placed on a third party should depend on the outcome of both assessments.

2.2.15 A twelfth respondent welcomed proposals to distinguish more clearly between provisions permitting reliance to be placed on identification measures applied by third parties and those dealing with simplification. It also observed that, in practice, reliance was often placed on third parties to keep "identification" and "relationship" information up to date.

2.2.16 The same respondent also supported proposals to allow general terms of business to provide an on-going basis for reliance to be placed on a third party. It suggested that such terms of business could provide for "identification" and "relationship" information to be provided in a template form, taken to be covered by general terms of business. It also supported the proposal that a *relevant person* record its assessment of the risk of placing reliance on a third party but asked for guidance on what it should do when it considered that a third party had not complied with relevant articles in the *Money Laundering Order*.

2.2.17 This respondent also supported proposals for assurances to be periodically tested. However, it said that it was not clear whether full disclosure of "customer" and "relationship" information and testing of assurances would still be required in a case where a third party relied on to have applied identification measures under Article 16 of the *Money Laundering Order* was also a customer to which simplified identification measures might be applied under Article 17.

2.2.18 In circumstances where a third party has provided notice that it has terminated its relationship with a customer, the eighth respondent suggested that it should still be possible to place reliance on that third party to hold evidence of identity in line with continuing assurances.

2.2.19 This respondent also said that it was pleased that no material changes were proposed to group reliance provisions at this time, since it thought this to be an integral part of Jersey's business activity. It invited the *Commission* to consider "flexing" the requirement to periodically test that group third parties had appropriate policies and procedures in place – on the basis that the same policies and procedures would apply to the *relevant person*.

2.2.20 Finally, a point on reliance "chains" was made by this respondent in respect of those cases where it is proposed to allow trust and company services providers, lawyers and accountants to be treated as intermediaries under Article 17 of the *Money Laundering Order*. In such cases, the application of simplified identification measures will be conditional upon details of underlying customers and a copy of evidence of identity being provided at the request of a *relevant person*, and confirmation was requested that it would be possible for a trust and company services provider, lawyer or accountant to present information and assurances that it, in turn, had been provided with by a third party.

2.2.21 Another respondent thought that some of the proposals should be clarified. It thought that there should be clearer statements about assessing risk *before* placing reliance on a third party and the requirement to test those assurances, as it did not think that either were currently happening in practice, particularly in "one-off" situations (where reliance is placed on a third party just once). It suggested publishing clear guidance on the *Commission's* expectations on testing.

2.2.22 Whilst this respondent understood the rationale for the new requirement to obtain assurances from a third party that it would notify a *relevant person* when it ceased trading, terminated its relationship with a particular customer, etc, it thought that this would create an additional layer of administration and cause persons to avoid giving or receiving such assurances, leaving the *relevant person* with no choice but to undertake identification measures itself. It thought that this risk could be mitigated to some extent by allowing *relevant persons* to place greater reliance on independent data sources than is currently the case. Moreover, it thought that such a change might eliminate the need to place reliance on third parties in future.

2.3 Commission Response

2.3.1 Changes will be made in line with those proposed in section 5.8 of *Consultation Paper No. 7*. However, the provision requiring a third party to provide assurance concerning the notification of certain future events will be dropped because:

2.3.1.1 the requirement is not commonly found elsewhere;

2.3.1.2 it may place an additional administrative burden on third parties who might no longer consent to being relied upon; and

2.3.1.3 other measures (i.e. effective testing) should serve to highlight cases where evidence of identity is no longer held by a third party or may no longer be relied upon by a *relevant person*.

2.3.2 The *Commission* will also update the *Three Handbooks* to:

2.3.2.1 provide additional guidance on the testing of assurances; and

2.3.2.2 explain the application of reliance provisions to managed entities (where the performance of identification measures is outsourced to managers of those managed entities).

2.3.3 Appendix C of the *AML/CFT Handbook* will be revised.

2.3.4 In a case where a *relevant person* considers that it should not place reliance on a third party because it does not consider that the third party has complied with relevant articles in the *Money Laundering Order* (or measures that are consistent with those in the *FATF* Recommendations), it should share its findings with the *Commission*.

2.3.5 Current provisions allowing identity to be verified using independent data sources will be reviewed.

2.3.6 It is not proposed to amend the provision that will prohibit the use of "chains" of certificates to permit a third party – C - that is relied upon by another – B - to "endorse" its written assurance so that B might be relied upon by a *relevant person*. In practice, however, it will be possible (as suggested) for C to provide a written assurance directly to a *relevant person*, where B highlights that it has placed reliance on identification measures conducted by C.

2.3.7 Nor is it proposed to permit the continued use of "chains" where reliance is placed on a group third party, which in turn has placed reliance on another group third party to have applied identification measures. However, the requirement to periodically test that group third parties have appropriate policies and procedures in place is likely to be easily satisfied – on the basis that the same policies and procedures will apply to the *relevant person*.

2.3.8 As part of the national risk assessment that is referred to in section 1.3 of *Consultation Paper No. 7*, consideration will be given to whether it should be necessary to test that a third party that is based in Jersey will provide a copy of evidence of identity without delay. This is on the basis that it is an offence under Article 19(5) of the *Money Laundering Order* for such a third party to fail to provide a copy of evidence of identification - where it has provided a written assurance that it will do so under Article 16. In the absence of similar provisions in place outside Jersey, there is no clear basis for considering applying a similar approach to third parties in other jurisdictions, e.g. the *UK*.

2.3.9 It is suggested that the assessment of the risk of placing reliance on a third party to have carried out identification measures, and risk assessment of the customer for which it is intended to place reliance on another, may be considered to be two separate assessments. The latter assessment will establish how much "identification" and "relationship" information is to be requested, and how the identity of a customer should be verified. The former will determine the extent to which reliance can be placed on a third party to have "found out" that information, verified it, and to keep underlying evidence of identity, including in cases where the third party has applied enhanced identification measures.

2.3.10 This means that it will be possible to place reliance on a third party in a case where a *relevant person* has assessed its customer as presenting a higher risk. However, in practice, it is likely that a *relevant person's* "appetite" to place reliance on a third party will be less where it assesses its customer as presenting a higher risk, and so the extent to which it places reliance on the same third party may vary from customer to customer.

2.3.11 For the avoidance of doubt:

2.3.11.1 Article 16 of the *Money Laundering Order* will still apply to a third party (in that capacity), notwithstanding that the same person may also be a customer to which simplified identification measures may be applied under Article 17 of the *Money Laundering Order* (the effect of which may be to allow a relationship to be conducted on a "non-disclosed" basis).

2.3.11.2 A *relevant person* may apply simplified identification measures to a customer under Article 17 of the *Money Laundering Order*, notwithstanding that its customer may have relied upon a third party to have verified the identity of its underlying customers. This is not considered to be a reliance "chain".

3 SIMPLIFIED IDENTIFICATION MEASURES – INTERMEDIARIES

3.1 Question 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.

3.2 Summary of Responses

3.2.1 Eight responses were received to this question.

3.2.2 Five respondents thought that the proposals addressed the *IMF's* recommendations in an effective and proportionate way. However, one of those respondents thought that obligations should be clarified in order to ensure consistent application by *relevant persons*.

3.2.3 A sixth respondent welcomed the proposal to retain the possibility that simplified identification measures might be applied to pooled accounts, without upfront disclosure of underlying customers. It said that it was not clear, however, how it would periodically test that trust and company services providers, lawyers and accountants would provide details of underlying customers and a copy of evidence of identity, as it would hold no information on such customers. It was also concerned that it might be expected to test all customers in the pool which could be a significant exercise.

3.2.4 A seventh respondent suggested that, whilst it would be possible to test and call for evidence of identity when providing transactions arrangements e.g. general clients' accounts for a law firm or trust and company services provider, guidance would be needed on testing of so called "treasury" accounts, where aggregated deposits would be received from and repaid to trust companies.

3.2.5 The same respondent observed that, whilst there was no overriding requirement to exclude or disclose higher risk customers, simplified identification measures could not be applied by a *relevant person* in any case where the intermediary relationship is considered to present a higher risk of money laundering. It was concerned that such an assessment would necessarily be subjective and could be challenged, and requested guidance as to what would constitute a higher risk in the case of a relationship with an intermediary that was prudentially supervised and met identification and records management criteria.

3.2.6 The seventh respondent also suggested introducing a requirement for terms of business to be put in place between a *relevant person* and intermediary customer to manage the potential risks involved with the application of simplified identification measures. If not a mandatory requirement, it recommended referring to such terms of business in guidance.

3.2.7 An eighth respondent thought that the proposals went beyond *UK* requirements and risked imposing a disproportionate burden on *relevant persons*. In particular, there is no requirement in the *UK* to consider the risk of applying simplified identification measures to a customer that carries on appropriately regulated business.

3.3 Commission Response

3.3.1 Changes will be made in line with those proposed in *Consultation Paper No. 7*. In addition, guidance to support the application of simplified identification measures will also be reviewed in the *Three Handbooks*.

3.3.2 In cases where it is necessary to periodically test that a customer of a *relevant person*: finds out information about the third parties that it (the customer) acts for; keeps evidence of identity; and will provide information and evidence to the *relevant person* without delay, a *relevant person* should request information from its customer about the third parties for which it acts at a particular point in time. Whilst the frequency and extent of testing should take account of all relevant factors, it is not expected that it will be necessary to request information and evidence on all of the third parties for which the *relevant person's* customer acts.

3.3.3 The decision as to whether to apply simplified identification measures will be necessarily subjective. Guidance is already published at Part 3 of the *AML/CFT Handbook* that says that, where a *relevant person* can demonstrate that an appropriate risk-based approach has been implemented, that it has an effective compliance mechanism, but where it has made a misjudgement in good faith in a particular area, or where minor instances of non-compliance have arisen, the *Commission* will not consider such matters to be a serious failing.

3.3.4 *UK* provisions are to be reviewed as part of proposals to revise the *Money Laundering Directive*. In particular, the basis upon which simplified identification measures may be applied is likely to become more restricted.

3.4 Question 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?

3.5 Summary of Responses

3.5.1 Nine responses were received to this question.

3.5.2 Five respondents – including two law firms - thought that simplified identification measures should be applied more generally to lawyers. One of these respondents explicitly stated that the concession should apply also to customers of the law firm outside the scope of identification measures (i.e. in respect of activities that are not financial services business). Another thought that client confidentiality might prevent lawyers providing details of underlying customers and a copy of evidence of their identity.

3.5.3 A sixth respondent supported an extension of the current concession to other activities, taking account of the risk profile of the underlying clients of the lawyer as well as the nature of the service provided by the firm.

3.5.4 A seventh respondent – a law firm – suggested that a large firm will generate a substantial number of entries on a daily basis through its client account. It thought that the "lighter touch" suggested made very good sense in practical terms to the extent that the law firm would be required to hold *CDD* on the parties involved. However, it asked for more guidance to be provided in the *Handbook for the Legal Sector* in respect of the operation of escrow accounts. It said that identification measures should be applied not only to the lawyer's customer but also to any parties providing escrow funds.

3.5.5 An eighth respondent thought that the concession might be extended, but only to transactions through the client account relating to Jersey-resident customers.

3.5.6 A ninth respondent did not agree at all with the proposal, suggesting that the acquisition of real estate using law firms was known to be attractive to money launderers.

3.6 Commission Response

3.6.1 The existing concession that is available to client accounts operated by lawyers – but only in respect of certain Jersey property transactions - will be changed to provide that a *relevant person* that is carrying on deposit-taking business need not, if that person thinks fit, comply with the obligation under Article 13 of the *Money Laundering Order* to apply identification measures specified in Article 3(2)(b) to the third party (or parties) for which its customer is acting where:

3.6.1.1 its customer is a lawyer carrying on business that is described in Paragraph 1 of Part B of Schedule 2 of the *Proceeds of Crime Law*, and is registered to carry on such business under the *Supervisory Bodies Law* and the nature of the business relationship between the *relevant person* and customer is such that there is little risk of money laundering occurring; or

3.6.1.2 its customer is carrying on *equivalent business* to the category described in paragraph 3.6.1.1, where the nature of the business relationship between the *relevant person* and customer is such that there is little risk of money laundering occurring.

3.6.2 This change will bring Jersey closer to UK practice and the approach already applied in Jersey to a business relationship between a deposit-taker and trust and company services provider.

3.6.3 The *Commission* will provide additional guidance on the application of this concession in the *AML/CFT Handbook*.

3.6.4 In order to benefit from the existing concession applied to lawyers, the lawyer must provide a written assurance in line with Article 16 of the *Money Laundering Order*. Inter alia, that requires a lawyer to confirm that it will provide a copy of evidence of identity without delay at the *relevant person's* request. Proposals in section 10 of *Consultation Paper No. 7* are intended to facilitate the provision of records by a Jersey-based lawyer to a *relevant person* when requested to do so.

3.7 Question 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.

3.8 Summary of Responses

3.8.1 Six responses were received to this question.

3.8.2 Two respondents thought that services currently listed presented a lower risk and thought that none should be added.

3.8.3 Two other respondents thought that lower risk services provided to foundations should be added to the existing list of lower risk legal services (in addition to services provided to companies, trusts and partnerships). One of those respondents added that, assuming there is acceptance that it is not practical to cover every service that presents a lower risk, an overall provision might be added to allow an element of interpretation/risk-based approach in relation to work not specifically contained in the list.

3.8.4 However, a fifth respondent questioned whether drafting, reviewing or advising on documentation supporting the movement of assets could really be considered to present a lower risk.

3.8.5 A sixth made a more general point. It called for further guidance to be provided on which legal opinions would fall within the scope of Schedule 2 of the *Proceeds of Crime Law*. In practice, it thought that Jersey law firms tended to err on the side of caution and apply identification measures when providing any advice. This contrasted with practice elsewhere, e.g. the *UK* and caused difficulty in cases where a *UK* firm instructed a Jersey firm.

3.9 Commission Response

3.9.1 The existing concession will be changed to provide that a *relevant person* that is a lawyer or accountant carrying on business that is described in Paragraphs 1 or 2 (respectively) of Part B of Schedule 2 of the *Proceeds of Crime Law* need not, if that person thinks fit, comply with the obligation under Article 13 to apply the identification measures specified in Article 3(2)(b) to the third party (or parties) for which its customer is acting where:

3.9.1.1 Its customer is carrying on trust company business, and is registered to carry on such business under the Financial Services (Jersey) Law 1998; and the nature of the business relationship between the *relevant person* and customer is such that there is little risk of money laundering occurring.

3.9.1.2 Its customer is carrying on *equivalent business* to the category described in paragraph 3.9.1.1, where the nature of the business relationship between the *relevant person* and customer is such that there is little risk of money laundering occurring.

3.9.2 The *Commission* will update guidance on the application of this concession in the *Handbook for the Legal Sector*, making reference, as appropriate, to lower risk services provided to foundations.

3.10 Question 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.

3.11 Summary of Responses

3.11.1 Five responses were received to this question.

3.11.2 Four respondents thought that circumstances currently listed presented a lower risk and thought that none should be added.

3.11.3 A fifth thought that two changes were needed to paragraph 217 of the *AML/CFT Handbook*.

3.11.3.1 First, it should be clear that a bank might operate a pooled client account for a trust and company services provider which included funds that would subsequently be transferred to a designated account, so long as that designated account was to be held with the same bank.

3.11.3.2 Second, it questioned whether the provision that allows low cost banking facilities to be provided to customers of trust and company services providers was still appropriate, given that it permitted a form of "permanent" pooling, something not allowed in *Guernsey*.

3.12 Commission Response

3.12.1 In light of comments made by the fifth respondent, the *Commission* will consult further with *Jersey Finance* on the circumstances in which there would be little risk of a trust and company services provider's client account being used to launder the proceeds of crime.

4 SIMPLIFIED IDENTIFICATION MEASURES – OTHER CASES

4.1 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.

4.2 Summary of Responses

4.2.1 Seven responses were received to this question.

4.2.2 Five respondents thought that the proposals addressed the *IMF's* recommendations in an effective and proportionate way.

4.2.3 One respondent suggested removing the "source of funds" concession altogether. It considered it difficult to administer in practice and that it had little relevance in a sophisticated jurisdiction like Jersey.

4.2.4 However, a seventh asked for further information to be provided on the rationale for excluding corporates from the source of funds concession.

4.3 Commission Response

4.3.1 The main driver for the change is greater alignment with other British jurisdictions. Only the *UK* offers a similar concession and that is limited to customers who are individuals.

4.3.2 Changes will be made in line with those proposed in *Consultation Paper No. 7* so that, in particular, the source of funds concession will not apply to:

4.3.2.1 a *relevant person* that is a lawyer; or

4.3.2.2 a customer that is a legal person.

5 DELAY IN VERIFICATION OF IDENTITY

5.1 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.

5.2 Summary of Responses

5.2.1 Nine responses were received to this question.

5.2.2 Four respondents supported the proposals.

5.2.3 Whilst a fifth respondent understood the value in reporting cases (to senior management) where verification of identity has been exceptionally delayed, it queried the value added in expressing this figure "as a percentage of the total number of relationships established". It also suggested reporting the overall risk rating given to each customer, since it would provide a useful indication of the level of risk posed by the delay.

5.2.4 A sixth thought that there should be some flexibility in the period triggering the reference of a delay in verification to senior management, to allow reporting to tie in with existing periodic reporting.

5.2.5 A seventh respondent requested clarification of the term "bank account holder" used in paragraph 8.8.1.3 of *Consultation Paper No. 7* and wished to understand how the proposals would apply to an account holder that was acting as trustee of a trust.

5.2.6 This respondent also observed that it would typically rely upon identification measures applied by the trustee under provisions in Article 16 of the *Money Laundering Order*. It noted that it would not be feasible to monitor payments instigated by the trustee in order to confirm that the trustee had applied the necessary identification measures to those having a "beneficial interest" in the trust.

5.2.7 A similar point was made by an eighth respondent. Where it did not place reliance on Article 16 of the *Money Laundering Order*, it said that it would not be able to check payments against information or evidence of identity held on trust beneficiaries, and that it was unreasonable to expect a bank to do so.

5.2.8 Another respondent thought that there would be cases when verification of identity might be delayed within the course of the provision of legal services. It also thought that proposals to amend Article 11(3)(f) were unclear and that the requirement for information to be provided to senior management in order that it might be satisfied that risk was properly managed could be costly and take time to instigate (perhaps warranting a transitional period).

5.3 Commission Response

5.3.1 Changes will be made in line with those proposed in *Consultation Paper No. 7*, such that: (i) provision will be made for specific cases where verification of identity may be delayed; and (ii) information will be provided to senior management 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.

5.3.2 However, in light of the above comments:

5.3.2.1 Pending further analysis, Article 13(4)(b) of the *Money Laundering Order* will not be amended at this time to set out the circumstances when there will be little risk of money laundering in the case of a *relevant person* that is carrying on deposit-taking business. This is because it is not clear that the circumstances listed in *Consultation Paper No. 7* would be appropriate in the case of a relationship in respect of a trust.

5.3.2.2 Proposed guidance on periodic reporting of delays in verifying identity will be reviewed.

5.3.3 It is not intended to require a *relevant person* that is a bank to monitor payments instigated by a trustee in order to confirm that the bank or the trustee has applied the necessary identification measures to those having a "beneficial interest" in the trust.

5.3.4 Instead, the intention behind paragraph 8.8.1.2 of *Consultation Paper No. 7* is to allow a *relevant person* that establishes a relationship with a trustee, or *relevant person* that becomes the trustee of a trust, to delay the verification of any person that has a vested interest in a trust at that time to be delayed until the time of distribution of trust property or income (in line with existing provisions).

5.3.5 Since Article 11(3)(f) will not prescribe the form of reporting to senior management, the *Commission* does not consider that there is a need to introduce transitional arrangements. Further, it does not believe that the cost of reporting information to management will be significant.

6 EXISTING CUSTOMERS

6.1 Question 9.9.1 (general)

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.

6.2 Summary of Responses

6.2.1 Eight responses were received to this question.

6.2.2 One respondent was surprised that remedial work had still to be carried out, and thought that Jersey had fallen behind practice in the *UK*. It thought it essential to set a deadline.

6.2.3 Four other respondents thought that the proposals addressed the *IMF's* recommendations in an effective and proportionate way.

6.2.4 However, a sixth – a bank - said that the proposals were wide-ranging and needed very careful consideration. It said that the proposals would present a significant challenge to *relevant persons* with large numbers of customers and suggested that a consistent set of standards for *existing customers* should be applied throughout the Crown Dependencies and the *UK*. Given historical response rates, it added that the challenges of dealing with non-respondents should not be underestimated.

6.2.5 Whilst the respondent recognised that the proposals did not also extend to verification of information, it suggested that this might itself present some operational challenges and observed that verification provisions continued to be "very open-ended". It advanced a view that there was a greater risk in holding more information that had not been verified. As a way forward, it suggested detailed discussions with the Jersey Bankers' Association to agree an approach that would create a level playing field for larger banks.

6.2.6 Similarly, a seventh respondent – also a bank – highlighted a number of difficulties with the proposals, not least that it could not leverage off broader group programmes (on the basis that there is no similar remediation requirement in place in the *UK*). It thought that a very significant number of customers would be affected by the proposals and that the exercise was likely to present significant logistical challenges and carry significant costs. It was also concerned that the *FATF* requirement on *existing customers* might change in the future.

6.2.7 Finally, this respondent did not believe that the benefits of the proposals had been properly articulated or that a bespoke remediation plan with the *Commission* could address its concerns. Accordingly, it suggested engaging with affected banks through the Jersey Bankers' Association.

6.2.8 Another respondent thought that, in line with proposals in section 14 of *Consultation Paper No. 7*, a *relevant person* that is a *CIS* should not be required to remediate its identification measures where ownership of shares held in that scheme had changed as a result of a transaction on a secondary market.

6.3 Commission Response

6.3.1 The *Commission* does not underestimate the scale of the remediation task for some *relevant persons*. Nevertheless, the suggestion in one instance that there may still be a very significant number of customers yet to be remediated highlights a very clear need to bring some conclusion or additional focus to this area, and benefit in following such an approach.

6.3.2 Whilst the *Commission* accepts that there will be risks in holding complete and up-to-date information that has still to be verified, it does not accept that these risks are greater than holding incomplete and out-of-date information on customers (which may be the effect of existing remediation arrangements).

6.3.3 The *Commission* is unaware of any *FATF* proposals to change its requirements for *existing customers*.

6.3.4 On this basis, changes will be made in line with those proposed in *Consultation Paper No. 7* so that, in particular, by 31 December 2014 every *relevant person* will either:

6.3.4.1 hold information for every continuing business relationship that takes into account a *relevant person's* assessment of the risk of that relationship (as in *Guernsey*), or be taking action under Article 14(7) of the *Money Laundering Order*; or

6.3.4.2 have agreed a bespoke remediation plan with the *Commission*.

6.3.5 Notwithstanding this, the *Commission* recognises that it will be useful to consult with regulators in the Isle of Man and the *UK* on remediation arrangements, and, where such plans relate to Jersey-registered deposit-takers, to engage with the Jersey Bankers' Association. The *Commission* acknowledges that such plans may need to set medium to longer-term completion dates.

6.3.6 Where a *relevant person* that is a *CIS* is not required to apply identification measures (in line with proposals in section 14 of *Consultation Paper No. 7*), it will follow that there is no need to remediate where information or evidence is not held.

6.4 Question 9.9.2 (general)

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?

6.5 Summary of Responses

6.5.1 Eight responses were received to this question.

6.5.2 Three respondents thought that the cut-off date proposed was appropriate. Two of the three suggested that it should not apply to customer relationships established within a certain period of the cut-off date. The other thought that the date proposed was appropriate for large *relevant persons*, given provision for the agreement of bespoke remediation plans. It also suggested permitting greater reliance to be placed on credible independent data sources to facilitate the remediation of *existing customers*.

6.5.3 Another respondent thought it better to set a deadline of 30 June 2014 on the basis that *relevant persons* had already had sufficient time to remediate.

6.5.4 A fifth thought that the deadline was generous, given the length of time that the requirement to remediate has been in place.

6.5.5 However, a sixth thought that the cut-off date should be postponed until 31 December 2015.

6.5.6 A seventh respondent – a bank - agreed that it should be possible to agree a bespoke remediation plan with the *Commission* by 31 December 2014. However, it suggested that the approach proposed was different to *Guernsey* and the Isle of Man, and sought assurance that standards were not likely to be raised again in the next three to five years, necessitating a further exercise.

6.5.7 Another (which thought it necessary to first have practical and risk-based guidance on remediation before agreeing a programme with the *Commission*) thought that a longer time frame was needed, given the current focus on remediation through trigger events.

6.6 Commission Response

6.6.1 As outlined above, by 31 December 2014 every *relevant person* will be required to:

6.6.1.1 hold information for every continuing business relationship that takes into account a *relevant person's* assessment of the risk of that relationship (as in *Guernsey*), or be taking action under Article 14(7) of the *Money Laundering Order*; or

6.6.1.2 have agreed a bespoke remediation plan with the *Commission*.

6.6.2 Identification measures required under the revised *FATF* Recommendations are not significantly different to those set out in Articles 3 and 13 of the *Money Laundering Order*. On this basis, it is considered that identification measures are unlikely to change significantly in Jersey in the next three to five years, save in any areas that may be identified in the national risk assessment referred to in section 1.3 of *Consultation Paper No. 7*.

6.6.3 Current provisions allowing identity to be verified using independent data sources will be reviewed.

6.7 Questions 9.9.3 and 9.9.4 (general)

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?**

If so, what dates do you suggest?

6.8 Summary of Responses

6.8.1 Seven responses were received to these questions.

6.8.2 Two respondents thought that cut-off dates should be set but did not specify any dates. Another suggested applying an approach consistent with earlier proposals (by 31 December 2014).

6.8.3 A fourth respondent thought that all remediation work should be completed by 30 June 2014.

6.8.4 A fifth thought it important to bring written assurances up to date, given the emphasis proposed on testing. This respondent acknowledged, however, that this might prove difficult where reliance had been placed over a longer period of time, where further guidance might be needed. It suggested that all remediation work should be completed by 31 December 2014, though it should be possible to agree alternative plans with the *Commission*.

6.8.5 A sixth, however, cautioned against setting a one-off industry wide cut-off date. It though that *relevant persons* would likely face various challenges in obtaining missing documentation, especially where Jersey requirements were higher than in other jurisdictions, such as the *UK*. It thought that setting a fixed cut-off date could lead to a number of *relevant persons* exiting or blocking a large number of accounts 'en masse' to meet the deadline imposed. This could have a detrimental effect, potentially leading to unnecessary criticism from national media and painting Jersey's banking system in a negative light.

6.8.6 This sixth respondent supported allowing each *relevant person* to agree a bespoke remediation plan with the *Commission* which should include dealing with customers where contact had been lost and which failed to respond. It thought this a more measured approach, addressing risks whilst minimising complaints and negative comment.

6.8.7 Another thought that, in line with proposals in section 14 of *Consultation Paper No. 7*, a *relevant person* that is a *CIS* should not be required to remediate its identification measures where ownership of shares held in that scheme had changed as a result of a transaction on a secondary market.

6.9 Commission Response

6.9.1 Ahead of changes elsewhere in the British Isles, it is not proposed to set cut-off dates for the collection of evidence of identity (or written assurances) for lower and standard risk customers (though, in line with proposals in *Consultation Paper No. 7*, assurances should be collected as soon as reasonably practicable).

6.10 Question 9.9.5 (self-certification)

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.

6.11 Summary of Responses

6.11.1 Five responses were received to this question.

6.11.2 Three respondents thought that this proposal was reasonable. Another said that the number of cases would, in their opinion, be negligible.

6.11.3 Another thought that if verification of a customer's identity had already been carried out in accordance with *AML/CFT* requirements, there should be no need to re-verify that customer's identity.

6.12 Commission Response

6.12.1 Changes will be made in line with those proposed in *Consultation Paper No. 7*.

6.12.2 On this basis, 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.

7 DISCLOSURE OF RECORDS

7.1 Question 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.

7.2 Summary of Responses

7.2.1 Six responses were received to this question.

7.2.2 Four thought that the proposals did address the *IMF's* recommendation on the disclosure of information in an effective and proportionate way, one adding that the proposals reinforced assurances provided by third parties.

7.2.3 A fifth agreed in principle but was concerned that flows of business may be inhibited if disclosure provisions were too prescriptive.

7.2.4 One respondent thought that both sets of proposals would create difficulties, not least because it had not seen provision made for such disclosure in other jurisdictions.

7.3 Commission Response

7.3.1 See section 7.6 below.

7.4 Question 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?**

7.5 Summary of Responses

7.5.1 Six responses were received to this question.

7.5.2 Four respondents favoured option 1.

7.5.3 One of these four suggested the addition of a safeguard: that the person to whom the disclosure is made should be subject to equivalent duties of confidentiality and protection of personal data. Another of the four thought that it would be useful to clarify that the records to be disclosed should be those collected under Articles 13 (*CDD* measures) and 15 (enhanced *CDD* measures) of the *Money Laundering Order*, and their release subject to "tipping off" provisions.

7.5.4 Two favoured option 2.

7.6 Commission Response

7.6.1 Changes will be made in line with option 1. This will allow (but not require) information found out and evidence obtained under Articles 13 (*CDD* measures) and 15 (enhanced *CDD* measures) of the *Money Laundering Order* to be disclosed in certain circumstances.

7.6.2 Discussions will continue on the possibility of implementing wider "gateways" in the longer term (option 2), allowing *relevant persons* to share information on common customers, in any case where to do so would assist in countering money laundering or terrorist financing.

8 INDEPENDENT AUDIT FUNCTION

8.1 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.

8.2 Summary of Responses

8.2.1 Twelve responses were received to this question.

8.2.2 Two respondents thought that the proposals addressed the *IMF's* recommendation in an effective and proportionate way.

8.2.3 One of those, a small business, thought its independent audit function would be its *MLCO*, supported by a review conducted by its external auditor.

8.2.4 A third respondent did not object to the principle that there should be an independent audit function, but suggested that it might be better to say that the function should not be undertaken by the *relevant person's MLCO*.

8.2.5 A fourth respondent agreed that the function should be independent of the day-to-day activities of the *relevant person* but felt that the term "audit" was too narrow. It suggested referring to an "independent oversight or supervisory function" allowing a *relevant person* to assess whether or not the *MLCO* is sufficiently independent to carry out this function.

8.2.6 A fifth respondent thought that few *relevant persons* would currently employ their own internal audit function and proposals would raise costs for many of them. Instead, it suggested placing reliance on work done by external auditors, which test *AML/CFT* policies and procedures and controls under regulatory legislation. For example, Article 5 of the Financial Services (Trust Company and Investment Business (Accounts, Audits and Reports)) (Jersey) Order 2007 requires a registered person to make a declaration that it "has complied with the requirements of all relevant legislation and guidance to counter money laundering and the financing of terrorism". Article 8 of that Order also requires the auditor to prepare "a report in respect of the declaration provided to the auditor under Article 7 by a registered person".

8.2.7 As a result, this respondent suggested that the testing of compliance with *AML/CFT* policies and procedures by an external audit function as part of an annual audit be considered to be an independent audit.

8.2.8 Two others disagreed that there should be a legal requirement for a *relevant person* to maintain an adequately resourced and independent audit function on the basis of the cost of such a requirement and made similar points about reliance on external audits. Both observed that external (and independent) audits of their financial statements included a detailed review of internal audits conducted by their compliance teams and that material issues would be reported in the directors' declaration submitted annually to the *Commission*.

8.2.9 However, an eighth respondent – an accountant - did not consider that it would be appropriate to use external audit to fulfil the "independent audit function" because this would incur a huge amount of extra costs and it would be necessary to devise some form of common standard that auditors would need to follow. Instead, it thought that a *relevant person's* compliance function should be fulfilling this role - acting independently of "day-to-day activities".

8.2.10 Another thought that the approach in the *UK* and other British jurisdictions should be followed so that there would be no requirement to maintain an adequately resourced and independent audit function. It felt that the proposal would impose a disproportionate burden and was inflexible.

8.2.11 A tenth respondent thought that it should be sufficient for consideration to be given for the need for an independent audit function (as in *Guernsey*). It thought that the key reference point for this exercise should be the *relevant person's* own business risk assessment, which if properly completed, ought to give consideration to all relevant matters and be the basis for the design of a registered person's whole *AML/CFT* control regime, including whether an independent audit function is necessary. It suggesting adding a requirement to the *AML/CFT Handbook* that a *relevant person's* formal *AML/CFT* strategy address the need for an independent audit function.

8.2.12 An eleventh respondent questioned whether the remit of separate audit functions in some larger businesses would extend to oversight of compliance with *AML/CFT* policies and procedures, on the basis that this work is typically undertaken by the *MLCO* or compliance function. If so, proposals for an independent audit function could have an effect on costs even within larger *relevant persons*.

8.2.13 One other respondent thought that the proposals would place *relevant persons* in Jersey at a disadvantage due to cost implications (not suffered elsewhere).

8.3 Commission Response

8.3.1 Rather than amend Article 11(11) of the *Money Laundering Order* to provide that testing of compliance with *AML/CFT* policies and procedures be carried out by an independent audit function, this Article will be amended instead to require that testing has regard to the risk of money laundering and terrorist financing and size of the *relevant person* (i.e. a *relevant person's* business risk assessment).

8.3.2 This is because there is no requirement for there to be an independent audit function elsewhere in the British Isles – something that may involve significant additional costs. Further work is needed in this area.

8.3.3 Consequential amendments will also be made to the *Three Handbooks*.

8.3.4 Paragraph 27 of Section 2 of the *AML/CFT Handbook* will be updated as follows:

"In maintaining the required systems and controls, a relevant person must check that the systems and controls are implemented and operating effectively. The type and extent of measures to be taken must be appropriate having regard to the *relevant person's* business risk assessment. In particular, a *relevant person* must consider [like in *Guernsey*] whether it is appropriate to maintain an audit function that is independent of its compliance function and day-to-day activities - in order to check that systems and controls are operating effectively."

8.3.5 An additional paragraph will be added to Section 2.4.2 of the *AML/CFT Handbook*:

"Dependent upon the Board's business risk assessment, such a report may be prepared by the *MLCO*, compliance function or internal audit function."

8.4 Question 11.9.2

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

8.5 Summary of Responses

8.5.1 Five responses were received to this question.

8.5.2 Factors suggested included:

8.5.2.1 Nature of business, services and products offered and jurisdictions in which services are offered.

8.5.2.2 Number of employees.

8.5.2.3 Number of suspicious activity reports submitted.

8.5.2.4 Number of customers and customer base.

8.5.2.5 Number of transactions.

8.5.2.6 Number of business introducers.

8.5.3 One respondent thought that, in the case of a *relevant person* that is a *CIS*, gross assets should not be a relevant factor.

8.6 Commission Response

8.6.1 In line with paragraphs 8.3.1 and 8.3.3 of this paper, a *relevant person's* business risk assessment under Section 2.3.1 of the *AML/CFT Handbook* (and equivalent sections) will be relevant to determining the type and extent of measures to be taken to test compliance with *AML/CFT* policies and procedures.

9 APPLICATION OF GROUP POLICIES AND PROCEDURES

9.1 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.

9.2 Summary of Responses

9.2.1 Five responses were received to this question.

9.2.2 Four respondents thought that the proposals addressed the *IMF's* recommendation in an effective and proportionate way.

9.2.3 However, one of those respondents was concerned that the effect of *AML/CFT* requirements in Jersey was that branches and subsidiaries of larger banks in the Island were often obliged to apply stricter policies and procedures than those adopted by parent companies and said that this had an effect on cost and the commercial viability of banking some Jersey-resident customers. It suggested giving consideration to allowing parent company policies and procedures (and, therefore, presumably home-country legislation) to apply to Jersey-resident customers – where the parent is overseen by a regulator in an equivalent jurisdiction.

9.2.4 A fifth – a law firm - asked whether the requirement for subsidiaries to maintain policies and procedures that are consistent with those applied by the *relevant person* would extend only to Jersey subsidiaries. It felt that the application of its Jersey policies and procedures to subsidiaries outside the Island would have potentially serious consequences in relation to its competitiveness outside Jersey.

9.3 Commission Response

9.3.1 Changes will be made in line with those proposed in *Consultation Paper No. 7*.

9.3.2 Article 11(1) of the *Money Laundering Order* will be amended so that a *relevant person* must also maintain appropriate policies and procedures in respect of any financial services business carried on by a subsidiary (in Jersey or elsewhere) that are consistent with those applied by the *relevant person* in respect of that person's financial services business.

9.3.3 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 do not require *DNFBPs* to apply measures, or policies and procedures to group entities.

10 TECHNOLOGICAL DEVELOPMENTS

10.1 Question 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.

10.2 Summary of Responses

10.2.1 Seven responses were received to this question.

10.2.2 Two respondents thought that the proposals addressed the *IMF's* recommendation in an effective and proportionate way.

10.2.3 A third respondent asked for consideration to be given to allowing branches and subsidiaries operating in Jersey to adopt the product and technological developments of their parent company, where the parent is overseen by a regulator in an equivalent jurisdiction.

10.2.4 A fourth broadly supported the changes and felt that the identification and assessment of risk should be driven by a *relevant person's* business risk assessment. It too asked for consideration to be given to group involvement in product and technological developments, suggesting that training might be delivered at functional rather than jurisdictional level.

10.2.5 This respondent also questioned whether there would be a need for training provided to those involved in product and service development to be bespoke and requested updated guidance on who would be considered to be a "relevant employee" under the *Money Laundering Order*.

10.2.6 A fifth respondent made similar points to the fourth. It remarked that it may be difficult to impose and source bespoke training for employees responsible for developing new products and services, delivery mechanisms and technology – ahead of the introduction of similar requirements elsewhere. This respondent also commented that its risk function was already an integral part of the product decision-making and review process. On this basis, it suggested requiring individuals with relevant *AML/CFT* experience to be engaged in product and technological development.

10.2.7 A sixth respondent highlighted a need for attention to be given to financial crime more generally, including fraud.

10.2.8 Another asked that thought be given to how training requirements would apply to a managed entity (which does not have employees).

10.3 Commission Response

10.3.1 Changes will be made in line with those proposed in *Consultation Paper No. 7*.

10.3.2 In particular, Article 11(3)(b) of the *Money Laundering Order* will be amended to require policies and procedures to be in place for identifying and assessing risk 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.

10.3.3 In addition, guidance in the *AML/CFT Handbook* will consider how a *relevant person* might identify and assess the risk that may arise in relation to new products, services, business practices and technology where:

10.3.3.1 these are developed at group level or by outside developers (often in another jurisdiction); or

10.3.3.2 it is a managed entity and uses or adapts products, services, business practices and technology of its manager.

10.3.4 Consideration will also be given to whether bespoke training is required in respect of development and technological activities, and the definition of "relevant employee" will be reviewed.

10.4 Question 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.

10.5 Summary of Responses

10.5.1 Four responses were received to this question.

10.5.2 One did not think that technology was being used extensively outside online banking. Another confirmed that technology was not used in the legal sector for client engagement.

10.5.3 Another respondent pointed to the use of virtual currencies, though not specifically in Jersey.

10.5.4 A fourth thought that it would be helpful to have guidance on money laundering and terrorist financing risks of new and developing technologies, whether offered in Jersey or not.

10.6 Commission Response

10.6.1 Guidance to be published by the *Commission* on risks presented by technological developments will focus on pre-paid cards. The need for other guidance will be kept under review.

11 APPLICATION OF IDENTIFICATION MEASURES TO SECONDARY MARKET TRADES

11.1 Question 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.

11.2 Summary of Responses

11.2.1 Four responses were received to this question. All agreed with the proposal.

11.2.2 One respondent provided a number of reasons, including:

11.2.2.1 There is no additional risk involved in comparison with listed trading companies, and listed trading companies are not covered by the money laundering requirements.

11.2.2.2 The *CIS* has no responsibility for money entering the system.

11.2.2.3 It is very difficult (if not impossible) for a listed *CIS* to monitor secondary market trading from a money laundering perspective.

11.2.2.4 Jersey is out of line with, inter alia, the *UK*, rest of the *EU*, Hong Kong and Singapore.

11.2.2.5 Jersey's current approach is not justified by the *FATF* Recommendations.

11.3 Commission Response

11.3.1 Changes will be made in line with those proposed in *Consultation Paper No. 7.*

11.3.2 In summary, a *relevant person* that is a *CIS* will not be required to apply identification measures under the *Money Laundering Order* in a case where it does not create shares or units, provided that a person carrying on investment business in Jersey or *equivalent business* has already applied identification measures in respect of that particular transaction.

11.3.3 For the avoidance of doubt, other requirements that may apply to a *CIS* to identify investors outside AML/CFT legislation will continue unaffected.

11.4 Question 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?

11.5 Summary of Responses

11.5.1 Five responses were received to this question.

11.5.2 One respondent was not clear what type of "on-going monitoring" was proposed, and disagreed with the general principle. It felt that, if a *CIS* was not required to apply identification measures to an investor, it should not be expected to subsequently monitor that investor on an on-going basis. It felt that such a requirement would be disproportionate and have no benefit. It noted that on-going monitoring should be carried on at broker level.

11.5.3 Two other respondents thought that, in practice, it was not realistic to expect a *relevant person* to apply on-going measures under Article 3(3)(b) of the *Money Laundering Order* (which requires that documents, data or information obtained under identification measures are kept up to date) or more generally, when it had not collected documents, data or information in the first place. One of the two felt that the same issues applied to on-going monitoring as applied to identification measures.

11.5.4 Two thought that a *CIS* should be required to continue to perform on-going monitoring, one suggesting that there be a requirement to scrutinise transactions in line with Article 3(3)(a) of the *Money Laundering Order*.

11.6 Commission Response

11.6.1 A *relevant person* that is a *CIS* will not be required to apply on-going monitoring 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).

11.6.2 This is because it is not clear how such an obligation could apply in a case where a relevant person had not been required to collect information on an investor in the first place.

APPENDIX A

List of respondents to Consultation Paper No. 7

- Association of Investment Companies
- Barclays Wealth
- Carey Olsen
- Collas Crill
- Hawksford
- HSBC Jersey
- *Jersey Finance* (responding on behalf of a medium sized asset manager, two small insurance businesses, one large trust company, one large law firm and one large bank)
- Kleinwort Benson (Jersey) Trustees Limited
- KPMG Channel Islands Limited
- LGL Trustees Limited
- Ogier
- State Street Global Services
- Thinking about Crime Limited