



JFSC

# **FEEDBACK ON POSITION PAPER NO. 1 2011**

# **REVIEW OF FINANCIAL ADVICE**

ISSUED 7 NOVEMBER 2012

# POSITION PAPER FEEDBACK

This paper reports on the responses received by the Jersey Financial Services Commission (the "Commission") on Position Paper No.1 2011 on the Review of Financial Advice.

Further enquiries concerning the feedback may be directed to:

Wyn Hughes  
**Senior Manager - Funds Policy**  
Jersey Financial Services Commission  
PO Box 267  
14-18 Castle Street  
St Helier  
Jersey  
JE4 8TP

Telephone: +44 (0) 1534 822189  
Email: [w.hughes@jerseyfsc.org](mailto:w.hughes@jerseyfsc.org)

# Glossary

APCIMS	means the Association of Private Client Investment Managers and Stockbrokers
the Commission	means the Jersey Financial Services Commission
the Commission Law	means the Financial Services Commission (Jersey) Law 1998, as amended
CPD	means Continuing Professional Development
the FSA	means the United Kingdom's Financial Services Authority
the FS(J)L	means the Financial Services (Jersey) Law 1998, as amended
the IB Codes	means the Codes of Practice for Investment Business
Investment Employee	means an individual that meets the definition of an investment employee, but advises only, as provided in the Investment Business Fees Notice published on the Commission Website: <a href="http://www.jerseyfsc.org/the_commission/fees_notices/index.asp">http://www.jerseyfsc.org/the_commission/fees_notices/index.asp</a>
JFA	means the Jersey Funds Association
JCOA	means the Jersey Compliance Officer' Association
Position Paper	the Commission's position paper no 1 of August 2011
Professional Client	means a client within the definition set out in paragraph 2.2.41 of this paper
QCF	means Qualifications and Credit Framework
RDR	means the FSA Retail Distribution Review
RFA	means the Review of Financial Advice
SPS	means a Statement of Professional Standing

# Contents

Glossary.....	3
Contents .....	4
<b>1 OVERVIEW .....</b>	<b>5</b>
1.1 Background .....	5
1.2 Feedback on the proposals contained in the Position Paper .....	5
1.3 Summary of main issues .....	5
<b>2 SUMMARY OF RESPONSES .....</b>	<b>7</b>
2.1 Structure of this section .....	7
2.2 Questions raised in the Position Paper.....	7
<b>3 NEXT STEPS .....</b>	<b>19</b>
3.1 Progressing Introduction of the New Regime.....	19
<b>APPENDIX A .....</b>	<b>20</b>
<b>APPENDIX B.....</b>	<b>21</b>

# 1 OVERVIEW

## 1.1 Background

- 1.1.1 The Commission published Position Paper No. 1 of 2011 in August 2011. It set out the Commission's position on matters relating to the giving of investment advice. The period during which responses were invited ended on 31 October 2011.
- 1.1.2 The purpose of this paper is to provide feedback on the responses received and to set out the policy conclusions which the Commission has arrived at in the light of those responses.

## 1.2 Feedback on the proposals contained in the Position Paper

- 1.2.1 The Commission received comments from the persons listed in Appendix A.
- 1.2.2 The Commission is grateful to all respondents for taking the time to consider and comment on the proposals.

## 1.3 Summary of main issues

- 1.3.1 The main issues identified in connection with the proposals in relation to the RFA are:
  - 1.3.1.1 the qualifications of individuals who are to be permitted to give financial advice generally;
  - 1.3.1.2 the method of remuneration for giving financial advice; and
  - 1.3.1.3 different requirements in relation to the qualification of advisers and the method of remuneration in relation to their services where the advice is given to Professional Clients, or clients who opt to be treated as Professional Clients, as opposed to retail clients.
- 1.3.2 The Commission has responded to the above issues as follows:
  - 1.3.2.1 For the reasons explained in more detail in paragraph 2.2.39 the Commission has agreed to draw a distinction between Professional Clients (as defined in paragraph 2.2.41 of this paper) and non-Professional Clients, also called retail clients. This distinction will have a bearing on both the qualification and remuneration requirements set out in the Position Paper.
  - 1.3.2.2 Subject to point 1.3.2.4 below, the Commission's position is that advisers are, from 1 January 2014, required to hold an appropriate qualification at QCF level 4 or above in order to be able to give financial advice in or from within Jersey to retail clients (i.e non-Professional Clients). The

Commission, and the majority of respondents, did not favour the 'grandfathering' of advisers by reason only of the length of time for which they had worked as financial advisers.

1.3.2.3 Subject to point 1.3.2.4 below, remuneration by way of commission will not be permitted in respect of advice given after 31 December 2013.

1.3.2.4 Even after 31 December 2013, it will not be necessary for an adviser advising Professional Clients, or clients who opt to be treated as Professional Clients, to hold investment qualifications at QCF level 4 or above. Furthermore, employers of advisers advising clients within this definition may continue to be remunerated by way of commission for advice given after 31 December 2013. The Commission is prepared to consider representations as to the achievability of this timescale for existing clients. However, the Commission would expect financial advisers to apply the categorisation for new clients taken on after 31 December 2013.

1.3.3 Overall the revised position will be:

1.3.3.1 the new rules (effectively a prohibition) on commission payments will apply only to non-Professional or retail clients resident in Jersey; and

1.3.3.2 the new requirements for qualifications will apply to advice given to non-Professional or retail clients wherever resident.

## 2 SUMMARY OF RESPONSES

### 2.1 Structure of this section

- 2.1.1 The questions posed in the Position Paper and a summary of the responses received to each one are set out in section 2.2 below.
- 2.1.2 In order for the questions to be considered in context, where appropriate there is a brief statement, after the question, explaining the nature of the proposed requirement.
- 2.1.3 The Commission's policy decision in the light of the responses received is set out in the shaded section after each question or comment.

### 2.2 Questions raised in the Position Paper

#### Question 1.4.4

**Do you consider the proposed members of the working party adequately capture all the relevant stakeholders. If not, please identify any stakeholders that you feel are not represented?**

- 2.2.1 The working party was to be formed from members of relevant key professional bodies such as the Personal Finance Society, the Jersey Bankers' Association, the Chartered Institute for Securities and Investment, Jersey Finance Limited and direct Industry representatives together with representatives from the Commission.
- 2.2.2 Eighteen responses were received. It was suggested that JFA, JCOA, APCIMS, professional training providers, stockbrokers and consumer groups be invited to join the working party. The Position Paper was also sent to the Jersey Consumer Council and to the Citizens' Advice Bureau but no responses were received from either.

**Commission response:**

- 2.2.3 As will be seen from Appendices A and B, this paper is being sent to various bodies, including the Jersey branch of the Chartered Institute of Securities and Investment, the Jersey branch of the Personal Finance Society, JFA, JCOA, and a number of training providers. They and, where relevant, their members are invited to contact the Commission if they wish to be considered for membership of the working party or the sub-parties (dealing with professional standards, and remuneration and client classification) which it has been proposed be established. In practical terms, involvement by members of the working party should not be vastly time-consuming. It is the Commission's intention that all changes be effective from 1 January 2014 and will be publicised in final form adequately in advance of that date in order to enable any deficiencies to be remedied and any required changes to be made. The Commission is, however, prepared to consider representations as to the achievability of this timescale for existing clients; please see further the response to Question 1.5.3.

## Question 1.5.3

**Do you consider the timeframe for introduction of the amendments resulting from the RFA is reasonable? If not, please provide further detail, including an indication of the timeframe that you would consider reasonable.**

2.2.4 The timeframe is that the changes, when finalised, will take effect from 1 January 2014.

2.2.5 Eighteen responses were received. The majority of respondents considered the proposed timeframe to be reasonable but some concerns were expressed as to the practicability of obtaining approved qualifications and of dealing with any practical and systems issues arising out of changes in the requirements in relation to remuneration by the proposed implementation date.

**Commission response:**

2.2.6 The Commission concludes that the timeframe should not be extended in view of its intention to include in a draft amended Guidance Note: Professional Qualifications (Investment Business) a link to approved qualifications.

2.2.7 In relation to remuneration, the limited changes required (as to which see further below) will now be only in relation to clients that are not Professional Clients and that are resident in Jersey. The Commission believes that bringing about such changes is achievable by 1 January 2014.

## Question 4.4.14

**Do you think it is appropriate for the Commission to raise the standards of qualification requirements for investment employees? If not, please provide details of other options to ensure investment employees achieve appropriate standards of professionalism.**

2.2.8 Eighteen responses were received. All agreed to raising the standards of qualifications. Comments were made that the qualifications should ideally be Jersey-centric.

**Commission response:**

2.2.9 The Commission is pleased to note the widespread agreement to this proposal to amend Guidance Note: Professional Qualifications (Investment Business) to reflect the new requirements in relation to qualifications.

2.2.10 The Commission has considered carefully the position when Jersey-based advisers give investment advice to retail clients (i.e non-Professional Clients) who are resident outside Jersey. On the one hand it is desirable for all Investment Employees to have attained a suitable level of qualification before advising, wherever their clients are located. On the other hand, there may be economic and practical reasons (particularly in relation to the obtaining of qualifications and their suitability) why achieving that aim could be problematic. The FSA's training and qualification requirements set out in its Training and Competence Sourcebook do not differentiate between giving advice to UK resident retail clients and non-UK resident retail clients.

- 2.2.11 On balance, the Commission has decided to follow the FSA's position and so will require advisers working for Jersey businesses and who advise clients who are not Professional Clients to be qualified at QCF level 4 wherever those clients are resident. In the Commission's view it would be undesirable to have one set of standards applicable where the advice is given to Jersey resident retail clients and to have another set of standards or no standards where the advice is to non-Jersey resident retail clients
- 2.2.12 The proposed amendments to the qualification requirements are not intended to be controversial but simply to record the requirements of the holding by advisers of QCF level 4 qualifications in relation to those categories of clients where the holding of qualifications is required. In this regard it will be necessary for advisers to have completed any training required for the purpose of RDR qualification "gap-fill", and to have passed any examinations in connection with this, by the end of December 2013. The Commission referred to the "gap-fill" tools in paragraph 4.4.7 of the Position Paper. It should be noted that the list of acceptable qualifications is not exhaustive and the Commission will consider case-by-case applications for other (non-listed) qualifications to be treated as equivalent after following the procedure set out in paragraph 4.4.11 of the Position Paper and paragraph 3.3.8 of the IB Codes.
- 2.2.13 In relation to a bespoke examination for Jersey-based advisors, whilst this might be possible in time, the Commission understands the current difficulty with such a proposal is finding enough experienced people to be involved because the trainer cannot also be the examination setter and marker. In addition, the syllabus would need to be approved by an appropriate body. The Commission will keep the position under review.

## Question 4.4.15

**Do you think the deadline of the end of 2013 is a reasonable timeframe for investment employees to be able to attain the increased professional standards? If not, please provide details of why the proposed timeframe is unreasonable and provide an indication of what you consider to be reasonable.**

- 2.2.14 Eighteen responses were received. On the whole, respondents considered the proposed timeframe to be reasonable but some respondents foresaw that there might need to be latitude in individual cases.

### **Commission response:**

- 2.2.15 The Commission will consider any request for an extension of time to obtain a required qualification(s) on a case-by-case basis and if supported by the applicant's employer.

## Question 4.4.21

**Do you think certain specialist areas should not be subject to the increased professional standards of the RFA? If so, what areas should fall outside of this scope?**

- 2.2.16 Twenty responses were received. Some respondents considered that certain specialised activities should not be subject to the increased professional standards of the RFA.

2.2.17 The question was raised whether all the people forming part of the “span of control” of the investment business must hold the required level of investment qualifications even if they do not give investment advice.

**Commission response:**

2.2.18 The Commission would welcome further views on areas which might be regarded as “specialist areas”. The Commission has formed the tentative view that the provision of advice in relation to the following products, where the sum paid out does not depend on investment performance, could be regarded as a “specialist area”: life assurance and permanent health insurance; even in relation to those areas some “core” principles such as ethical and regulatory requirements, knowing clients’ needs, and treating clients fairly should apply to the adviser.

2.2.19 In relation to persons forming part of the “span of control”, whilst they need to possess sufficient knowledge, experience and/or qualifications to be able to discharge that role, there is a reasonable argument that they do not necessarily need to hold the same level of qualification as those involved in the day-to-day giving of advice. Accordingly the Commission confirms it will not be necessary for all those forming part of the span of control to hold a relevant qualification under the RFA. The Commission also confirms that it will be a matter for registered persons to determine whether those responsible for quality control (however described) but who do not themselves give investment advice should possess a relevant investment qualification at a minimum level of QCF level 4.

### Question 4.4.22

**Do you envisage any logistical or practical problems arising from the introduction of the increased professional standards? If so, what problems do you envisage?**

2.2.20 Eighteen responses were received. No significant problems were foreseen.

**Commission response:**

2.2.21 In the light of the responses received, the Commission sees no reason to change its position.

### Question 4.4.25

**Do you think the Commission should allow certain current investment employees that do not meet the increased professional qualifications to continue giving investment advice on the basis of relevant experience, i.e. allow some grandfathering? If yes, please explain the criteria which you believe should be applied to identify these individuals.**

2.2.22 Twenty responses were received. The majority were opposed to grandfathering although some made the point that in individual cases, additional time (beyond 31 December 2013) might be needed in order to obtain the qualifications. The responses generally saw the requirement for qualifications as a way to demonstrate (and, where necessary, improve) the professional standing of those involved in this industry.

**Commission response:**

- 2.2.23 In the light of the responses received, the Commission sees no need to permit grandfathering. The Commission would, however, be prepared to permit the proof of knowledge to be demonstrated (to the satisfaction of an appropriate industry body which confirms in writing the outcome of its examination) by a method of work-based assessment supplemented by an inspection of client files. This is already available from the CISI in the UK as an alternative to the PCIAM paper. In this regard we refer to paragraph 4.4.6 of the Position Paper.
- 2.2.24 Where an investment adviser is giving advice to Professional Clients (i.e. Professional Clients within the meaning of the definition set out in the answer to question 6.3.5 below) or clients who have opted to be treated as Professional Clients, there is no requirement for that adviser to possess any qualifications beyond those currently required under the IB Codes.

**Question 4.4.29**

**Do you think a Jersey-specific professional qualification would be beneficial, and should the attainment of such a professional qualification form part of the professional standards requirements? If so, do you have any suggestions who should be responsible for drafting and administering a Jersey-specific professional qualification?**

- 2.2.25 Twenty-one responses were received. A great range of views was expressed, ranging from outright opposition to moderate enthusiasm. Some respondents suggested that this be an additional requirement for advisers advising Jersey-resident clients. The bodies suggested as being involved in the Jersey-specific professional qualifications were the Chartered Insurance Institute, the Chartered Institute for Securities and Investments, BPP, Highlands College and the Jersey International Business School.

**Commission response:**

- 2.2.26 The Commission has concluded that it is too early in the process of finalising and introducing changes as part of the RFA project to be able to make a determination on this. It may be appropriate to re-visit this matter once the revised regime has been in operation for a reasonable period.
- 2.2.27 One problem identified early on is the shortage of independent persons available locally to oversee such a qualification. One body would be required to set the papers and another, separate body required to mark them. Neither body could be connected to the lecturers or trainers.

**Question 4.4.30**

**Do you think raising professional standards will have a negative impact on the investment advisory industry's ability to attract new investment employees? If so, please provide details of your concerns.**

- 2.2.28 Twenty responses were received. The respondents were generally supportive of the raising of standards.

**Commission response:**

2.2.29 In the light of the responses received, the Commission sees no reason to change its position.

## Question 4.4.37

**Do you think the requirement to hold an annual SPS should be introduced in Jersey? If not, please detail an alternative method by which an investment employee could demonstrate meeting the required standard.**

2.2.30 Eighteen responses were received. The response ranged from moderate support to moderate opposition.

**Commission response:**

2.2.31 The Commission intends to require a form of SPS, but it is unlikely to be exactly the same as the statement proposed for the United Kingdom. There are no definite plans as to when this will take place but it is the Commission's intention to keep this matter under review and to learn from any relevant experience in the United Kingdom.

## Question 4.4.38

**Do you think the requirement for investment employees to hold a SPS will provide clients with greater confidence when dealing with advisers? If not, please provide alternative actions that could be undertaken to address client confidence.**

2.2.32 Eighteen responses were received. The majority expressed moderate agreement.

**Commission response:**

2.2.33 The Commission intends to require the holding of a form of SPS, as outlined in our response to question 4.4.37 above, at a time to be advised.

## Question 4.4.39

**Do you think the requirement for investment employees to hold a SPS will help to visibly enhance professional standards within the investment advisory sector of the Jersey investment business industry? If not, please provide details of why not.**

2.2.34 Eighteen responses were received. The majority of responses agreed that the requirement for investment employees to hold a SPS will help visibly to enhance professional standards within the investment advisory sector of the Jersey investment business industry.

**Commission response:**

2.2.35 As outlined in our response to question 4.4.37 above, the Commission will require the holding of a form of SPS at a time to be advised.

## Question 5.3.3

**Do you agree that paragraph 4.5 of the IB Codes sufficiently addresses the FSA's proposals in relation to "independent" and "restricted" advice? If not, please provide details why not.**

2.2.36 Seventeen responses were received. The majority expressed the view that paragraph 4.5 of the IB Code sufficiently address the FSA's proposals in relation to "independent" and "restricted" advice. Some respondents thought that paragraph 4.5 of the IB code should be amended to clarify the differences between "independent" and "restricted".

**Commission response:**

2.2.37 In the light of the responses received the Commission has concluded that there is no need to amend the definitions.

## Question 6.3.5

**Do you agree with the Commission's proposals in respect of adviser charges? If not, please provide further detail.**

2.2.38 Seventeen responses were received. The majority opposed the Commission's proposal to prohibit a registered person from receiving commission offered by product providers, even if the registered person intended to rebate these payments to the client. Some detailed reasons were given for this opposition including that it could place Jersey providers at a disadvantage compared with advisers from other jurisdictions in servicing an internationally mobile client base. In this regard it is worth noting that the FSA's prohibition on remuneration by way of Commission does not apply in respect of non-UK resident clients of UK advisers.

**Commission response:**

2.2.39 After careful consideration the Commission has concluded that where adequate disclosure of commissions, or the method of calculating commissions, has been made to clients who are or opt to be treated as Professional Clients (as to which see below in this section), or to non-Jersey resident retail clients, it should continue to be permissible for remuneration in respect of that service to be paid by way of commission. It will also be possible for the adviser to be remunerated by way of trail commission where a client, whether or not a Professional Client or who has opted to be treated as a Professional Client, wishes to pay for initial advice by way of commission in relation to regular contribution products.

2.2.40 This limited form of client classification is to be introduced only for the purpose of Classes C and D of Investment Business and not, currently, for Classes A and B. The Commission intends to consider whether to introduce a requirement of client classification for Classes A and B and will consult fully in relation to any such proposals.

2.2.41 The requirements and procedure for treating a person as a Professional Client closely follow the approach taken in Guernsey which, in turn, has been influenced by the FSA's definition.

1. *A retail client is client who is not a Professional Client. It is considered that the limited scope of this work, which relates to the giving of financial advice, makes it unlikely that there will be dealings with an eligible counterparty and that introducing a definition (and all the required associated definitions) required to bring an eligible counterparty within the scope of the definition of Professional Client would be unduly cumbersome.*
2. *A per se Professional Client or an elective Professional Client is a Professional Client.*
3. *Each of the following is a per se Professional Client unless and to the extent that it is given a different categorisation under paragraph 5 below:*
  - *a Large Undertaking and a Professional Investor (defined below).*
4. *An investment adviser (which is the holder of the appropriate class of investment business licence) may treat a client as an elective Professional Client if the adviser undertakes an adequate assessment of the expertise, experience and knowledge of the client that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved. If the client is an entity, (for example a company, a foundation, a trust or a partnership) the assessment should be performed in relation to the person authorised to carry out transactions for it. In making this assessment the investment adviser should have regard inter alia to:*
  - *the frequency of the client's dealings in the kind of investments which are the subject matter of the investment adviser's advice;*
  - *the size of the client's portfolio; it is unlikely that a client with a portfolio of less than £500,000 could properly be categorised as an elective Professional Client; and*
  - *the client's relevant professional expertise.*
5. *The following procedure must be followed if a client is to be treated as an elective Professional Client:*
  - (a) *the client must state in writing to the investment advisory firm in advance of the transaction being carried out that he/she or it wishes to be treated as a Professional Client either generally or in respect of a particular service or transaction or type of transaction or product;*
  - (b) *the firm must give the client a clear written warning of the protections and any investor compensation rights the client may lose; and*
  - (c) *the client must state in writing, in a separate document from the contract of engagement of the professional advisory firm, that he/she or it is aware of the consequences of losing such protections.*
6. *If the investment adviser becomes aware that a client no longer fulfils the initial conditions that made him/her or it eligible for categorisation as a Professional Client, the investment advisory firm must cease to treat the client an elective Professional Client and treat it as a retail client, and inform the client accordingly.*
7. *An investment advisory firm must implement appropriate written internal policies, procedures and controls to categorise its clients and must keep a copy of its communication with its client (and proof of the despatch of that communication) as to the client's categorisation for ten years after the categorisation ceases to be correct or the business relationship with the client is terminated, whichever is the later.*

8. For the purpose of these rules:

*“Large Undertaking” means a body in relation to which two of the following three criteria are satisfied;*

(i) *balance sheet total of not less than £13,000,000;*

(ii) *net turnover of £26,000,000;*

(iii) *own funds of £1,300,000.*

*“Professional Investor” means;*

(a) *a government, local authority, public authority or supra-national body (wherever established); or*

(b) *a person, partnership, unincorporated association or body corporate whose ordinary business or professional activity includes or it is reasonable to expect that it includes acquiring, underwriting, managing, holding or disposing of investments whether as principal or agent or the giving of advice on investments.*

## Question 6.3.6

**Do you envisage any logistical or practical problems arising from the proposed change to investor charging? If so, what problems do you envisage?**

2.2.42 Sixteen responses were received. The problems foreseen included that the product provider might not adapt its systems and procedures fully to deal with all the permitted permutations of charging, and that the change might cause difficulties for clients as it might no longer continue to be possible for the advisers to be remunerated in the way clients wish.

### **Commission response:**

2.2.43 It is not possible for the Commission to regulate the way in which all payers of commission operate, but obligations will be imposed on advisers to ensure that they are remunerated in a way which is consistent with the policy on charging set out in the Position Paper. As is clear from the Commission’s responses in relation to the policy on payment by way of commission for Professional Clients, the Commission’s policy seeks to deal with commission in a way that is sensitive to the circumstances of relevant parts of the market.

## Question 6.4.16

**Do you agree with the Commission’s proposal with regards to trail commission? If not, do you have any suggestions for possible alternative solutions?**

2.2.44 Fifteen responses were received; all but two were broadly in favour of the Commission’s proposals.

**Commission response:**

2.2.45 It is not possible for the Commission to regulate the way in which all payers of commission operate, but obligations will be imposed on advisers to ensure that they are remunerated in a way which is consistent with the policy on charging set out in the Position Paper. As is clear from the Commission's responses in relation to the policy on payment by way of commission for Professional Clients, the Commission's policy seeks to deal with the matter of payment by way of commission in a way that is sensitive to the circumstances of relevant parts of the market. As mentioned above (in relation to the Commission's response to question 6.3.5), it will also be possible for the adviser to be remunerated by way of trail commission where the client wishes to pay for initial advice by way of commission in relation to regular contribution products or in relation to investments made before 31 December 2013 that remain unchanged after that date. Please see paragraphs 6.4.11 to 6.4.13 of the Position Paper for more details on the position in relation to trail commission generated by a contract set up before 1 January 2014.

## Question 6.4.20

**Do you agree a registered person selling long-term insurance contracts (as defined in Schedule 1 of the FS(J)L) should fall outside the advisory charging proposals? If not, please provide details of why not.**

2.2.46 Sixteen responses were received. Some respondents expressed the view that the definition of long-term insurance contracts should be re-examined.

**Commission response:**

2.2.47 In the light of the responses received, the Commission intends to proceed with its proposal of excluding the selling of long-term insurance contracts from the advisory charging regime. The Commission has reviewed the definition of such contracts in Schedule 1 to the FS(J)L and proposes making amendments as follows:

2.2.48 Long-term business within classes I, II and IV of Part 1 of Schedule 1 to the Insurance Business (Jersey) Law 1996 should fall outside the advisory charging proposals.

## Question 7.3.4

**Do you believe the financial resources requirements of the RDR are sufficiently addressed under section 5 of the IB Codes. If not, please provide details of any suggested enhancements that you feel are required.**

2.2.49 Sixteen responses were received. Almost all agreed that the financial resource requirements are sufficiently addressed under section 5 of the IB Codes.

**Commission response:**

2.2.50 In the light of the responses received the Commission does not intend altering the current requirements.

## Question 8.1.6

**Do you agree with the Commission's position that a client classification regime is unnecessary in Jersey investment business framework? If not, please explain how the benefits of introducing a client classification regime will outweigh the costs.**

2.2.51 Seventeen responses were received. A range of views was expressed as to the desirability or otherwise of a client classification regime.

**Commission response:**

2.2.52 As explained in the response to question 6.3.5, the Commission intends to introduce a straightforward form of client classification regime that will have the effect of allowing advisers to continue to be paid by way of commission in respect of services provided to Professional Clients or clients who opt to be treated as such, wherever those clients are resident. The Commission will treat a company as resident where incorporated, a trust as resident where its trustees or the majority of its trustees are resident (or in Jersey if one of two trustees is resident in Jersey), a foundation as resident in the jurisdiction of the governing law and a limited partnership as resident where the general partner is incorporated.

## Question 8.2.4

**Are there any specific considerations that the Commission should be aware of in relation to platforms and the proposed changes outlined in its position paper of August 2011.**

2.2.53 Seventeen responses were received. The majority of these did not identify any specific considerations in relation to platforms.

**Commission response**

2.2.54 The Commission does not intend taking any further action.

## Question 8.3.2

**Do you agree with the Commission's position that a fit and proper assessment for all investment employees is unnecessary in the Jersey investment business framework? If not, please explain how the benefit of introducing such an assessment will outweigh the costs.**

2.2.55 Seventeen responses were received. The majority were against the introduction of such an assessment for all investment employees although a few expressed the view that requiring such an assessment would raise client confidence in the adviser.

**Commission response:**

2.2.56 No action on the part of the Commission is necessary.

## Question 8.4.3

**Do you agree with the Commission's position that a product classification regime is unnecessary in the Jersey investment business regulatory framework? If not, please explain how the benefits of introducing a product classification regime will outweigh the costs.**

2.2.57 Sixteen responses were received. The few who were in favour of the introduction of such a regime did not develop any persuasive detailed arguments in favour.

**Commission response:**

2.2.58 No action on the part of the Commission is necessary.

## Question 8.4.4

**Do you have any concerns that the Commission's proposals will limit the choice of products available to recommend to clients? If so, do you have any suggestions as to how this could be addressed?**

2.2.59 Fifteen responses were received. The views expressed were evenly split between concern that the proposals will limit the choice of products and the view that the proposals will not have such a limiting effect.

**Commission response:**

2.2.60 The Commission considers that the modification, outlined above, of its original proposals, so as to permit remuneration by way of commission for advice given to Professional Clients (or clients who opt to be treated as such) should remove a large part of the concerns expressed.

## Question 8.4.5

**Are there any additional areas for consideration that you feel the Commission will need to address?**

2.2.61 Sixteen responses were received. Amongst the responses was a request for clarification whether Jersey product providers may continue to offer commission to investment advisers located outside Jersey. There was also a suggestion that a lesser qualification for simplified advice be introduced and that be done at the same time as in Guernsey and the Isle of Man.

**Commission response:**

2.2.62 Nothing in the Position Paper was intended to, and the Commission does not intend to, impose any restrictions on the payment of commission by Jersey product providers; how that commission is dealt with will be a matter to be determined by any regulatory regime applying to the recipient of the commission. The Commission has proposed, in this paper, going some way towards a lesser requirement in relation to simpler products by permitting certain long-term life assurance to be advised upon by persons with a lower level of qualification than is required for the generality of financial advice.

## **3 NEXT STEPS**

### **3.1 Progressing Introduction of the New Regime**

- 3.1.1 Following receipt of any comments prompted by this paper the Commission will take such steps as are necessary to bring about the implementation of the proposals outlined in this paper (but subject to any changes considered appropriate in the light of those comments) with effect from 1 January 2014.

# APPENDIX A

Persons that submitted responses (in some cases anonymised, at the respondent's request):

- Standard Chartered (Jersey) Limited
- Barclays Bank PLC
- Royal Bank of Canada (Channel Islands) Limited
- Lloyds TSB Offshore Limited
- HSBC Private Bank (C. I.) Limited
- HSBC Bank Middle East Limited
- Citibank N. A.
- The Royal Bank of Scotland International Limited
- Alexander Forbes Channel Islands Limited
- Spearpoint Limited
- Cenkos Jersey Limited
- Bridport & Co. (Jersey) Limited
- Collins Stewart (C. I.) Limited
- Heritage Insurance Limited
- Homebuyer Financial Services Limited
- Personal Finance Society, Jersey
- Personal Finance Society Member "A"
- Personal Finance Society Member "B"
- Aviva Insurance (UK) Limited
- Chartered Institute for Securities and Investment
- Chartered Financial Advisers
- Jersey Finance Limited

# APPENDIX B

Recipients of this paper:

All the persons mentioned in Appendix A above and:

- JFA – Jersey Funds Association
- JCOA – Jersey Compliance Officers’ Association
- JIBS – Jersey International Business School
- BPP Jersey