

**POSITION PAPER
NO. 2 2007**

**IMPLEMENTATION OF THE FUTURE
REGULATION OF FUNDS AND
FUNCTIONARIES OF FUNDS**

**Draft legislation, regulatory requirements and Codes of
Practice**

POSITION PAPER

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1. EXECUTIVE SUMMARY

OVERVIEW

- 1.1. Since 2003 the Commission has been implementing an initiative to integrate a number of pre-existing regulatory laws into the Financial Services (Jersey) Law 1998 as amended (the “**FS(J)L**”). By providing a “one-stop shop” for the legislation that we manage, the Commission’s administrative and communication roles will be simplified and it will be easier for the industry to understand and comply with the legal framework.
- 1.2. In February 2006, the Commission issued Consultation Paper No. 1 of 2006 (“**CP1**”) in order to consult on the case for change and the manner in which the Commission proposed to move the regulation of fund functionaries from the Collective Investment Funds (Jersey) Law 1988 as amended (the “**CIF(J)L**”) into the FS(J)L.
- 1.3. Consultation Paper No. 2 of 2006 (“**CP2**”) was issued at the same time on an interim arrangement to create a limited exemption for certain functionaries of non-Jersey domiciled funds from the requirement to apply for permits under the CIF(J)L. In view of resourcing issues and as the Commission wishes to implement the new regime in full in the near future, the Commission has decided to abandon those proposals.
- 1.4. The consultation process took place with the assistance of Jersey Finance Limited (“**Jersey Finance**”), which provided a co-ordinated industry response in accordance with the agreed consultation process.
- 1.5. The Commission has considered the responses to CP1 and CP2 and where appropriate has undertaken further research and planning. A summary of the responses to both Consultation Papers is set out at **Appendix A**.
- 1.6. In the light of the favourable responses received to CP1, the Commission has resolved to put the proposals into effect but with a number of minor changes. The purpose of this Position Paper is to highlight such changes and to set out the manner in which the Commission plans to transfer regulation of fund functionaries from the CIF(J)L to the FS(J)L.
- 1.7. This paper explains the legislative steps regarding:
 - 1.7.1. moving the authorisation and regulation of functionaries (service providers) of collective investment funds into the FS(J)L;
 - 1.7.2. removing the requirement for a functionary to hold separate permits under the CIF(J)L in respect of each collective investment fund for which it carries out work;
 - 1.7.3. leaving recognized funds untouched and the requirement for a functionary of a

recognized fund to hold a permit under the CIF(J)L.

- 1.8. This paper sets out the implementation of the changes in two stages.
- 1.9. This paper should be read in conjunction with CP1. ¹
- 1.10. This paper will outline how a “manager of a managed entity” will be added to the list of functionaries (services providers) to be authorised and regulated under the FS(J)L. This proposal was considered in CP1.
- 1.11. This paper will consider further the introduction of Codes of Practice following the first stage of the implementation of the new regime. The Codes of Practice were also consulted upon in CP1 and a further draft of the Codes of Practice is appended to this paper.
- 1.12. Throughout this paper references to functionaries, service providers and “fund services business” are interchangeable. The term “fund services business” (“**Fund Services Business**”) is a term to be introduced under the new regime.
- 1.13. All references to funds and functionaries exclude recognized funds unless the contrary is stated.

TWO STAGE IMPLEMENTATION PROCESS

- 1.14. In order to bring the new regime fully into place, legislative changes will be introduced by a change of Law, by States Regulation and by Ministerial Order. A change of Law requires a lengthy period of time to come into being while subordinate legislation such as States Regulations and Ministerial Orders can be implemented relatively quickly. Consequently, in order for the regime to come into place in good time before the IMF assessment due in 2008, it is proposed to implement the changes in two stages.
- 1.15. The first stage (the “**First Stage**”) will bring the new regime into full effect save in respect of the power to issue certificates under the CIF(J)L. The second stage (the “**Second Stage**”) will be to amend the CIF(J)L to allow for the issue of certificates.
- 1.16. The First Stage comprises the following elements:
 - all functionaries of unclassified funds will be exempt from the requirement to obtain a permit under the CIF(J)L, except the “company issuing units” (a “**CIU**”), the trustee of the unit trust (the “**Trustee**”) and the general partner of the limited partnership (the “**General Partner**”).
 - The concept of Fund Services Business will be introduced into the FS(J)L within the

¹ A copy of CP1 may be found on the Commission website www.jerseyfsc.org under the tab “The Commission” at General Information/ Consultation Papers

definition of financial services business.

- Orders will be introduced dealing with the holding of fund assets, the preparation of accounts, and the exemption from the requirement to obtain COBO consent where the fund has been issued with a permit under the CIF(J)L.
 - The activities comprised within Fund Services Business will be identical to the list of functionaries contained in the CIF(J)L with two exceptions:
 - a CIU will not be counted as a Fund Services Business activity,
 - a new Fund Services Business activity will be introduced to be called “manager of a managed entity” (this replaces the term “manager of a functionary” used in CP1)
- 1.17. Those who conduct Fund Services Business will need to be registered under the FS(J)L and all existing unclassified fund functionary permit holders (other than the CIU) will be “grandfathered” into the FS(J)L. In addition, with reference to managers of managed entities, the Commission will automatically register those managers for the appropriate class of fund services business under the FS(J)L.
- 1.18. CP1 made reference to limits being imposed on the type of fund that functionaries can provide services to once they have been transferred over to the FS(J)L regime. Consideration was given to imposing such limits by reference to the asset classes comprised within the fund. It is no longer the Commission’s intention to condition registration in this manner. Instead the Commission will take into account any existing permit conditions applicable to a particular functionary, and the type of funds or asset classes of the fund with which the entity is currently engaged. The Commission has the power to vary registration conditions. For grandfathering purposes, any existing conditions relating to the functionary itself (as opposed to the fund) will be carried across to its registration under the FS(J)L.
- 1.19. Following implementation of the First Stage the Commission will issue Codes of Practice for Fund Services Businesses.
- 1.20. In relation to the qualification requirements contained in the Codes of Practice, a questionnaire will be circulated shortly in order to gauge the level and range of qualifications currently held within industry.
- 1.21. In addition, another questionnaire will be circulated to all Fund Services Businesses in order to ensure that data currently held on the Commission’s database in respect of permit holders is up to date. This will be of particular importance for managers of managed entities as it is not currently possible to issue them with permits under the CIF(J)L.
- 1.22. The Second Stage of the implementation process will be to change the CIF(J)L to introduce the concept of certificates and to make various consequential amendments. As

this involves a change to the law itself, it requires an amending statute which will take some time to enact. The Commission takes the view, therefore, that the concept of a permit for both recognized funds and unclassified funds can remain in place until such time as the CIF(J)L is amended. Following the amendment of the CIF(J)L, permits will only be required for recognized funds and the term functionary will apply exclusively to recognized funds.

- 1.23. Primary law changes will need to be assessed for compliance with the Human Rights (Jersey) Law 2000 before they are submitted to the States.
- 1.24. It is intended to implement the First Stage in July 2007 and the Second Stage towards the end of the year.

2. - THE COMMISSION

2.1. The Commission is a statutory body corporate established under the Financial Services Commission (Jersey) Law 1998, as amended. It is responsible for the supervision of financial services provided in or from within Jersey.

2.2. The Commission's guiding principles require it to have regard to:

- the reduction of risk to the public of financial loss due to dishonesty, incompetence or malpractice by, or the financial unsoundness of, persons carrying on the business of financial services in or from within the Island;
- the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;
- the best economic interests of the Island, and, in pursuit of the above,
- contributing to the fight against financial crime.

3.- OVERVIEW OF CHANGES

3.1. In the two sections below the draft First and Second Stage Laws, Regulations and Orders are listed. These drafts are attached at **Appendix B** in the order of the document numbering.

The First Stage

Financial Services (Amendment of Law) (Jersey) Regulations 200- [Document 1](#)

Financial Services (Investment Business (Fund Services Business Exemption)) (Jersey) Order 200- [Document 2](#)

Financial Services (Trust Company Business (Exemptions)) (Amendment No 2) (Jersey) Order 200- [Document 3](#)

Financial Services (Fund Services Business) (Accounts, Audits and Reports) (Jersey) Order 200- [Document 4](#)

Financial Services (Fund Services Business) (Client Assets) (Jersey) Order 200- [Document 5](#)

Collective Investment Funds (Permits) (Exemptions) (Amendment No 2) (Jersey) Order 200- [Document 6](#)

Control of Borrowing (Amendment No 12) (Jersey) Order 200- [Document 7](#)

It is proposed to implement the First Stage by July 2007.

The Second Stage

Financial Services (Investment Business (Fund Services Business Exemption) (Amendment)) (Jersey) Order 200- [Document 8](#)

Financial Services (Trust Company Business (Exemptions)) (Amendment No 3) (Jersey) Order 200- [Document 9](#)

Financial Services (Fund Services Business (Registration and Fees)) (Jersey) Order 200- [Document 10](#)

Collective Investment Funds (Amendment No 4) (Jersey) Law 200- [Document 11](#)

Collective Investment Funds (Unclassified Funds) (Prospectuses)
(Amendment No 4) (Jersey) Order 200- [Document 12](#)

Companies (General Provisions) (Amendment No 2) (Jersey) Order 200- [Document 13](#)

Collective Investment Funds (Permit Fees) (Jersey) Order 200- [Document 14](#)

Collective Investment Funds (Permits) (Exemptions) (Amendment No 3)
(Jersey) Order 200- [Document 15](#)

3.2. The draft Laws, Regulations and Orders mentioned above will be discussed in the next two chapters.

4 - CHANGES TO THE FS(J)L AND ORDERS

4.1 Introduction of “Funds Services Business” to the FS(J)L

- 4.1.1. The FS(J)L will be amended by the Financial Services (Amendment of Law) (Jersey) Regulations 200-, a draft of which is attached at [Appendix B marked Document 1](#). These Regulations will be introduced as part of the First Stage of the implementation process.
- 4.1.2 Article 2 of the FS(J)L defines “financial service business” to mean investment business, trust company business and general insurance mediation business.
- 4.1.3 The Commission proposes regulating service providers of collective investment funds by introducing into Article 2 a new category of business to be called “fund services business”.
- 4.1.4 Registration under the FS(J)L will be required where a person wishes to be a manager, manager of a managed entity, administrator, registrar, investment manager, investment adviser, distributor, subscription agent, redemption agent, premium receiving agent, policy proceeds paying agent, purchase agent, repurchase agent, trustee, custodian, depository or member of a partnership (except a limited partner) of a collective investment fund which is not a recognized fund. The Commission proposes that there will be a separate class of “fund services business” for each of these activities.
- 4.1.5 The above list of functions is broadly the same as that listed in the Schedule to the CIF(J)L, with two exceptions.
- 4.1.6 The first exception relates to the company issuing units. The CIF(J)L currently regulates both the fund and the functionary. By removing the function entitled “company issuing units” from the list of functionaries transferred over to the FS(J)L, the fund company itself remains to be regulated under the CIF(J)L regime.
- 4.1.7 The second exception relates to the “manager of a managed entity” and this encompasses the business of providing management services to a Fund Services Business managed entity. In CP1 the proposal was to name the activity “manager of a functionary”. The class of business would apply to all those who manage managers or general partners. The manager may be engaged to provide a number of services under contract such as a money laundering reporting officer, a compliance officer, registered office and directors.
- 4.1.8 It is no longer proposed to make a distinction between specialist and non-specialist

funds.

- 4.1.9 In addition, Articles 20 and 21 of the FS(J)L will be amended so as to apply to client assets and funds assets.
- 4.1.10 Permits under the CIFJL will be only be issued in respect of CIU's, unit trusts and limited partnerships. While for fund companies the permit will continue to be issued to the fund company itself, in the case of unit trusts the permit will be granted to the trustee and for limited partnerships the permit will be granted to the general partner.

4.2 "Grandfathering" provisions and managers of managed entities

- 4.2.1 A "grandfathering" provision will be introduced to allow all existing functionaries transferring to the FS(J)L regime to continue to act for existing funds and for new funds that are similar in type and function to the existing ones.
- 4.2.2 To demonstrate appropriate levels of "fitness and propriety", all grandfathered businesses will be required to comply with the Fund Services Business Codes of Practice.
- 4.2.3 There is no equivalent of "manager of a managed entity" under the CIF(J)L, therefore grandfathering is not possible in this case. As it is a new category of activity those who are currently engaged as manager of a managed entity in respect of a fund will automatically be registered under FS(J)L to conduct this new category of activity.
- 4.2.4 In order to take advantage of this process, it is important for those providing management services in the manner described above to complete and return the questionnaire referred to in paragraph 1.21 above. This is in order for the Commission to be satisfied that it holds all relevant information in relation to the manager so that registration can take effect. Replies to the questionnaire should be received by the Commission no later than 1 June 2007 failing which the Commission will be unable to process the registration. There is no charge for registration in this situation.

4.3 Codes of Practice

- 4.3.1 A draft of the Codes of Practice was appended to CP1. Following comments from industry and in the light of proposals to amend the Trust Company Business Codes of Practice² changes have been made to the original draft. A further draft together

² These proposals are set out in Consultation Paper No. 8 2006, a copy of which may be found on the Commission website www.jerseyfsc.org under the tab "The Commission" at General Information/ Consultation Papers

with a draft blacklined with amendments from that circulated with CP1 is attached to this paper at **Appendix C**.

4.4 Exemptions

- 4.4.1 As the law stands at present, any functionary holding a CIF(J)L permit is exempt from the requirement to register under the FS(J)L for conducting investment business. With the removal of the obligation on functionaries (other than the CIU and recognized funds) to hold a permit, this exemption will no longer apply.
- 4.4.2 The Financial Services (Investment Business (Fund Services Business Exemption)) (Jersey) Order 200- is designed to restore the position under the new arrangements. A draft is attached at [Appendix B marked Document 2](#).
- 4.4.3 By substituting paragraph 3 of schedule 2 to the FS(J)L neither those performing a function for a recognized collective investment fund holding a permit under the CIF(J)L nor the carrying on by a company issuing units under the functionary's permit granted under the CIF(J)L shall be treated as carrying on investment business for the purposes of the FS(J)L.
- 4.4.4 Further, anyone registered under the FS(J)L to carry on Fund Services Business will be exempt from the requirement to register for carrying on investment business.
- 4.4.5 The Financial Services (Trust Company Business (Exemptions)) (Amendment No.2) (Jersey) Order 200- is to have the same effect as the one described in paragraph 4.4.1 to 4.4.4 above save that it relates to trust company business in place of Investment Business. A draft is attached at [Appendix B marked Document 3](#).
- 4.4.6 By substituting paragraph 14 of part 2 of the schedule to the Financial Services (Trust Company Business (Exemptions)) (Jersey) Order 2000 a functionary of a collective investment fund holding a permit under the CIF(J)L, when providing trust company business services as part of its authorized function, is not treated as a trust company business for the purpose of the FS(J)L. Paragraph 15 exempts the directors of a permit holder from the requirement to register as a trust company business.
- 4.4.7 Further anyone registered under the FS(J)L to carry on Fund Services Business will be exempt from the requirements to register for carrying on trust company business.
- 4.4.8 Both exemptions will be introduced as part of the First Stage implementation process.

4.5 Further Orders

- 4.5.1 The Commission recommends introducing orders under the FS(J)L for Fund

Services Businesses that are equivalent to existing orders under the FS(J)L for Trust Company Businesses (“TCBs”) and Investment Businesses (“IBs”).

- 4.5.2 By introducing equivalent orders, all Fund Services Businesses will be subject to a consistent and coherent approach to regulation in accordance with international standards.
- 4.5.3 The Financial Services (Funds Services Business) (Accounts, Audits and Reports) (Jersey) Order 200- is to be equivalent to the Order in place for TCBs. Fund Services Businesses would be subject to new requirements such as the provision of a declaration stating, amongst other things, whether they complied with the legislation and Codes of Practice. Another difference from the current treatment under the CIF(J)L would be that there would be a shorter time frame for submitting the audited annual report and accounts from the current requirement of 10 months to 4 months from the end of the accounting period. It is important to note, however, that the shorter time limit only applies to the functionary registered under the FS(J)L and not the fund itself. A draft is attached at [Appendix B marked Document 4](#).
- 4.5.4 The Financial Services (Funds Services Business) (Client Assets) (Jersey) Order 200- will provide that funds assets and client assets are subject to statutory requirements to hold the assets of the fund or client on trust. A draft is attached at [Appendix B marked Document 5](#).
- 4.5.5 Both Orders will be introduced as part of the First Stage of the implementation process.

4.6 Investment Business exemption – overseas distributors

- 4.6.1 The Financial Services (Investment Business (Fund Services Business Exemption) (Amendment)) (Jersey) Order 200- inserts the carrying on of the activities of a certified fund under the proposed certificate regime into Schedule 2, Part 1 paragraph 3 of the FS(J)L. It is intended to act in conjunction with and to come into force at the same time as Article 4 of the Collective Investment Funds (Amendment No 4) (Jersey) Law 200-. It is part of the Second Stage and a draft is attached at [Appendix B marked Document 8](#).
- 4.6.2 The above Order also grants exemption from registration under the FS(J)L to overseas distributors of certain non-Jersey funds where the distributor is supervised for fund services business in its home jurisdiction and the person acting in the Island does so in accordance with the Fund Services Business Codes of Practice. In summary, the relevant funds are UCITs, authorized funds in the United Kingdom, Class A funds in Guernsey and authorized funds in the Isle of Man.

4.7 Miscellaneous

- 4.7.1 The Financial Services (Trust Company Business (Exemptions)) (Amendment No 3) (Jersey) Order 200- is similar to the above and applies the Financial Services (Trust Company Business (Exemptions)) (Jersey) Order 2000 to a CIU of a certified fund. It is intended act in conjunction with and to come into force at the same time Article 3 of the Collective Investment Funds (Amendment No 4) (Jersey) Law 200- comes into force. It is part of the Second Stage and a draft is attached at [Appendix B marked Document 9](#).
- 4.7.2 The Financial Services (Fund Services Business (Registration and Fees)) (Jersey) Order 200- is intended to act in conjunction with and to come into force at the same time the Financial Services (Amendment of Law) (Jersey) Regulations 200- comes into force. It will apply to all new applicants other than those grandfathered across and those existing managers of managed entities who make the initial applications. It is part of the Second Stage and a draft is attached at [Appendix B marked Document 10](#).

5 - CHANGES TO THE CIF(J)L AND ORDERS

5.1 Requirement to hold a permit for Unclassified Funds

- 5.1.1 Article 5 of the CIF(J)L imposes the requirement for a functionary of a collective investment fund to hold a permit. For the fund entity itself, this currently only applies to CIU's constituted as companies; it does not apply to unit trusts nor limited partnerships.
- 5.1.2 The Collective Investment Funds (Permits) (Exemptions) (Amendment No 2) (Jersey) Order 200- is designed to amend the Collective Investment Funds (Permits Exemptions) (Jersey) Order 1994 so that in relation to unclassified funds both a Trustee and a General Partner will still require a permit. This will enable the Commission to control the fund product for unit trusts and limited partnerships respectively.
- 5.1.3 Therefore in the First Stage, the CIF(J)L requirements for permits to be issued to functionaries of Unclassified Funds will be disapplied other than for the CIU, the Trustee and the General Partner.
- 5.1.4 A draft of this Order is attached at [Appendix B marked Document 6](#) and the amendments will be introduced as part of the First Stage of the implementation process.

5.2 The introduction of certificates to the CIF(J)L

- 5.2.1 In the Second Stage, the Collective Investment Funds (Amendment No 4) (Jersey) Law 200- will introduce to the CIF(J)L a certification regime in respect of Unclassified Funds as a result of which the CIU, Trustee and General Partner will be required to hold a certificate in place of a permit. A draft is attached at [Appendix B marked Document 11](#).
- 5.2.2 Thereafter, unclassified funds will be controlled under the CIF(J)L by certificates. Recognized funds will continue to be controlled by permits as before and the terms "functionary" and "permit" will only henceforth apply to recognized funds.
- 5.2.3 All funds that currently have permits in respect of a CIU, unit trusts and limited partnerships will be issued with certificates.

5.3 Grant or refusal of permit, imposition of conditions and cancellation of permit

5.3.1 The Commission proposes that new Articles 8A to 8E should be introduced to the CIF(J)L by the Collective Investment Funds (Amendment No 4) (Jersey) Law 200- in order to apply to the grant or refusal of an “unclassified fund certificate”, imposition of conditions on and the cancellation of such certificate.

5.4 Procedures and rights of appeal in respect of permits

5.4.1 The Commission proposes introducing by the Collective Investment Funds (Amendment No 4) (Jersey) Law 200- Article 8E to the CIF(J)L to apply it to the refusal or cancellation of such “unclassified fund certificate.”

5.5 Powers of investigation and other regulatory powers

5.5.1 At present, the CIF(J)L provides powers of investigation in respect of a fund company where it holds a permit.

5.5.2 The Commission is proposing that the CIF(J)L be amended so that powers of investigation and other regulatory powers continue for a fund that is constituted as a Jersey company.

5.5.3 The Commission also proposes that powers of investigation will apply to all unclassified funds that have been issued with an “unclassified fund certificate”, including unit trusts and limited partnerships.

5.5.4 These proposals will be introduced by the Collective Investment Funds (Amendment No 4) (Jersey) Law 200-.

5.6 The Collective Investment Funds (Unclassified Funds) (Prospectuses) (Jersey) Order 1995 (the “Prospectuses Order”)

5.6.1 The Prospectuses Order prohibits the marketing of units in certain types of open-ended unclassified funds unless the requirements of the Prospectuses Order have been met.

5.6.2 The Commission proposes to keep the Prospectuses Order subject to consequential amendments. The Prospectuses Order refers, for example, to the permit holder and the open-ended investment company which is a permit holder (CIU). As this will no longer be applicable in the proposed regime, the Prospectuses Order will require consequential amendments so that it applies to open-ended unclassified funds.

5.6.3 The amendments will be introduced by the Collective Investment Funds (Unclassified Funds) (Prospectuses) (Amendment No 4) (Jersey) Order 200- as part of the Second Stage of the implementation process. A draft of this Order is attached at [Appendix B marked Document 12](#).

5.7 The Companies (General Provisions) (Jersey) Order 2002 (the “General Provisions Order”)

- 5.7.1 The General Provisions Order requires any Jersey company circulating a prospectus to comply with the General Provisions Order.
- 5.7.2 The General Provisions Order does not apply where the Jersey company is open-ended and holds a company issuing units (CIU) permit. Under the new regime, the CIU permit would no longer be applicable (except when the fund is a recognized fund), therefore the Commission recommends amending the General Provisions Order so that the exemption continues to apply to open-ended Jersey companies holding “unclassified fund certificates.”
- 5.7.3 The amendments will be introduced by the Companies (General Provisions) (Amendment No 2) (Jersey) Order 200- as part of the Second Stage of the implementation process. A draft of this Order is attached at [Appendix B marked Document 13](#).

5.8 The Collective Investment Funds (Permit Fees) (Jersey) Order 200-

- 5.8.1 The Collective Investment Funds (Permit Fees) (Jersey) Order 200- will prescribe the application and annual fees payable in respect of an applicant and a holder of a permit, respectively.
- 5.8.2 With regard to annual fees, as a result of the proposed regulation of service providers under the FS(J)L and the corresponding loss of permit application fee income, it is proposed that the Jersey fund company will continue to pay an annual fee based on the number of separate pools of assets. The Commission also proposes that all funds issued with an “unclassified fund certificate” will pay an annual fee. This will result in funds that are constituted as unit trusts or limited partnerships having to pay an annual fee for the first time.
- 5.8.3 In the current regime, the only fund structure that pays an application fee is the CIU when applying for a permit. The Commission proposes that all funds that are issued with an “unclassified fund certificate” pay an application fee. It is also proposed that umbrella funds continue to pay an application fee for any new sub-funds that may be added.
- 5.8.4 With regard to application fees, when a certificate is granted, in addition to the fee of £1,000 charged in respect of the certificate itself, an additional fee of £1,000 will be charged in respect of each fund service provider appointed in relation to the fund. The purpose of this amendment is to replace the fee income that would have been received by the Commission if permits had been issued to each of the functionaries involved.
- 5.8.5 For a recognized fund, the fees will mirror the fee regime for a fund that has been issued with an “unclassified fund certificate”. In respect of functionaries of

recognized funds (other than the CIU), the fee regime will mirror that for fund services business under the FS(J)L.

- 5.8.6 The Collective Investment Funds (Permit Fees) (Jersey) Order 200- will be part of the Second Stage of the implementation process. A draft of this Order is attached at [Appendix B marked Document 14](#).

5.9 Miscellaneous

- 5.9.1. The purpose of the Collective Investment Funds (Permits) (Exemptions) (Amendment No 3) (Jersey) Order 200- is to delete Article 1A of the Collective Investment Funds (Permits) (Exemptions) (Jersey) Order 1994. It is intended to come into force at the same time as Article 4 of the Collective Investment Funds (Amendment No 4) (Jersey) Law 200- It is part of the Second Stage. A draft is attached at [Appendix B marked Document 15](#).

APPENDIX A

REVIEW OF RESPONSES TO CP1 AND CP2

The following summarises the comments of the members of Jersey Finance Limited to CP1 and CP2 contained in its letter dated 5 April 2006. The Commission gives its response to those comments.

As this paper explains, the Commission has decided not to proceed with the interim project set out in CP2, therefore the comments relating specifically to the interim project have not been included below.

In addition, following the introduction of the Collective Investment Funds (Permits) (Exemptions) (Amendment) (Jersey) Order 200-, comments in CP2 relating to the 'mind and management' issues concerning non-domiciled funds have not been included as the Commission considers such issues to have fallen away.

The decision by the Commission not to proceed with any classification according to fund type when registering fund services businesses means that comments relating to the classification of funds have also fallen away. Registration as, say, a manager, will apply to management of all fund types provided of course the manager is in compliance with the Codes of Practice, with particular reference to the organisation and control requirements in Principle 3.

Abbreviations used in this summary are the same as those set out in this paper. The Commission's response to the comments is given in the shaded part of the text.

General comments

Industry expressed its broad agreement with the concept of transferring regulation of functionaries from the CIF(J)L to the FS(J)L in order to create a clearer and more efficient regulatory regime.

Industry would, however, like to see a change in terminology with respect to the phrase 'unclassified funds'. There is a perception that promoters see this expression in a negative light and would prefer to call them by another name such as, for example, 'authorised funds'.

The expression derives from a literal application of the CIF(J)L. Under the Law, the Minister for Economic Development Committee may classify funds and specify rules applicable to them. The only classification made so far is in respect of recognized funds, hence all other funds remain in the 'unclassified' category. The Commission sees no reason why such funds cannot be called 'authorised funds' if that would assist Industry and provided they continue to be clearly distinguishable from recognized funds.

The Commission invites further suggestions for alternative names. For the time being the law changes set out this paper retain the references to 'unclassified funds.'

Industry would like to see an overhaul of the scope of the CIF(J)L with particular reference to the wording of Article 3 dealing with what amounts to a public offer.

In the Commission's view such a change could amount to a significant shift in the way in which funds are regulated in Jersey, and the Consultation Papers are not an appropriate forum for a discussion of that nature. The Commission is, however, willing to discuss the proposals at a future date.

Control of Borrowing – 'COBO' consent for non-Jersey domiciled funds

While the initiatives relating to non-Jersey domiciled funds were welcomed, concerns remained about retaining the COBO requirement for such funds. Ideally industry would like to see COBO removed altogether for non-Jersey funds.

In the meantime, there was a request that COBO consents be fast-tracked for approval by the Commission to, say, 72 hours?

The issue of COBO consents for non-domiciled funds is under review. An issue remains over the circulation of a prospectus in Jersey by non-Jersey entities which would still require COBO consent as the law stands at present.

A 72 hour turn around may be achievable for non-domiciled funds and the Commission will consider this further.

Review of Closed-ended Funds

Industry would like to see a review of the overall regulatory approach to closed-ended funds.

The Commission has sought to address this request and has now introduced the Closed-ended Listed Fund Guide in respect of closed-ended funds listing on exchanges recognized by the Commission.

Current exemptions including 'professional investor regulated schemes'

Industry questioned whether, following the change over, existing exemptions from the CIF(J)L for pooled investment vehicles would remain, together with existing exemptions from the FS(J)L such as the "professional investor regulated schemes" under the Financial Services (Investment Business (Restricted Investment Business – Exemption)) (Jersey) Order 2001.

Also, Industry would like to see a lower financial threshold for professional investor regulated schemes under the above Order from £250,000 to US\$100,000 in order to fall into line with the Expert Fund Guide.

It is confirmed that the existing exemptions from the FS(J)L will remain. Consideration of the limits applicable to a professional investor regulated scheme was rather outside the matters raised in the Consultation Papers but the Commission is willing to consider this separately in consultation with Jersey Finance.

Certificates for unit trusts and limited partnerships

Industry noted that the new style certificate to be issued under the CIF(J)L will have to be issued in the name of a legal person. So for unit trusts the certificate will be issued to the trustee, and for limited partnerships the certificate will be issued to the general partner.

This understanding is correct. Until such time as the Collective Investment Funds (Amendment No 4) (Jersey) Law 200- ([Document 11](#)) is enacted, the Commission will continue with issuing permits.

Fees and charges

It was noted that presently no charge is made for COBO consents and that the Commission may wish to look at this in the future. If a charge for COBO consent is charged for non-CIF structures, it was questioned whether this would permit a reduction in the amount charged under the CIF(J)L and the FS(J)L.

In addition, paragraph 5.8.1 of CP2 suggested there would be an annual charge for each class of fund services business undertaken.

The Commission is keeping under review the position of COBO consents for funds. It should be borne in mind, however, that for public funds under the CIF(J)L, the requirement for COBO consent is removed by virtue of the Control of Borrowing (Amendment No 12) (Jersey) Order 200- ([Document 7](#)).

It is correct that there will be a separate charge for each class of fund services business undertaken by a registered entity under the FS(J)L.

On the proposed fees due in respect of unit trusts and limited partnerships (previously not charged), there was a question whether these can be adjusted downwards in the light of the large number of 'extra' licence fees that would be due?

Fees should be considered in the round. The Commission sees no reason to charge limited partnerships or unit trusts any differently to corporate-style funds, or to offer any other form of reduction at this stage. The position will be kept under review to ensure that the level of fees applicable to all fund types correlates with the level of fees presently received by the Commission in respect of corporate funds. This may result in a reduction in the fees charged to corporate funds.

There is concern that if there is an annual fee required for each class of business undertaken, there are unnecessary overlaps in the categories of functionary. For instance, a manager might also be the administrator, or a distributor and might also receive subscriptions. A review of the prescribed list of functionaries is called for and a list defining each function would be helpful.

The Commission acknowledges that this is a difficult issue. Exemption from the CIF(J)L is being given on a 'grandfathered' basis so that the class of business for which registration is made under the FS(J)L matches the class of functionary for which a permit is presently held under the CIF(J)L. Therefore, if more than function is presently performed within, say, a manager's permit, that will continue to be the position under the FS(J)L.

It is also acknowledged that the performance of certain functions may embrace other functions. For example, a manager might also fulfil the role of distributor as part of its management function. In that case no separate registration would be required under the FS(J)L, although attention is drawn to the IB requirements set out in paragraph 3.2 of the Codes of Practice.

In cases of real doubt the precise nature of a functionary's role would be determined as a matter of fact on a case by case basis. Penalties may ensue where an entity holds a permit/registered under the FS(J)L to act as distributor when in reality it is also acting as, say, a subscription agent.

Rationalisation of business classes could, however, be reviewed once the full transfer of regulation to the FS(J)L is completed. No further functionary permits will then be issued under the CIF Law, (except for recognized funds).

The list of functions is prescribed by statute and any description of the functions given by the Commission would only be its interpretation of the Law. Nonetheless the Commission could in the future consider drawing up some notes provided it was only used for guidance purposes.

For new applicants, an application fee is payable on registration as a fund services business under the FS(J)L but this will not apply under the grandfathering arrangements. An annual fee is payable in respect of each class of business undertaken for both new and grandfathered applicants. The first round of annual fees under the new regime will be payable on 1 July 2008.

It is desirable that separate categories of functionary remain as stated in the schedule to the CIF(J)L in the event they are to be performed separately. The position should be compared with that for TCBs where one registered person is obliged to pay for a number of classes of business.

Standardisation of permit conditions

With reference to the standardisation of permit conditions for expert and non-expert funds, Industry is in broad agreement with this but would like to be consulted on their terms.

The Commission agrees to do this.

The Recognized Fund regime

Industry agreed with the decision to retain the current regime for recognized funds under the CIF(J)L for the time being. (This has also been the response of the small number of functionaries who replied separately to the Commission).

The Commission has accepted the comments here and the proposed amendments to the CIF(J)L make a very clear distinction between recognized funds and unclassified funds. In effect, the words 'permit' and 'functionary' will only become applicable to recognized funds.

What amounts to carrying on 'fund services business'

There was a question regarding the level of business activity necessary to trigger registration under the FS(J)L for carrying on 'fund services business'. Would registration under the FS(J)L be required where only a single non-executive directorship is undertaken?

In the Commission's view it is instructive to compare the position for TCBs and IBs under the FS(J)L since the same wording of the Law applies. In keeping with the Commission's general view for TCBs, if a director is paid for his or her services that fact will be strongly indicative of a person acting 'by way of business' and registration under the Law will be required, even if it is only a one off undertaking. Overall, the emphasis of the Commission's approach is one of consistency across all areas of regulated activity under the FS(J)L.

Employee qualifications

Industry would prefer not to see a prescriptive approach regarding employee qualifications. When the proposal to transfer regulation to the FS(J)L was made originally, the Codes of Practice provided that registered persons would ensure employees had sufficient qualifications and experience, i.e. responsibility would rest with the registered person to ensure compliance.

The Commission has adopted the prescriptive route in order to be consistent with TCBs. A long transitional period is proposed, possibly 5 years, in which to comply. The Commission is proposing to discuss with industry the exact qualification requirements with once responses to the qualification questionnaire have been received and assessed.

New class 'manager of functionary'

The need to introduce a new class of business of 'manager of a functionary' was questioned. If providing administration support and if already registered under the FS(J)L to carry on trust company business, Industry also questioned whether further registration will be required?

Although the Commission is not clear what is meant by 'administration support' in this context, as a general principle the Commission regards carrying on trust company business and fund services business, as distinct operations subject to separate Codes of Practice, therefore further registration will indeed be required. It is proposed to rename the new class as 'manager of a managed entity' because the word 'functionary' will become the exclusive preserve of the recognized fund regime.

Filing of Accounts

In the view of Industry, the reduction in filing time for accounts will put pressure on the auditors, and the increased volume of accounts may well overwhelm Commission in any event.

The Commission sees no reason to deviate from the policy of consistency of the approach applied to IBs and TCBs, which is four months. Businesses could consider changing their accounting year end in order to spread the number of audits throughout the year. It should be borne in mind that it is the (FS(J)L) registered entity's accounts that require to be filed within four months rather than accounts for the fund itself – see *Document 11*. For the time being the time limit remains at ten months for the fund itself although the Commission intends to review it.

Client Assets Order – assets held on trust

With regard to the proposed Client Assets Order, there is concern that the requirement to hold assets on trust for the investors will convert corporate funds and limited partnership funds into unit trusts which may have adverse tax consequences for a fund and its investors.

In the light of these concerns the Commission has amended the draft Client Assets Order (*Document 12*). It now refers to the safekeeping of assets belonging to a client and arising from a 'fund services business agreement'.

Codes of Practice

With regard to the high-level principles set out in the Introduction to the Codes of Practice, there is general acceptance of them as Industry would not want to see any weakening of the current regulatory position.

Paragraph 2

Industry queried the use of the expression 'and its unitholders' in Principle 2 of the Codes of Practice, as it could give rise to conflicts. This would be on the footing that a functionary will contract with, and owe duties to, the fund vehicle itself and not to the investors in that vehicle. If duties were owed to the individual unitholders, arguably such persons could action the functionaries for breach in the event of a default instead of the fund.

The Commission has noted the comments here. The revised draft Codes of Practice now refer to 'the Fund' in place of the unitholders.

Paragraph 2.6

Industry considered this paragraph to be unnecessary given the overriding obligation under paragraph 2.5 of the Codes of Practice always to act in the best interests of the Fund.

The Commission wishes to retain this part in the interests of clarity and consistency.

Paragraph 3.1.3.2

In the view of Industry, this paragraph seemed rather eclectic.

In the light of Industry's comments, this paragraph has been removed from the current draft of the Codes of Practice.

Paragraph 3.2.4 - Directors

Industry suggested having only one Jersey resident director on the board of a registered person in place of the usual two where such person is also a principal person of a regulated financial services business.

Industry also raised the possible use of corporate directors on the boards of regulated entities once that concept is introduced into the Companies (Jersey) Law 1991.

This is now paragraph 3.1.4 of the amended draft Codes of Practice. The Commission wishes to keep to its long-established policy of requiring two locally resident directors.

The question whether corporate directors will be permissible is a matter for the Commission to determine as a matter of policy. The Commission has not formed any view at this stage whether to permit the use of corporate directors in this manner.

Paragraph 3.4.4 - Compliance Officer

Industry considered the duties assigned to the Compliance Officer are onerous (see e.g. paragraph 3.4.4.1), and it should be made clear in the Codes of Practice that ultimate responsibility for compliance rests with the board.

This part of the draft Codes of Practice (now paragraph 3.5.3) is intended to be consistent with the Codes for TCBs and IBs. The specific paragraph mentioned, namely 3.4.4.1, has been amended to be consistent with the revised Trust Company Business Codes of Practice.

Paragraph 3.4.5 - AML Handbook

By the time the transfer over to the FS(J)L takes effect, the revised Anti-money Laundering Handbook should be published. The Codes should be amended to take into account the revisions made by the Handbook.

The revised version of the AML/CFT Handbook has been published for consultation and corresponding amendments have been made to the draft Codes of Practice.

Paragraph 3.6 - complaints handling

The proposed complaints handling process is inconsistent with the approach agreed under the Codes of Practice for Deposit-taking Business. A consistent approach should be adopted.

Deposit-taking is regulated under a different statute. The emphasis in the Commission's approach to fund services business is consistency with trust company business and investment business.

Paragraph 5.2 - PII cover

An observation was made that it may not be possible or appropriate for the manager of a functionary to include a managed entity within its own PII cover.

The Commission notes the observation, however it is a core regulatory requirement for all regulated entities to maintain adequate PII cover .

Schedule 1 - Financial Resource Requirements

Results of the consultation process on Trust Company Business Codes of Practice should be taken into account, especially with regard to the ANLA calculations.

Industry would welcome clarification on whether the Supplementary Guidance issued by the Commission in January 2006 in relation to the treatment of intragroup management charges will apply to Codes of Practice.

Preparation of the revised draft of the Codes of Practice for TCBs is very close to completion and the consultation on has now concluded. The revised draft of the Codes of Practice has been prepared based on the Trust Company Business Codes of Practice amendments.

The Commission confirms the Supplementary Guidance will apply to Fund Services Businesses.

APPENDIX B

DRAFT FIRST AND SECOND STAGE LAWS, REGULATIONS AND ORDERS

	The First Stage
Document 1	Financial Services (Amendment of Law) (Jersey) Regulations 200-
Document 2	Financial Services (Investment Business (Fund Services Business Exemption)) (Jersey) Order 200-
Document 3	Financial Services (Trust Company Business (Exemptions)) (Amendment No 2) (Jersey) Order 200-
Document 4	Financial Services (Fund Services Business) (Accounts, Audits and Reports) (Jersey) Order 200-
Document 5	Financial Services (Fund Services Business) (Client Assets) (Jersey) Order 200-
Document 6	Collective Investment Funds (Permits) (Exemptions) (Amendment No 2) (Jersey) Order 200-
Document 7	Control of Borrowing (Amendment No 12) (Jersey) Order 200-
	The Second Stage
Document 8	Financial Services (Investment Business (Fund Services Business Exemption) (Amendment)) (Jersey) Order 200-
Document 9	Financial Services (Trust Company Business (Exemptions)) (Amendment No 3) (Jersey) Order 200-
Document 10	Financial Services (Fund Services Business (Registration and Fees)) (Jersey) Order 200-
Document 11	Collective Investment Funds (Amendment No 4) (Jersey) Law 200-
Document 12	Collective Investment Funds (Unclassified Funds) (Prospectuses) (Amendment No 4) (Jersey) Order 200-
Document 13	Companies (General Provisions) (Amendment No 2) (Jersey) Order 200-
Document 14	Collective Investment Funds (Permit Fees) (Jersey) Order 200-
Document 15	Collective Investment Funds (Permits) (Exemptions) (Amendment No 3) (Jersey) Order 200-

APPENDIX C

DRAFT CODES OF PRACTICE

- [Draft Fund Services Business Codes Of Practice.](#)
- [Draft Fund Services Business Codes Of Practice in black lined version showing the changes from the version circulated with CP1.](#)