

**CONSULTATION PAPER
NO. 5 2007**

**AMENDMENTS TO SECONDARY
LEGISLATION**

**Amendments to secondary legislation as discussed in
Position Paper No. 4 2007**

CONSULTATION PAPER

The Jersey Financial Services Commission (the “**Commission**”) invites comments on this consultation paper. Robert Kirkby at Jersey Finance Limited (“**Jersey Finance**”) is co-ordinating industry responses that will incorporate matters raised by its members.

Comments with respect to the proposed amendments should reach Jersey Finance by:

With respect to sections 4 and 7:	26 November 2007
With respect to sections 5 and 6:	11 January 2008

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Alternatively, responses may be sent directly to individuals at the Commission, as noted below, by the dates as set out above. If you require any assistance, clarification or wish to discuss any aspect of the proposal prior to formulating a response, it is of course appropriate to contact the Commission. The Commission contacts are:

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It is the policy of the Commission to make the content of all responses available for public inspection unless specifically requested otherwise.

Glossary of Terms

Position Paper No. 4 2007 Amendments to Regulatory Legislation, issued June 2007	the Position Paper
Adjusted Net Liquid Assets	ANLA
Codes of Practice	Codes
Offshore Group of Banking Supervisors	OGBS
The Minister for Economic Development	the Minister
Investment Business	IB
Trust Company Business	TCB
General Insurance Mediation Business	GIMB
Unclassified Collective Investment Funds	Funds
In this paper “ licence ” is being used as a generic term to cover:	
<ul style="list-style-type: none">• a registration granted under the BB(J)L;• a permit granted pursuant to the CIF(J)L;• a registration granted under the FS(J)L; and• a permit granted pursuant to the IB(J)L.	
In this paper “ registered person ” is being used as a generic term to cover:	
<ul style="list-style-type: none">• a person granted a registration under the BB(J)L;• a person granted a permit pursuant to the CIF(J)L;• a person granted a registration under the FS(J)L; and• a person granted a permit pursuant to the IB(J)L.	
Financial Services (Investment Business (Accounts, Audits and Reports)) (Jersey) Order 2001	IB Accounts Order
Financial Services (Trust Company Business (Accounts, Audits and Reports)) (Jersey) Order 2000	TCB Accounts Order
Financial Services (General Insurance Mediation Business (Accounts, Audits, Reports & Solvency)) (Jersey) Order 2005	GIMB Accounts Order

Financial Services (Trust Company Business (Assets – Customer Money)) (Jersey Order 2000) **TCB Customer Money Order**

Banking Business (Jersey) Law 1991

BB(J)L

Collective Investment Funds (Jersey) Law 1988

CIF(J)L

Financial Services (Jersey) Law 1998

FS(J)L

Insurance Business (Jersey) Law 1996

IB(J)L

Individually this paper refers to these as a “primary law” and collectively they are referred to as the “Regulatory Laws”

Basel Committee on Banking Supervision

BCBS

International Association of Insurance Supervisors

IAIS

International Organisation of Securities Commissions

IOSCO

Financial Action Task Force

FATF

Collectively this paper refers to these as the “international regulatory bodies”

IOSCO Objectives and Principles of Securities Regulation

IOSCO Objectives

Methodology for Assessing Implementation of the IOSCO Objectives

IOSCO Methodology

International Monetary Fund

IMF

Contents

Glossary of Terms	2
Contents.....	4
1 Executive Summary	6
1.1 Overview	6
1.2 What is proposed and why?.....	7
1.3 Who would be affected?.....	9
2 Consultation.....	11
2.1 Basis for consultation.....	11
2.2 Responding to the consultation.....	11
2.3 Next steps.....	12
3 The Commission	13
3.1 Overview	13
3.2 Commission's functions	13
3.3 Guiding principles	13
4 Accounts Order – Investment and Trust Company Business.....	14
4.1 Policy position	14
4.2 Subsequent policy discussions.....	16
4.3 Draft legislation.....	22
5 Trust Company Business Assets	23
5.1 Policy position	23
5.2 Subsequent policy discussions.....	24
5.3 Draft legislation.....	25
6 Advertising Order	26
6.1 Policy position	26
6.2 Subsequent policy discussions.....	27
6.3 Draft legislation.....	29
7 Disclosures by Unclassified Collective Investment Funds.....	31
7.1 Policy position	31
7.2 Subsequent policy position.....	31
7.3 Draft legislation.....	32
8 Cost Benefit Analysis	33
8.1 Costs and benefits relating to section 7.....	33
8.2 Costs to industry	33
8.3 Costs to the Commission.....	33
8.4 Benefits.....	34
9 Summary of Questions.....	35

Appendix A	List of representative bodies who have been sent this consultation paper	37
Appendix B	Draft Financial Services (Trust Company and Investment Business Accounts, Audits and Reports) (Jersey) Order 200-	39
Appendix C	Draft Financial Services (Trust Company Business Assets) (Jersey) Order 200-	61
Appendix D	Draft Financial Services (Advertising) (Jersey) Order 200-	77
Appendix E	Draft Financial Service (Investment Business (Overseas Persons – Exemption)) (Jersey) Order 200-.....	87

1 Executive Summary

1.1 Overview

- 1.1.1 Earlier in 2007 the Commission completed a comprehensive self assessment exercise of the Island's regulatory framework against international standards set by international regulatory bodies; this consultation paper provides another opportunity for industry to comment on the items identified as a result of the self assessment exercise.
- 1.1.2 To date the Commission has:
 - 1.1.2.1 issued the Position Paper;
 - 1.1.2.2 undertaken open discussion sessions on the amendments proposed to the Regulatory Laws; and
 - 1.1.2.3 issued Consultation Paper No. 4 2007 Amendments to Regulatory Laws ("**Consultation Paper No. 4**")¹.
- 1.1.3 Both the need for and the topics discussed within this consultation paper were first brought to industry's attention as part of the Position Paper. Since publication of the Position Paper the Commission has continued to develop its policy position and has issued drafting instructions to the Law Draftsman.
- 1.1.4 Sections 4 to 7 of this paper detail the subsequent policy discussions and decisions taken, as well as highlighting areas where the Commission considers industry's attention should be focussed and where we are seeking specific feedback.
- 1.1.5 Wherever possible the Commission has appended draft legislation to this consultation paper. This is not the case with respect to disclosures by funds (section 7), as the transition of certain funds functionaries from regulation under the CIF(J)L to the FS(J)L has been the priority for the Commission staff involved in the authorisation and supervision of funds. Consequently, this paper only consults on the policy intent relating to the scope of funds that will be subject to disclosure requirements and a separate consultation on the legislative amendments will occur later this year.

¹ With respect to Consultation Paper No. 4, the Commission has considered the responses received - which in the main raised points of practical application rather than issues that required amendment to the draft legislation - and has recently lodged, au Greffe, the amending legislation for the Regulatory Laws. These may be viewed on the States Assembly website and are due for debate on 6 November 2007.

1.2 What is proposed and why?

- 1.2.1 This consultation paper proposes amendments to existing secondary legislation as well as proposing a new piece of secondary legislation, with the majority of amendments being proposed as a result of the Commission's pre IMF self assessment exercise.
- 1.2.2 Whilst the following paragraphs provide an overview of each section we would encourage all interested parties to read the sections in full.

Section 4 Accounts Order – Investment and Trust Company Business

- 1.2.3 Section 4 proposes that the TCB Accounts Order and IB Accounts Order are both repealed and replaced with a single Order designed to cover both business sectors in respect of matters relating to accounts, audits and reports.
- 1.2.4 The Commission recognises that, in general, matters relating to accounts, audits and reports are not financial sector specific, however where operational matters dictate that specific requirements must be accommodated, the Commission believes that this has been achieved within the single Order.
- 1.2.5 Having decided to produce one Order covering the financial sectors of trust company and Investment Business the Commission has taken the opportunity to restructure the Accounts Order into what it believes to be a more logical format.
- 1.2.6 The majority of the amendments proposed are in connection with the accounts, audits and reports of the Investment Business sector although the proposals do clarify a number of items for the Trust Company Business sector.
- 1.2.7 The majority of the amendments are being proposed to address shortfalls highlighted in the current regime when considered against the IOSCO Objectives and IOSCO Methodology².
- 1.2.8 Additionally, a small number of amendments have been proposed as a result of the Commission's business as usual policy work.
- 1.2.9 One of the more significant proposals, that is a new requirement for both investment and trust company businesses, is that a registered person submit to the Commission, where relevant, a copy of their Resource Requirement Table in respect of the end of the accounting period.

Section 5 Trust Company Business Assets

- 1.2.10 Section 5 proposes that the assets of TCB customers covered by an Assets Order should be extended beyond its current scope of customer money. This paper proposes that the assets within the scope of an Order are:

² Details on the shortfalls being addressed by these proposals are given in section 9 of the Position Paper.

- 1.2.10.1 Customer money;
 - 1.2.10.2 Investments – as defined by the FS(J)L; and
 - 1.2.10.3 Immovable property.
- 1.2.11 The proposed mechanism for extending the scope of assets covered by an Order is to repeal the current TCB Customer Money Order and incorporate its requirements into a new Assets Order that will cover the wider asset scope as defined in 1.2.10.
- 1.2.12 The extension of asset scope is being proposed to address a shortfall in the current regime highlighted when it was considered against the OGBS Best Practice Statement for Trust and Company Service Providers. The statement refers to customer assets, which the Commission understands to incorporate a wider range of customer assets than “money”³.

Section 6 Advertising Order

- 1.2.13 Section 6 proposes the publication of an Advertising Order covering advertising, to be issued under the FS(J)L. All businesses granted a registration to operate under the FS(J)L will be affected by the Order, however it is intended that entities only registered to operate “money service business” will be exempted from its requirements.
- 1.2.14 An Advertising Order was first issued for consultation in 2002. The consultation paper included both draft legislation and proposed text for inclusion in the IB and TCB Codes. Subsequently, an advertising principle has either been added to the Codes or is proposed in the most recent Codes issued for consultation.
- 1.2.15 The draft legislation establishes general principles; record keeping requirements and clarifies the position regarding the application of the Order to certain advertisements issued by overseas persons.
- 1.2.16 There is a direct link between the Advertising Order and the Financial Services (Investment Business (Overseas Persons – Exemption)) (Jersey) Order 200- (the “**IB OPEO**”). Consequently, this Order has been revisited and a proposed amending Order is attached to this paper as Appendix E.
- 1.2.17 The Advertising Order is being proposed:
- 1.2.17.1 to better facilitate compliance with the IOSCO Objectives and IOSCO Methodology, which require, inter alia, that regulation includes rules and procedures to prevent guarantees of future performance; and
 - 1.2.17.2 to provide the Commission with access to sanctions that are envisaged by the FS(J)L but which remain unavailable until an Advertising Order is made.

³ Further details on the shortfall that is being addressed are given in section 10 of the Position Paper.

Section 7 Disclosures by Unclassified Collective Investment Funds

- 1.2.18 Unlike sections 4 to 6 there is no draft legislation associated with section 7. Rather, the section discusses the Commission's policy position with respect to the scope of funds to be covered by an amended prospectus order.
- 1.2.19 The proposal is that the Collective Investment Funds (Unclassified Funds) (Prospectuses) (Jersey) Order 1995 ("UFPO") will apply to companies, trusts and limited partnerships, whether they are open-ended or closed-ended, for which an unclassified fund certificate has been issued under the CIF(J)L⁴.
- 1.2.20 Policy work is still progressing on the actual disclosure requirements and both aspects, scope and disclosure requirements, will be consulted on later this year.
- 1.2.21 The amendments are being proposed to address perceived shortfalls in the current regime when considered against the IOSCO Objectives for collective investment schemes.

1.3 Who would be affected?

- 1.3.1 The impact of the proposals contained in sections 4 to 7 of this paper are spread across a number of financial sectors. The following table identifies where the Commission believes the impact of the proposed changes will fall:

1.3.2

Consultation Paper Section	Area of impact
4. Accounts Order	Auditor of an entity holding either: a licence to conduct Investment Business; Trust Company Business; or both. Registered Persons undertaking: <ul style="list-style-type: none">▪ Investment Business▪ Trust Company Business
5. Trust Company Business Assets	Registered Persons undertaking: <ul style="list-style-type: none">▪ Trust Company Business

⁴ The concept of unclassified fund certificates is being proposed as part of Collective Investment Funds (Amendment No.4) (Jersey) Law 200- ("CIF Amendment No.4"), lodged au Greffe on 25 September 2007 by the Minister for Economic Development.

Consultation Paper Section	Area of impact
6. Advertising Order	<p>Persons advertising in Jersey in respect of financial service business as defined by Article 1 of the FS(J)L.</p> <p>Especially, Registered Persons undertaking:</p> <ul style="list-style-type: none"> ▪ Investment Business ▪ Trust Company Business ▪ General Insurance Mediation Business ▪ Fund Services Business (following the transfer of fund functionary regulation from the CIF(J)L to the FS(J)L)
7. Disclosures by Unclassified Collective Investment Funds	Unclassified Collective Investment Funds

2 Consultation

2.1 Basis for consultation

- 2.1.1 The Commission has issued this consultation paper in accordance with Article 8(2) of the Financial Services Commission (Jersey) Law 1998 (the “**Commission Law**”), as amended, under which the Commission “*may, in connection with the carrying out of its functions -consult and seek the advice of such persons or bodies whether inside or outside Jersey as it considers appropriate*”.
- 2.1.2 The Orders, as proposed by this paper, are in pursuance of the following Articles of the FS(J)L:
- 2.1.2.1 Accounts Order – Articles 17, 18 and 42;
 - 2.1.2.2 Trust Company Business assets – Articles 21 and 42;
 - 2.1.2.3 Advertising Order – Articles 31 and 42; and
 - 2.1.2.4 IB OPEO – Articles 7(2)(a)(i), 7(2)(b) and 42.

2.2 Responding to the consultation

- 2.2.1 The Commission invites comments in writing from interested parties on the proposals included in this consultation paper. Where an industry body or association makes comments, that body or association should also provide a summary of the type of individuals and/or institutions that it represents.
- 2.2.2 To assist in analysing responses to the consultation paper, respondents are asked to:
- 2.2.2.1 prioritise comments and to indicate their relative importance; and
 - 2.2.2.2 respond as specifically as possible and, where they refer to costs, to quantify those costs.
- 2.2.3 Respondents to the consultation paper should note that the comment period for sections 4 and 7 of this paper closes on 26 November 2007.
- 2.2.4 The shortened comment periods have been set to facilitate the following:
- 2.2.4.1 with respect to section 4 - Accounts Order: the Order coming into force on or prior to 31 December 2007 - the accounting period end date for a large proportion of the entities licensed by the Commission to conduct Investment and Trust Company Business; and
 - 2.2.4.2 with respect to section 7 - Disclosures by Unclassified Collective Investment Funds: the Commission intends to consult on draft

legislation towards the end of the year and consequently requires feedback on the proposed Order scope.

- 2.2.5 In a similar vein to the industry discussion sessions held just prior to the publication of Consultation Paper No. 4, the Commission has hosted a series of industry discussion sessions on the areas covered by this paper. These discussion sessions form part of the consultation process and all comments received will be considered as the Commission formulates the final legislation.
- 2.2.6 The Commission encourages respondents to submit their responses as soon as possible, either to Jersey Finance or directly to the Commission, using the contact details provided on page 1.

2.3 Next steps

- 2.3.1 As noted, Jersey Finance will be collating industry responses to all parts of this consultation and the Commission will consider all responses from interested parties.
- 2.3.2 Following consideration of the responses the Commission intends to work to the following timetable:
 - 2.3.2.1 Accounts Order – the Minister to make the Order mid December 2007;
 - 2.3.2.2 Disclosures by Unclassified Collective Investment Funds – consultation on draft legislation to be published by the end of 2007;
 - 2.3.2.3 Trust Company Business Assets – the Minister to make the Order by the end of February 2008; and
 - 2.3.2.4 the Advertising Order and OPEO – the Minister to make the Order by the end of February 2008.
- 2.3.3 It is anticipated that all Orders will come into effect 7 days after they are made.

3 The Commission

3.1 Overview

3.1.1 The Commission is a statutory body corporate established under the Commission Law. It is responsible for the supervision and development of financial services provided in or from within Jersey.

3.2 Commission's functions

3.2.1 The Commission Law prescribes that the Commission shall be responsible for:

3.2.1.1 the supervision and development of financial services provided in or from within Jersey;

3.2.1.2 providing the States, any Minister or any other public body with reports, advice, assistance and information in relation to any matter connected with financial services;

3.2.1.3 preparing and submitting to the Minister recommendations for the introduction, amendment or replacement of legislation appertaining to financial services, companies and other forms of business structure; and

3.2.1.4 such functions in relation to financial services or such incidental or ancillary matters –

- as are required or authorised by or under any enactment, or
- as the States may, by Regulations, transfer.

3.3 Guiding principles

3.3.1 The Commission's guiding principles require it to have particular regard to:

3.3.1.1 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 Jersey;

3.3.1.2 the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;

3.3.1.3 the best economic interests of Jersey; and, in pursuit of the above,

3.3.1.4 contributing to the fight against financial crime.

4 Accounts Order – Investment and Trust Company Business

4.1 Policy position

- 4.1.1 Section 9 of the Position Paper sets out the Commission’s position in respect of amendments being considered to both the IB Accounts Order and the TCB Accounts Order. The proposed amendments resulted from the self assessment exercise, undertaken against international regulatory standards, and business as usual policy work.
- 4.1.2 The Position Paper noted that the IB and TCB Accounts Orders are currently dissimilar in ways that cannot be justified by considering the characteristics of the business to which they relate. Additionally, many of the amendments considered necessary to the IB Accounts Order replicate items already present in the TCB Accounts Order.
- 4.1.3 The Position Paper went on to state that consideration was being given to the possibility of combining the IB and TCB Accounts Orders.
- 4.1.4 The remainder of this section provides a summary of the policy thinking at the time of issuing the Position Paper, June 2007, whilst section 4.2 provides details of how these policy areas have been developed.
- 4.1.5 In terms of the specific amendments proposed by the Position Paper the following were noted as necessary to the IB Accounts Order as a result of the self assessment exercise against the IOSCO Objectives and IOSCO Methodology as they relate to Market Intermediaries⁵:
- 4.1.5.1 That the directors of a licensed entity provide a declaration to the Commission regarding compliance with the relevant Laws, Orders and Codes (that have not been waived by the Commission). The declaration should be appropriately signed and submitted to the Commission.
- 4.1.5.2 That the auditor prepares and furnishes the licensed entity with a report on the financial statements and the declaration noted in 4.1.5.1.
- 4.1.5.3 That the Commission is provided with reports prepared by an internal or external auditor, for the licensed entity, to address a relevant matter⁶.
- 4.1.5.4 That the Commission is provided with reports prepared by an accountant or consultant, for the licensed entity, to address a material relevant matter.

⁵ Principles 21 to 24.

⁶ Currently, relevant matter is defined in the TCB Accounts Order (Article 8(4)) however see 4.1.6.8.

- 4.1.5.5 That greater detail should be provided in the Order relating to the nature and form of the accounting records that should be kept.
- 4.1.6 Additionally, the Position Paper proposed the following for both the IB and TCB Accounts Orders as a result of the Commission's business as usual policy work:
- 4.1.6.1 That the Commission is provided with an appropriately signed directors' report that should contain the following minimum information: list of the current directors; details of the responsibilities of the directors; activities of the licensed entity; and the entity's country of incorporation.
- 4.1.6.2 That the financial statements provided to the Commission should be an original signed copy bearing the signature of at least one director and the external auditor of the entity.
- 4.1.6.3 That, where relevant, licensed entities should submit their period-end ANLA calculation to the Commission along with their financial statements.
- 4.1.6.4 That the date of submission of the directors' declaration is within one month of the period-end.
- 4.1.6.5 That financial statements may be prepared using either the Accounting Standards issued by the UK Accounting Standards Board, or the International Financial Reporting Standards issued by the International Accounting Standards Board. The use of any other accounting standard would require the prior consent of the Commission.
- 4.1.6.6 That the financial statements may be audited using either the Auditing Standards issued by the Auditing Practices Board - International Standards on Auditing (UK & Ireland) or the International Standards on Auditing issued by the International Auditing and Assurance Standards Board.
- 4.1.6.7 That a director should sign the declaration relating to the licensed entity's compliance with the relevant Laws, Order and Codes.
- 4.1.6.8 That the definition of relevant matter⁷ (as it refers to the reports to be provided to the Commission) be amended such that it refers to "...a breakdown or weakness in the person's internal control procedures..." rather than "...a breakdown or material weakness...". The amendment is proposed as the Commission has found itself engaged in numerous discussions regarding the meaning of "material".

⁷ Article 8(4) of the TCB Accounts Order.

4.2 Subsequent policy discussions

Format of the Accounts Order

- 4.2.1 Following publication of the Position Paper the Commission has continued to consider the policy in respect of the IB and TCB Accounts Orders and has engaged in discussions with interested parties with a view to informing the Commission's policy development.
- 4.2.2 One of the areas of discussion has been the possibility of continuing with separate accounts Orders for the Investment Business and Trust Company Business sectors. Increasingly, it has become obvious that, in practical terms, the differences between the two sectors do not warrant the maintenance of two Orders.
- 4.2.3 By continuing to maintain two Orders the Commission would not be operating in the most efficient and effective manner with regard to the use of either its, or the States', resources as amendments to one Order would most likely need to be replicated in the other. Additionally, we may be imposing unnecessary costs on the audit industry and registered persons, as they would need to continually compare and contrast the two Orders for entities that undertake both financial activities either within a single entity or within a group scenario.
- 4.2.4 Consequently, the Commission has concluded that it is no longer necessary to maintain both an IB Accounts Order and a TCB Accounts Order therefore Appendix B contains draft legislation – Financial Services (Trust Company and Investment Business Accounts, Audits and Reports) (Jersey) Order 200- (the “**combined Accounts Order**”) – that will apply to both financial sectors.
- 4.2.5 **Do you agree with the Commission's decision to repeal the IB Accounts Order and TCB Accounts Order and replace them with a combined Accounts Order? If not, please explain why in your response.**

The declaration

- 4.2.6 The Commission views the directors' declaration as an important document that should be shared with a registered person's auditor in advance of the start of the audit of period end figures. The Commission believes that the declaration should be shared to assist the auditor to tailor, where necessary, the scope of the audit around the risks that the registered person is currently experiencing.
- 4.2.7 The Commission has become aware that not all registered persons currently provide their auditor with a declaration in advance of the commencement of the audit of the period end figures. Rather, the Commission understands that it is quite common for directors to prepare the declaration as the audit nears completion, and, in some cases, the Commission has sighted declarations that simply state, “refer to the auditor's management letter”.
- 4.2.8 The proposal set out in the Position Paper, and reiterated at 4.1.6.4 of this paper, was that the registered person would be required to submit their declaration [to the Commission] one month after the period end.

- 4.2.9 This proposal initiated considerable debate, both within industry and also within the Commission, not least, as the policy proposal did not clarify to whom the declaration would be deliverable within one month.
- 4.2.10 Consequently, the Commission has decided not to proceed with its proposal to amend the requirements from those currently established by the TCB Accounts Order; the existing TCB requirements have been included in the combined Accounts Order.
- 4.2.11 However, the Commission would like to suggest alternative proposals as set out below:
- 4.2.11.1 The first alternative would be to amend Article 7(1) of the combined Accounts Order, such that, instead of the registered person providing the declaration to their auditor as soon as practicable after their accounting period end, there would be an explicit requirement to provide the declaration to their auditor one month after the end of their accounting period.
- 4.2.11.2 A second alternative, which could be used on its own or in addition to the proposal in 4.2.11.1, is for the Commission to issue a guidance note, specifically covering the declaration and how it should be used in practice, with rationale for this treatment.
- 4.2.12 **Do you agree that providing a signed declaration to the auditor one month after the period end date is achievable? If not, please explain why in your response.**
- 4.2.13 It is also worth highlighting that, although the combined Accounts Order specifically addresses declarations relating to Investment Business and Trust Company Business, the use of declarations is becoming more commonplace. For example, the draft Codes of Practice for deposit-taking business, currently out for consultation, propose the submission of a directors' declaration in a similar manner to that included in the combined Accounts Order.
- 4.2.14 Consequently, going forward the Commission appreciates that those entities holding more than one licence will have to consider the format of each declaration and whether or not one declaration will be sufficient to meet all regulatory requirements.
- 4.2.15 The Commission is aware of this issue and aims to provide industry with guidance in the area of providing declarations where a registered person holds more than one licence in a single entity, or group of entities that are managed by way of one risk management system. Any such guidance may be combined with the guidance referred to in 4.2.11.2.

Submission of the Resource Requirement Table

- 4.2.16 The Commission proposed, in the Position Paper, that a registered person be required to submit their Resource Requirement Table (commonly referred to as the ANLA) for the period end to the Commission, prepared in accordance with the IB Codes and TCB Codes, First and Second Schedule respectively.

- 4.2.17 Based on the feedback to the Position Paper, industry seems to have accepted this proposal as the comments received by the Commission generally focused on a practical issue: how to manage the financial resource requirements where a registered person holds more than one licence.
- 4.2.18 The policy has been taken forward in the combined Accounts Order as part of Article 10, declarations and reports to be provided to the Commission at the same time as financial statements.
- 4.2.19 **Do you foresee any difficulties in submitting a Resource Requirement Table? If so please cover these in your response.**

Materiality

- 4.2.20 The definition of what constitutes a material relevant matter has often initiated debate between industry and the Commission, not least because of the current sentence construct which results in reference to a “material material” weakness within Articles 8(3)(c) and Article 8(4) of the TCB Accounts Order.
- 4.2.21 As a result, the definition of relevant matter has been considered when drafting the combined Accounts Order with the aim of alleviating this confusion and to better reflect, in legislation, the substance of reports that are received by the Commission.
- 4.2.22 Consequently, the definition of “relevant matter” and the requirement to submit any auditor’s management letter and internal audit report of the combined Accounts Order (Articles 10(1)(d) and 10(2)) no longer refer to “material”.
- 4.2.23 The Commission believes the overall effect of the proposed amendment is to clarify that where an auditor’s management letter, or an internal audit report is prepared the Commission expects to receive a copy of these documents, irrespective of the materiality of the items contained therein.
- 4.2.24 However, the consideration of materiality remains relevant in relation to whether a report prepared by an accountant or consultant should be submitted to the Commission. In determining what constitutes material the registered person is directed to the guidance note issued by the Commission entitled: “Guidance on Auditing Persons conducting Financial Services Business”. This guidance note cross-refers to certain sections of Practice Note 21: The audit of investment businesses in the United Kingdom⁸ and, in particular, the section dealing specifically with materiality from the perspective of the regulator.
- 4.2.25 **Do you believe that the amendments to the definition of “relevant matter” have achieved the Commission’s aims in 4.2.21?**

⁸ The Commission is aware that Practice Note 21 was recently subject to consultation by the Auditing Practices Board, in the UK. The results of this consultation may have an impact on the definition of materiality therefore the Commission is following the consultation process closely. As a result of the proposal to issue the combined Accounts Order, and the consultation on changes to Practice Note 21, the Commission will review its own guidance note - Guidance on Auditing Persons conducting Financial Services Business - in 2008 and any change in the definition of materiality will be considered at this time.

- 4.2.26 Do you support the proposal to drop reference to “material” from the definition of relevant matter and the requirement to submit an auditor’s management letter and internal audit report?
- 4.2.27 As an Investment Business, do you foresee that the submission of the auditor’s management letter or an internal audit report would have an adverse effect on your business? If so, please explain why in your response.
- 4.2.28 As a Trust Company Business, do you foresee that the submission of any auditor’s management letter or internal audit report would have an adverse effect on your business? If so, please explain why in your response.

Submission of consolidated financial statements

- 4.2.29 Whilst drafting the combined Accounts Order the Commission has considered if, and when, a registered person can satisfy the requirement to submit financial statements to the Commission by submitting consolidated financial statements, which include the position and results of the registered person.
- 4.2.30 The current IB Accounts Order does not provide for consolidated financial statements to be provided and the TCB Accounts Order allows consolidated financial statements to be provided, but in limited circumstances: where a registered person is an affiliated member of a Jersey based group. Expanding this topic into other financial sectors identifies that the GIMB Accounts Order permits consolidated financial statements to be submitted, without limiting the situation to a Jersey based group.
- 4.2.31 After considering the various current legislative positions, the Commission has opted to propose a new requirement, in the combined Accounts Order, in respect of the submission of consolidated financial statements by registered persons. The intention is to provide a consistent but flexible approach in this area as it is proposed that registered persons may apply to the Commission for approval to submit consolidated financial statements in place of financial statements for the registered person.
- 4.2.32 In practice, the question as to whether or not consolidated financial statements meet the Commission’s requirements depends on the structure of the group and the position of the registered person within the group. In this area, the Commission has noted an increase in the complexity of group structures.
- 4.2.33 The Commission’s proposal is for a registered person to seek the Commission’s prior consent, should it consider the submission of consolidated financial statements to be more relevant than the submission of company only financial statements for the registered person – Article 11 of the combined Accounts Order.
- 4.2.34 The combined Accounts Order includes transitional provisions for those entities where the Commission has previously provided consent to submit consolidated financial statements – Article 15(6).

4.2.35 **Can you foresee any practical issues associated with the Commission's proposal in respect of the submission of consolidated financial statements? If so please provide details in your response.**

Signatures

4.2.36 Section 9.15.2 of the Position Paper proposed that the financial statements provided to the Commission should be an "original" signed copy. The use of the word "original" generated debate, consequently, "original" has been dropped from the draft legislation. However, the combined Accounts Order will still require that financial statements be appropriately signed.

4.2.37 In addition, 9.15.1 of the Position Paper set out two proposals.

4.2.37.1 The first was that the directors' report, accompanying the financial statements, would be "appropriately signed". The Commission has decided to drop the proposal that the directors' report be signed as, in practice, most directors' reports are signed. Additionally, as the wording of the auditor's report encompasses a review of the directors' report, we consider this adequate for regulatory purposes.

4.2.37.2 The second proposal of 9.15.1 of the Position Paper related to the minimum information that should be included within the directors' report. This proposal remains the same and has been incorporated into Article 6 of the combined Accounts Order.

Appointment of an auditor

4.2.38 The combined Accounts Order does not amend the requirements relating to the appointment of an auditor in respect of trust company businesses. However, Article 3 of the combined Accounts Order, appointment of auditor, will place new requirements on investment businesses, as the IB Accounts Order does not include a similar provision.

4.2.39 Additionally, the appointment of auditors is being looked at as a separate piece of policy work cutting across all financial sectors within the regulatory scope of the Commission. In this respect the Commission issued a separate consultation, Consultation Paper No. 1 2007 "Approval of Auditors" earlier in 2007, and continues to consider the feedback to this consultation with a view to issuing drafting instructions later this year. As a consequence, this is an area of legislation where further change may be expected.

Auditing standards

4.2.40 The Position Paper noted and 4.1.6.6 reiterated that the Commission intended to permit the use of either:

4.2.40.1 the Auditing Standards issued by the Auditing Practices Board - International Standards on Auditing (UK & Ireland); or

4.2.40.2 the International Standards on Auditing issued by the International Auditing and Assurance Standards Board.

- 4.2.41 However, subsequent discussions on the use of the International Standards on Auditing, accompanied by consideration of the current standards applied by auditors has resulted in the Commission concluding that the audit should be undertaken and the subsequent auditor's report produced using the International Standards on Auditing (UK & Ireland), published by the Auditing Practices Board.
- 4.2.42 The Commission's conclusion is reflected in Articles 8(3) and 8(4) of the combined Accounts Order.
- 4.2.43 **Do you envisage that the restriction to using International Standards on Auditing (UK & Ireland), published by the Auditing Practices Board, will cause you significant problems, either as a registered person or as an auditor? If so, please provide details in your response.**

Items being considered for the future

- 4.2.44 Following discussions, with the Regulatory Audit Group, and in consideration of the proposed expansion of TCB customer assets that fall within the scope of an Assets Order (see section 5 for details), the Commission is currently considering introducing a requirement that some positive statements should be included within the auditor's report on the declaration⁹.
- 4.2.45 The current thinking is that a requirement would be placed on the auditor to comment positively on a registered person's compliance with:
- 4.2.45.1 the Codes requirements in respect of the ANLA; and
 - 4.2.45.2 the relevant client/customer Assets Order.
- 4.2.46 The requirement for an auditor to positively comment on certain aspects of a registered persons compliance with regulatory standards, as set out in 4.2.45, is not a new concept and is consistent with the approach currently adopted by other regulators¹⁰.
- 4.2.47 It is possible that such a positive statement would not be covered by the statutory audit undertaken by the auditor of a registered person and may therefore be an incremental cost of regulation.
- 4.2.48 This requirement does not form part of the combined Accounts Order attached to this paper.
- 4.2.49 **Do you agree that an auditor should be required to include a positive declaration in the areas referred to above?**

⁹ Currently the auditors report on the declaration is a negative statement.

¹⁰ The Financial Services Authority ("FSA") currently required auditors to positively comment on entities compliance with the client asset rules of the FSA Handbook.

4.3 Draft legislation

- 4.3.1 Whilst the basis for drafting the combined Accounts Order has been the current TCB Accounts Order, the Commission has taken the opportunity to re-order a number of the articles and to split some articles to provide greater clarity. The main areas of clarification are in respect of the directors' report and declarations and reports to be provided to the Commission.
- 4.3.2 The Commission believes that the new layout provides more distinction between the financial statements, the directors' report and the declaration, and the fact that the latter two accompany the financial statements.
- 4.3.3 Additionally, the Commission is of the opinion that the new layout better reflects the flow of documentation and physical process more clearly, such that:
 - 4.3.3.1 the registered person has to maintain accounting records,
 - 4.3.3.2 provide the financial statements, declaration and directors' report to the auditor; and
 - 4.3.3.3 provide these documents, together with the auditor's report on the declaration, to the Commission by the required deadline.
- 4.3.4 The Commission continues to work on the combined Accounts Order with the Law Draftsman especially in respect of two specific areas:
 - 4.3.4.1 Article 11(8) of the current draft includes an incorrect reference. The Commission is also concerned that, notwithstanding the incorrect reference, the paragraph does not achieve the policy intent of the Commission.
 - 4.3.4.2 The Commission is concerned that as currently drafted there is insufficient clarity with respect to the use of the term "person". It appears that in some areas of the combined Accounts Order the term "person" has been utilised in place of the term "registered person", but in other areas the term "person" has been used in place of the term "auditor".
- 4.3.5 A copy of the combined Accounts Order is attached at Appendix B.

5 Trust Company Business Assets

5.1 Policy position

- 5.1.1 Section 10 of the Position Paper set out the Commission's intentions in respect of expanding the range of assets, within the TCB sector, which will become subject to an Assets Order.
- 5.1.2 The Position Paper noted that: the Commission is following a stepped approach to achieving its long term intention that all classes of TCB customer assets be covered by an Order relating to their protection; and this is the next step in a process initiated in 2000, with the introduction of the TCB Customer Money Order.
- 5.1.3 The Position Paper also noted that, in more recent years, Orders addressing the protection of assets have been established for other finance sectors, which are more inclusive than the TCB Customer Money Order.
- 5.1.4 Consequently, the Position Paper proposed that the following customer assets be subject to an Assets Order:
 - 5.1.4.1 customer money;
 - 5.1.4.2 assets that fall within the meaning of investment as provided by Schedule 1 to the FS(J)L; and
 - 5.1.4.3 property consisting of land and buildings.
- 5.1.5 The Position Paper identified that all customer assets, subject to an Assets Order, should be adequately protected and listed five areas that would be subject to legislation:
 - 5.1.5.1 safeguarding of assets;
 - 5.1.5.2 segregation of assets;
 - 5.1.5.3 record keeping;
 - 5.1.5.4 preventing use of assets for unauthorised purposes; and
 - 5.1.5.5 maintaining appropriate insurance cover.
- 5.1.6 At the time of publishing the Position Paper, the precise nature of the Assets Order was not clear and it was noted that three options were under consideration.

5.2 Subsequent policy discussions

Format of the Assets Order

- 5.2.1 Following the publication of the Position Paper the Commission has continued to consider the format of an Assets Order that will apply to those registered to carry on trust company business, and in the course of carrying on that business, have control or otherwise are responsible for those trust company business assets.
- 5.2.2 The Commission has considered the options set out in the Position Paper at 10.9 and concluded that the most efficient and effective method of expanding the range of assets within the scope of an Assets Order is to repeal the TCB Customer Money Order and replace it with a new Order covering:
- 5.2.2.1 customer money;
 - 5.2.2.2 investments, as defined by Schedule 1 of the FS(J)L; and
 - 5.2.2.3 immovable property.
- 5.2.3 This approach is also in line with that taken in Assets Orders covering the client assets of Investment Business, and General Insurance Mediation Business, and the draft Order for the forthcoming fund services business.
- 5.2.4 The new Order will be the Financial Services (Trust Company Business Assets) (Jersey) Order 200- (the “**TCB Assets Order**”) and has been drafted in five parts to facilitate the inclusion of both specific and general requirements relating to asset types and their protection.
- 5.2.4.1 Part 1, Preliminary – Interpretation.
 - 5.2.4.2 Part 2, Requirements relating to customer money.
 - 5.2.4.3 Part 3, Requirements relating to investments and immovable property.
 - 5.2.4.4 Part 4, General requirements.
 - 5.2.4.5 Part 5, Miscellaneous including record keeping requirements.
- 5.2.5 **Do you consider the repeal of the TCB Customer Money Order and the introduction of the TCB Assets Order, drafted in a similar manner to the customer/client Assets Orders of other financial sectors, the most appropriate format for the Order? If not, please provide details of your concerns with the proposed format along with specific suggestions for change.**
- 5.2.6 **Do you foresee any practical difficulties in the application of Parts 4 and 4 of the Assets Order as currently drafted? If yes, please provide details with your response.**

Customer Money

- 5.2.7 With respect to the requirements relating to the protection of customer money, policy discussions have only identified one amendment to the current TCB Customer Money Order. Consequently, Part 2 of the TCB Assets Order reflects the requirements of the TCB Customer Money Order with one exception.
- 5.2.8 The exception is in the area of “exemptions”: Article 8 of the TCB Customer Money Order currently states “*The Commission may on the application of a registered person exempt the person from compliance with any requirements of this Order*”. This exemption has never been utilised and the Commission cannot foresee a situation where it would grant such an exemption and, consequently, a decision has been taken not to provide equivalent provisions in the TCB Assets Order.

Areas subject to legislation

- 5.2.9 Subsequent policy discussions have not highlighted the need to amend any of the five areas noted in 5.1.5 as being those for which legislation was considered relevant.
- 5.2.10 **Has the Commission gone far enough with its definition of assets that need to be covered by legislation If no, please provide details of the additional asset types you consider should be included as part of your response.**

5.3 Draft legislation

- 5.3.1 The draft TCB Assets Order has been attached to this paper as Appendix C.

6 Advertising Order

6.1 Policy position

- 6.1.1 Section 8 of the Position Paper identified that, as well as being a long term objective of the Commission to publish an Advertising Order with respect to financial service business registered under the FS(J)L, the lack of an Advertising Order establishing minimum standards for advertising is of concern when considering compliance with the IOSCO Objectives and IOSCO Methodology.
- 6.1.2 During 2002, the Commission published a consultation paper entitled “Advertising Standards”, which set out policy proposals and included draft legislation relating to the introduction of the Financial Services (Advertising) (Jersey) Order 200- (the “**Advertising Order**”). The 2002 consultation paper also proposed new provisions relating to advertising standards which were to be included in the Codes for entities undertaking Investment Business and Trust Company Business¹¹.
- 6.1.3 As noted in the Position Paper, extensive feedback was received on the 2002 consultation paper and dialogue with industry representatives ensued. Whilst progress has stalled a number of times in respect of the Advertising Order, due to changing Commission priorities, headway has been made in relation to those requirements to be established via Codes.
- 6.1.4 Subsequent to the 2002 consultation paper, an advertising principle and related requirements have been proposed in the TCB Codes, that will be effective from 1 January 2008, and similar provisions have been included in the draft IB Codes, the consultation comment period for which closed on 12 October 2007.
- 6.1.5 Additionally, in other areas of the Commission an advertising principle and related requirements are either present or have been proposed as follows:
- 6.1.5.1 Codes for Deposit-taking business, issued August 2006, include advertising requirements – section 7;
 - 6.1.5.2 Codes for Insurers, issued February 2005, include advertising requirements - section 7;
 - 6.1.5.3 draft GIMB Codes, whose consultation period closed on 31 August 2007, include advertising requirements – section 7; and
 - 6.1.5.4 draft Codes for Fund Services Business, issued for consultation April 2007¹², include advertising requirements – section 7.

¹¹ In 2002, investment business and trust company business were the only financial sectors that were within the scope of the FS(J)L.

¹² Consultation on the Fund Services Business Codes continues.

- 6.1.6 The Position Paper noted that the key reasons for an Advertising Order are:
- 6.1.6.1 legislative clarity is required with respect to the minimum standards for advertisements issued in the Island; and
 - 6.1.6.2 in the absence of an Advertising Order, the IB OPEO fails to operate effectively - as the exemption criteria are directly tied to compliance with an Order made under Article 31 of the FS(J)L [control of advertising].

6.2 Subsequent policy discussions

Advertising Order

- 6.2.1 Whilst the Codes establish sound principles for the conduct of financial service business, which in respect of advertising standards includes risk disclosure and accuracy, it is not a criminal offence to fail to follow a code. In addition, the Codes apply only to registered persons, whilst the Advertising Order related to all persons.
- 6.2.2 Currently some of the sanctions envisaged by the FS(J)L remain unavailable to the Commission as they are reliant on an Advertising Order having been made. For example, in the absence of an Advertising Order, the Commission is unable to fully utilise the injunction and restitution powers provided by the FS(J)L¹³.
- 6.2.3 Consequently, action (other than regulatory action) in respect of advertisements would need to be taken under Article 30 of the FS(J)L, which relates to misleading statements and practices. This may result in much more serious sanctions for registered persons and potentially produce an outcome not envisaged when provisions relating to the control of advertising were drafted.
- 6.2.4 In the absence of an Advertising Order, the Commission's capacity to fulfil its functions concerning customer/client/investor protection and protecting the reputation of the Island in commercial and financial matters is inhibited.

IB OPEO

- 6.2.5 Given the interaction of the IB OPEO with the Advertising Order, as highlighted in 6.1.6.2, the IB OPEO has been reviewed and amendments proposed in light of the current draft Advertising Order.
- 6.2.6 The IB OPEO is intended to enable, in certain circumstances, overseas persons to provide investment business services to customers within Jersey, to a limited extent, and solicit new business without being licensed under the FS(J)L, but requiring them to adhere to prescribed standards.

¹³ Article 24 of the FS(J)L - injunctions and remedial Orders.

6.2.7 These circumstances are:

6.2.7.1 an overseas person will be able to respond to an approach from a Jersey resident, without being registered by the Commission and any such response. Which might constitute a financial service advertisement, will not need to comply with the Advertising Order; and

6.2.7.2 an overseas person will be able issue in Jersey advertisements that solicit investment business, without being registered by the Commission, so long as any advertisements comply with Articles 1 to 6 and Article 8 of the Advertising Order.

6.2.8 However, whenever the Jersey resident is a natural person, the overseas person:

6.2.8.1 must have their head office in a country where they are supervised by a relevant supervisory authority; and

6.2.8.2 the must deal with the Jersey resident in accordance with the relevant standards expected of registered persons as specified in the IB Codes.

6.2.9 The Commission has proposed amendments to the IB OPEO, as although it will become effective once an Advertising Order is made, as currently drafted, the IB OPEO currently offers free rein to regulated overseas persons on oral communications i.e. they can freely solicit orally in Jersey.

6.2.10 The Commission considers that this is contrary to the original intention, as reflected by the general thrust of the IB OPEO, which the Commission considers was to:

6.2.10.1 enable a Jersey resident to invite an overseas person to Jersey to transact investment business; but

6.2.10.2 prevent an overseas person coming to the Island uninvited and soliciting for such business.

6.2.11 Amendments to the IB OPEO are therefore proposed such that the provision in 6.2.10.2 is adequately covered.

6.2.12 **Do you consider that the extent to which overseas persons can conduct financial service business in Jersey should be limited as proposed?**

Transitional provisions

6.2.13 Transitional provisions are provided for in Article 9 of the draft Advertising Order, to the effect that sales and marketing material created prior to the Advertising Order enactment may be used for a maximum period of 12 months after that date.

6.2.14 **Do you consider the proposed 12-month transitional period to be appropriate? If not, please explain why in your response.**

Scope of the advertising requirements of the FS(J)L and definition of advertisement

6.2.15 Article 1 of the FS(J)L defines a financial service advertisement to be:

“...an advertisement containing-

an invitation to transact financial service business; or

information which is intended or might reasonably be presumed to be intended to lead directly or indirectly to the transaction of financial service business,

and includes any means of bringing such an invitation or such information to the notice of any person ...”.

6.2.16 This means that any natural or legal (e.g. a limited company) person who causes to be published or communicated, by any means, a financial service advertisement, will be affected (other than conduits, such as publishers).

6.2.17 It is not proposed to amend this definition nor the scope of the related provisions of the FS(J)L. In that respect, Article 31(6) of the FS(J)L states:

6.2.17.1 *“For the purposes of this Article a financial service advertisement issued outside Jersey shall be treated as issued in Jersey if it is directed to persons in Jersey or is made available to them otherwise than in a newspaper, journal, magazine or other publication published and circulating principally outside Jersey or in a sound or television broadcast transmitted principally for reception outside Jersey.”*

6.2.18 The Advertising Order will therefore cover all communications leading either directly or indirectly to the transaction of business in Jersey, involving financial products or services. Written or broadcast includes: invitations to treat; advice in relation to financial products or services; or any communication that specifies terms and conditions in relation to such.

6.2.19 However, the Commission does not currently believe that it is appropriate for those entities that are only registered to operate “money service business” under the FS(J)L to be within the scope of the Advertising Order. This policy decision will be enacted in the draft legislation prior to its finalisation, as the current draft legislation does not provide for this scenario.

6.3 Draft legislation

6.3.1 Draft legislation in respect of the proposed Advertising Order is attached to this paper as Appendix D and the legislation proposing amendments to the IB OPEO is attached to this paper as Appendix E.

Advertising Order

6.3.2 An overview of the key contents of the Advertising Order is shown below.

6.3.2.1 Article 4 establishes requirements for detailing the identification and location of the issuer.

6.3.2.2 Article 5 establishes a number of general principles spanning clarity, fairness and disclosures.

6.3.2.3 Article 6 establishes record keeping requirements, both the period for which records should be retained (ten years) and the nature of the records that should be retained.

6.3.2.4 Article 7 exempts overseas persons from the above standards when dealing with a Jersey resident who is already a client or who has solicited the approach.

6.3.2.5 Article 8 prevents unsolicited advertisements being sent to customers that have previously stated that they do not wish to receive these.

6.3.3 **Are there any specific proposed provisions, relating to the Advertising Order, that you disagree with or would like amended?**

IB OPEO

6.3.4 **Are there any specific proposed provisions, relating to the IB OPEO, that you disagree with or would like amended?**

7 Disclosures by Unclassified Collective Investment Funds

7.1 Policy position

- 7.1.1 Following a self assessment of the Island’s regulatory framework against the disclosure requirements of the IOSCO Objectives relating to collective investment schemes, the Commission identified the need to amend the framework.
- 7.1.2 The Position Paper¹⁴ identified two possible ways in which the framework could be amended to facilitate compliance with IOSCO covering the disclosures that unclassified funds are required to make to those investing or proposing to invest.
- 7.1.3 Consultation Paper No.4¹⁵ clarified which of the two options the Commission intends to implement.
- 7.1.4 The Consultation Paper confirmed that the Commission intends to propose amendments to the Collective Investment Funds (Unclassified Funds) (Prospectuses) (Jersey) Order 1995 (“UFPO”) such that the UFPO will cover both open and closed- ended unclassified collective investment funds holding an unclassified fund certificate issued under the CIF(J)L.

7.2 Subsequent policy position

- 7.2.1 The Commission’s policy intent in this area has not altered and this section provides clarification of the proposed amendments and an update on the work undertaken to date.
- 7.2.2 The Commission has commenced its review of the UFPO and will propose amendments designed to facilitate compliance with the disclosure requirements of IOSCO.
- 7.2.3 The proposed amendments will result in the application of the UFPO to companies, trusts and limited partnerships, whether they are open-ended or closed-ended, that hold an unclassified fund certificate issued under the CIF(J)L, a concept that is being proposed as part of CIF Amendment No.4.
- 7.2.4 As a consequence of the amendments proposed to the UFPO the Commission will be proposing amendments to the Companies (General Provisions) (Jersey) Order 2002 (“CGPO”). The proposed amendment will be to remove from the scope of the CGPO Jersey closed-ended investment companies that hold an unclassified fund certificate issued under the CIF(J)L, as these companies will be subject to the UFPO.

¹⁴ Section 12.27 to 12.34

¹⁵ Section 10.7

7.2.5 None of the proposed amendments will alter the position in respect of Recognized Funds.

7.3 Draft legislation

7.3.1 No draft legislation has been included as part of this consultation paper.

7.3.2 Proposed amendments to the UFPO and CGPO were published as part of Position Paper No. 2 2007 in respect of the future regulation of funds and functionaries of funds ("**Position Paper no. 2**"). The amendments proposed as part of Position Paper no. 2 will be merged with the proposed amendments in respect of the IOSCO principles and the scope of each of the Orders, as described in 7.2, and will move forward as one set of proposed amendments.

7.3.3 A consultation paper, including draft legislation, on the proposed amendments to the UFPO and CGPO will be issued later in 2007.

7.3.4 It should be noted that the amendments proposed to the UFPO and CGPO are directly connected with the recently lodged CIF Amendment No. 4. The UFPO and CGPO amendments rely on the concept of certificates being issued to unclassified collective investment funds under the CIF(J)L, a concept that is being proposed as part of CIF Amendment No.4.

7.3.5 **Do you agree with the Commission's proposal that the UFPO will apply to all companies, trusts and limited partnerships, whether they are open-ended or closed-ended, that are constituted as unclassified collective investment funds which hold an unclassified fund certificate under the CIF(J)L? If not, please explain your reasons as part of your response.**

8 Cost Benefit Analysis

8.1 Costs and benefits relating to section 7

8.1.1 This section does not deal with the costs and benefits associated with the disclosure by Unclassified Collective Investment Funds. These will be subject to cost benefit analysis as part of the consultation paper, which will be issued later this year including draft legislation.

8.2 Costs to industry

8.2.1 The Commission is aware that the proposals contained within this paper will result in increased costs for some registered persons. The magnitude of the costs will vary dependent upon the current state of the registered person's systems and controls.

8.2.2 Amendments that the Commission believe may result in incremental costs for a registered person include:

8.2.2.1 for registered persons undertaking Investment Business:

- the production of and submission to the auditor of the declaration by the directors of the registered person in respect of compliance with relevant Laws, Orders and Codes;

8.2.2.2 for registered persons undertaking Trust Company Business:

- costs associated with implementing and maintaining relevant controls with respect to investments and immovable property held or managed in the capacity of trustee;

8.2.2.3 for registered persons undertaking financial service business, with the exception of those only registered to undertake money service business:

- the costs associated with implementing the requirements of the Advertising Order.

8.3 Costs to the Commission

8.3.1 The Commission will also be receive some minor additional costs as a result of the amendments proposed by this paper, due to the following:

8.3.1.1 it is proposed that the Commission approves the auditor of a registered person undertaking Investment Business, a new function for the Commission.

8.4 Benefits

- 8.4.1 Along with costs the proposed amendments are expected to bring benefits to registered persons, the Commission and customers/clients of registered persons.
- 8.4.2 One of the benefits expected to accrue to those registered to conduct investment and trust company business is the consistency of requirements in relation to accounts, audits and reports.
- 8.4.3 Benefits accruing to the Commission, as a result of the proposed amendments, include:
 - 8.4.3.1 ability of the Commission to utilise the injunction and restitution powers of the FS(J)L, alongside the criminal actions available under the FS(J)L; and
 - 8.4.3.2 ability of the Commission to take action against those cold calling or touting for investment business in Jersey.
- 8.4.4 Benefits accruing to customers, as a result of the proposed amendments, include:
 - 8.4.4.1 adequate protection of assets held by those acting in the capacity of trustees;
 - 8.4.4.2 advertisements to meet minimum standards; and
 - 8.4.4.3 the protection Jersey residents against investment businesses “cold calling” or “touting” for business in Jersey without being registered and regulated.

9 Summary of Questions

4 Accounts Order - Investment and Trust Company Business

- 4.2.5 Do you agree with the Commission's decision to repeal the IB Accounts Order and TCB Accounts Order and replace them with a combined Accounts Order? If not, please explain why in your response.
- 4.2.12 Do you agree that providing a signed declaration to the auditor one month after the period end date is achievable? If not, please explain why in your response.
- 4.2.19 Do you foresee any difficulties in submitting a Resource Requirement Table? If so please cover these in your response.
- 4.2.25 Do you believe that the amendments to the definition of "relevant matter" have achieved the Commission's aims in 4.2.21?
- 4.2.26 Do you support the proposal to drop reference to "material" from the definition of relevant matter and the requirement to submit an auditor's management letter and internal audit report?
- 4.2.27 As an Investment Business, do you foresee that the submission of the auditor's management letter or an internal audit report would have an adverse effect on your business? If so, please explain why in your response.
- 4.2.28 As a Trust Company Business, do you foresee that the submission of any auditor's management letter or internal audit report would have an adverse effect on your business? If so, please explain why in your response.
- 4.2.35 Can you foresee any practical issues associated with the Commission's proposal in respect of the submission of consolidated financial statements? If so please provide details in your response.
- 4.2.43 Do you envisage that the restriction to using International Standards on Auditing (UK & Ireland), published by the Auditing Practices Board, will cause you significant problems, either as a registered person or as an auditor? If so, please provide details in your response.
- 4.2.49 Do you agree that an auditor should be required to include a positive declaration in the areas referred to above?

5 Trust Company Business Assets

- 5.2.5 Do you consider the repeal of the TCB Customer Money Order and the introduction of the TCB Assets Order, drafted in a similar manner to the customer/client Assets Orders of other financial sectors, the most appropriate format for the Order? If not, please provide details of your concerns with the proposed format along with specific suggestions for change.
- 5.2.6 Do you foresee any practical difficulties in the application of Parts 4 and 4 of the Assets Order as currently drafted? If yes, please provide details with your response.
- 5.2.10 Has the Commission gone far enough with its definition of assets that need to be covered by legislation? If no, please provide details of the additional asset types you consider should be included as part of your response.

6 Advertising Order

- 6.2.12 Do you consider that the extent to which overseas persons can conduct financial service business in Jersey should be limited as proposed?
- 6.2.14 Do you consider the proposed 12-month transitional period to be appropriate? If not, please explain why in your response.
- 6.3.3 Are there any specific proposed provisions, relating to the Advertising Order, that you disagree with or would like amended?
- 6.3.4 Are there any specific proposed provisions, relating to the IB OPEO, that you disagree with or would like amended?

7 Disclosures by Unclassified Collective Investment Funds

- 7.3.5 Do you agree with the Commission's proposal that the UFPO will apply to all companies, trusts and limited partnerships, whether they are open-ended or closed-ended, that are constituted as unclassified collective investment funds which hold an unclassified fund certificate under the CIF(J)L? If not, please explain your reasons as part of your response.

APPENDIX A

LIST OF REPRESENTATIVE BODIES WHO HAVE BEEN SENT THIS CONSULTATION PAPER.

- Jersey Finance Limited
- Jersey Society of Chartered and Certified Accountants

APPENDIX B

Draft Financial Services (Trust Company and Investment Business (Accounts, Audits and Reports)) (Jersey) Order 200-



Jersey

FINANCIAL SERVICES (TRUST COMPANY AND INVESTMENT BUSINESS (ACCOUNTS, AUDITS AND REPORTS)) (JERSEY) ORDER 200-

Explanatory Note

This Order establishes requirements in relation to accounts, audits and reports for persons registered to carry on trust company business, or investment business, under the Financial Services (Jersey) Law 1998. The Order shall come into force 7 days after it is made.



Jersey

FINANCIAL SERVICES (TRUST COMPANY AND INVESTMENT BUSINESS (ACCOUNTS, AUDITS AND REPORTS)) (JERSEY) ORDER 200-

Arrangement

Article

1	Interpretation.....	5
2	Accounting period	6
3	Appointment of auditor.....	7
4	Accounting records.....	7
5	Declaration.....	8
6	Director's report.....	9
7	Registered person to provide certain documents to auditor.....	9
8	Auditor's reports.....	10
9	Financial statements to be provided to Commission.....	11
10	Declarations and reports to be provided to Commission at same time as financial statements	11
11	Consolidated financial statements.....	13
12	Exemptions	14
13	Circumstances to be communicated to the Commission by auditors, accountants and others.....	14
14	Revocation.....	15
15	Transitional provisions	15
16	Citation and commencement	16



Jersey

FINANCIAL SERVICES (TRUST COMPANY AND INVESTMENT BUSINESS (ACCOUNTS, AUDITS AND REPORTS)) (JERSEY) ORDER 200-

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE MINISTER FOR ECONOMIC DEVELOPMENT, in pursuance of Articles 17, 18 and 42 of the Financial Services (Jersey) Law 1998, on the recommendation of the Jersey Financial Services Commission and after having consulted such bodies as appear to the Commission to represent the interests of persons described in Article 18(1)(a) and (b) of the Law and registered persons, orders as follows –

1 Interpretation

In this Order, unless the context otherwise requires –

“accounting period”, in respect of a registered person, means the accounting period for the person that is approved in accordance with Article 2;

“auditor”, in respect of a registered person, means the external auditor who is approved by the Commission in respect of that person in accordance with Article 3;

“auditor’s report” means a report prepared in accordance with Article 8;

“client”, in relation to a registered person who carries on investment business, means a person, whether or not resident in Jersey, with or for whom the registered person transacts or has transacted investment business;

“Commission” means the Jersey Financial Services Commission;

“customer”, in relation to a registered person who carries on trust company business, means –

- (a) a person who has entered into an agreement for the provision of services to be provided by the registered person when carrying on trust company business; or

-
- (b) a person who has received or may receive the benefit of services to be provided or arranged by the registered person when carrying on trust company business;

“declaration” means a declaration that complies with Article 5;

“director’s report” means a report that complies with Article 6;

“external auditor”, in relation to a registered person, means a person –

- (a) who provides auditing services to the registered person;
- (b) who is not an employee of the registered person; and
- (c) who is a person, or an entity, who or which is independent of the registered person;

“financial statements”, in respect of a registered person, means financial statements prepared in respect of that person that comply with the requirements of Article 9 or 11;

“Law” means the Financial Services (Jersey) Law 1998;

“registered person” means a person registered under the Law to carry on trust company business or investment business.

2 Accounting period

- (1) A person applying under the Law for registration in respect of trust company business or investment business shall, at the same time, apply to the Commission for approval of –
- (a) a period, of not more than 18 months, that is proposed by the person to be the first accounting period for the person; and
- (b) the period that is proposed by the person to be the accounting period for the person after the end of the first accounting period.
- (2) The Commission shall approve or refuse to approve an accounting period proposed in an application under paragraph (1).
- (3) A registered person shall not, without the Commission’s approval, change an accounting period approved under this Article.
- (4) A registered person may apply to the Commission for approval of a proposed accounting period for the person in place of an accounting period that is, under paragraph (2), approved in respect of the person by the Commission.
- (5) The Commission shall approve or refuse to approve an accounting period proposed in an application under paragraph (4).
- (6) The Commission shall only approve, as the accounting period for a registered person after the end of the first accounting period, a period of 12 months, unless it is satisfied that there are reasonable grounds for approving another period, which shall not be more than 18 months.
- (7) A person who fails to comply with paragraph (1) or (3) shall be guilty of an offence and shall be liable to a fine.

3 Appointment of auditor

- (1) A registered person shall not engage a person to be an external auditor in respect of the person's trust company business, investment business, or both, unless the auditor is approved under paragraph (3) to be the auditor in respect of that business.
- (2) A registered person who fails to comply with paragraph (1) shall be guilty of an offence and shall be liable to a fine.
- (3) A person may apply to the Commission for approval of a person nominated in the application to be the auditor in respect of the person's trust company business, investment business, or both.
- (4) The Commission may approve, or refuse to approve, as the auditor in respect of trust company business, investment business, or both, carried on, or to be carried on, by a person, another person nominated in an application under paragraph (3) by the person.
- (5) The Commission shall approve under paragraph (4) an auditor in respect of trust company business, investment business, or both, conducted, or to be conducted, by a person only if it is satisfied that, having regard to the trust company business, investment business, or both, carried on by the person, the person nominated is suitable to be an auditor in respect of the person.
- (6) If the appointment of an auditor is terminated by either the registered person or the auditor, the auditor shall, within 7 days of the termination, provide the Commission with a statement as to whether there are circumstances relating to the termination that should be brought to the Commission's attention and, if there are, what those circumstances are.
- (7) An auditor who fails to comply with paragraph (6) shall be guilty of an offence and shall be liable to a fine.

4 Accounting records

- (1) A person who is registered to carry on investment business, trust company business, or both, shall keep accounting records that –
 - (a) show and explain each of the registered person's transactions in respect of that business carried on by the person;
 - (b) enable financial statements to be prepared in respect of the person; and
 - (c) are capable of disclosing at any time with reasonable accuracy the person's –
 - (i) financial position, and
 - (ii) degree of compliance with any financial resources requirements of the Commission that relate to the person.
- (2) A registered person shall ensure that accounting records kept in accordance with paragraph (1), whether in electronic form or any other form –

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- (a) are so stored as to minimize any risk of their loss due to theft, fire, flood, corruption or unauthorized erasure;
 - (b) are so stored as to prevent unauthorized access; and
 - (c) are backed up or otherwise duplicated so that copies shall be available if the originals are lost, destroyed, corrupted or erased.
- (3) A registered person shall ensure that accounting records kept in accordance with paragraph (1) and the backup copy or duplicate made in accordance with paragraph (2)(c) are retained for a period of at least 10 years from the date the records were made.
- (4) A registered person who fails to comply with paragraph (1), (2) or (3) shall be guilty of an offence and shall be liable to a fine.

5 Declaration

- (1) A registered person (or, if the registered person is a company or a partnership, a director or partner of the company) shall prepare and sign, after a relevant accounting period of the registered person, a declaration in relation to the period.
- (2) If a declaration under paragraph (1) in respect of a company relates only to a single branch of the company, then, despite paragraph (1), the declaration may be prepared and signed by an employee of the company approved in respect of that branch by the company, instead of by a director.
- (3) A declaration under paragraph (1) shall state whether, throughout the relevant accounting period, the registered person to whom the declaration relates –
- (a) has complied with the requirements of the Law, and with the requirements of Orders and Codes of Practice made or issued under the Law (not being a requirement the Commission has waived) that are relevant to the registered person;
 - (b) has maintained proper accounting records and adequate systems to enable the registered person to comply with the requirements referred to in sub-paragraph (a); and
 - (c) has complied with the requirements of all relevant legislation and guidance to counter money laundering and the financing of terrorism.
- (4) If a registered person to whom a declaration under paragraph (1) relates has failed to comply with a requirement referred to in paragraph (3), the declaration shall –
- (a) contain details of all material failures; and
 - (b) specify any measures taken or to be taken by the registered person to ensure that the failures are not repeated.

6 Director's report

- (1) A registered person that is a company or a partnership shall prepare, after the end of the relevant accounting period in respect of the person, a report (a "director's report") in relation to the period.
- (2) Paragraph (1) shall not apply in relation to a registered person that is a company conducting financial services business from branches of the company, if the financial statements in relation to the company that are to be provided, together with the director's report, to an auditor under Article 7, relate only to the business of a single branch of the company.
- (3) The director's report in relation to a registered person shall contain at least the following information –
 - (a) a list of the directors, if any, of the registered person or, if the registered person is a partnership, a list of the partners;
 - (b) a list of the directors, if any, of the registered person or, if the registered person is a partnership, a list of the partners, who were appointed during the accounting period to which the report relates and the date of their appointment;
 - (c) a list of the directors, if any, of the registered person or, if the registered person is a partnership, a list of the partners, who resigned during the accounting period to which the report relates and the date of their resignation;
 - (d) a summary of the activities of the registered person during the year;
 - (e) the name of the country in which the registered person is incorporated or established.

7 Registered person to provide certain documents to auditor

- (1) A registered person shall, as soon as practicable after the end of an accounting period, provide the person's auditor with –
 - (a) financial statements;
 - (b) if Article 6(1) applies to the registered person, the director's report; and
 - (c) the declaration,in relation to the registered person in respect of that period.
- (2) A registered person who, on being requested to do so by the auditor for the purposes of this Order, fails to give the auditor –
 - (a) access at all reasonable times to the person's records and documents relating to the person's business; or
 - (b) other information or an explanation the auditor considers necessary for the performance of the auditor's duties under this Order,shall be guilty of an offence and liable to a fine.

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- (3) A registered person, or a person acting or purporting to be acting on behalf of a registered person, who knowingly or recklessly makes a statement to the registered person's auditor –
- (a) that conveys or purports to convey information or an explanation that the auditor requires, or is entitled to require in the course of the auditor's duties under this Order; and
 - (b) that is misleading, false or deceptive in a material particular,
- shall be guilty of an offence and shall be liable to a fine.

8 Auditor's reports

- (1) The auditor shall prepare –
- (a) a report in respect of the financial statement provided to the auditor under Article 7 by a registered person;
 - (b) a report in respect of the director's report provided to the auditor under Article 7 by a registered person, if such a report is required to be prepared under Article 6; and
 - (c) a report in respect of the declaration provided to the auditor under Article 7 by a registered person.
- (2) The auditor shall provide to the registered person copies of any report prepared by the auditor under paragraph (1).
- (3) An auditor's report shall be prepared in accordance with the International Standards on Auditing (U.K. and Ireland) issued by the Auditing Practices Board.
- (4) The audit leading to an auditor's report shall be conducted in accordance with the International Standards on Auditing (U.K. and Ireland) issued by the Auditing Practices Board.
- (5) An auditor's report that relates to financial statements shall state whether the statements have been prepared in accordance with this Order.
- (6) An auditor's report that relates to a declaration provided to the auditor under Article 7 shall –
- (a) contain a statement that while conducting the audit for the purpose of preparing the report under paragraph (1) the auditor became aware of nothing that could be taken to indicate that a statement in the declaration was incorrect; or
 - (b) if the auditor became aware of a matter that could be taken to indicate that a statement in the declaration was incorrect, contain a statement as to the matter and why the auditor is of the opinion that it may indicate that a statement in the declaration was incorrect.
- (7) An audit report shall be signed by the auditor.

9 Financial statements to be provided to Commission

- (1) A registered person shall, after the end of the relevant accounting period, prepare financial statements in respect of the period.
- (2) Unless the Commission otherwise agrees, the financial statements shall be prepared in accordance with either –
 - (a) the U.K. Accounting Standards issued by the U.K. Accounting Standards Board; or
 - (b) the International Financial Reporting Standards issued by the International Accounting Standards Board.
- (3) The financial statements in relation to a registered person shall –
 - (a) be signed by the registered person; or
 - (b) if the registered person is a body corporate or a partnership, be signed by as many directors or partners as are required, under the laws of the country or territory in which the registered person is incorporated or established, to sign financial statements for the registered person, but in any case not less than one director or partner of the registered person.
- (4) The financial statements shall be provided to the Commission –
 - (a) within 4 months of the end of the accounting period; or
 - (b) within the period (being not more than 8 months after the end of the accounting period) that the Commission may, in special circumstances, permit.
- (5) The financial statements shall show a true and fair view of –
 - (a) the state of affairs of the registered person at the end of the relevant accounting period; and
 - (b) the person's profit or loss for that period.
- (6) A registered person who fails to comply with a requirement of this Article shall be guilty of an offence and shall be liable to a fine.

10 Declarations and reports to be provided to Commission at same time as financial statements

- (1) A registered person shall ensure that the financial statements provided to the Commission under Article 9 by the person are accompanied by –
 - (a) a declaration in relation to the relevant accounting period;
 - (b) the director's report in relation to the relevant accounting period;
 - (c) any auditor's reports in respect of the financial statements, director's report and declaration;
 - (d) any report that –
 - (i) has been prepared during, or in relation to, the relevant accounting period, by an auditor in relation to the registered

-
- person or a person who conducts an audit for the registered person,
- (ii) addresses a relevant matter, and
 - (iii) is available to the registered person; and
- (e) any report that –
- (i) has been prepared, during, or in relation to, the relevant accounting period, by an accountant or consultant in relation to the registered person,
 - (ii) addresses a material relevant matter, and
 - (iii) is available to the registered person.
- (2) In paragraphs (1)(d) and (e) “relevant matter”, in respect of a registered person, means –
- (a) a breakdown or weakness in the person’s internal control procedures; and
 - (b) the consequential recommendations for their improvement.
- (3) A registered person shall ensure that the financial statements provided to the Commission under Article 9 by the person are accompanied by –
- (a) if the registered person is registered to carry on trust company business, a document setting out the Resource Requirement Table, within the meaning of the code of practice issued under Article 19 of the Law in relation to trust company business, that is prepared, in relation to the relevant accounting period, in accordance with that code of practice;
 - (b) if the registered person is registered to carry on investment business, a document setting out the Resource Requirement Table, within the meaning of the code of practice issued under Article 19 of the Law in relation to investment business, that is prepared, in relation to the relevant accounting period, in accordance with that code of practice; or
 - (c) if the registered person is registered –
 - (i) to carry on both trust company business and investment business, or
 - (ii) to carry on trust company business, or investment business, together with any other financial services business,a document containing, for the relevant accounting period, the requirements in relation to the resources of the registered person that are specified by the Commission under paragraph (4).
- (4) The Commission may, on the application of a registered person who is registered to carry on trust company business, or investment business, together with any other financial services business, specify the requirements in relation to the resources of the registered person that shall apply to the person under paragraph (3)(c).
- (5) A registered person who fails to comply with a requirement of this Article shall be guilty of an offence and shall be liable to a fine.
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11 Consolidated financial statements

- (1) This Article applies to a registered person if –
 - (a) the person is registered in respect of trust company business or investment business, or trust company business or investment business together with another financial services business;
 - (b) the registered person is a member of a group of companies or partnerships;
 - (c) the accounting standards in accordance with which, under Article 9(2), the person shall prepare financial statements, allow consolidated financial statements to be prepared in respect of the members of the group; and
 - (d) the Commission has approved the application of this Article to the person.
- (2) A registered person may apply to the Commission for approval of the application of this Article to the person.
- (3) The Commission may grant, or refuse to grant, an approval for which application is made under paragraph (2).
- (4) If this Article applies to a person, the person may provide under Articles 7 or 9 the consolidated financial statements of the group of which the registered person is a member instead of the financial statements of the registered person alone.
- (5) The consolidated financial statements shall show a true and fair view of –
 - (a) the state of affairs of the group as at the end of the relevant accounting period; and
 - (b) the profit or loss of the members of the group for that period.
- (6) If this Article applies to a person, the person may provide under Articles 7(1)(c) and 10(1)(a) a declaration that is a single consolidated declaration relating to all registered persons who are members of the group of which the person is a member, instead of a declaration that relates only to the registered person.
- (7) If members of a group acting in accordance with this Article have provided their auditor with consolidated financial statements for the purpose of Article 7(1)(a), the auditor may for the purpose of Article 8(1)(c) prepare –
 - (a) a single report in respect of all the separate declarations provided to the auditor by the members of the group in compliance with Article 7; or
 - (b) a single report in respect of a single consolidated declaration provided under Article 7, in accordance with paragraph (6) of this Article, covering all registered persons who are members of the group,instead of a separate report in relation to each member of the group.

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- (8) If this Article applies to a person, the person may provide under Articles 7(1)(b) and 10(1)(c) a director's report that relates to a single consolidated declaration, provided in accordance with paragraph (6) of this Article and covering all registered persons who are members of the group of which the person is a member, instead of the report otherwise required to be provided under those Articles.
 - (9) The Commission may revoke an approval granted under paragraph (2).
 - (10) In this Article, "group" means a group of registered persons (other than a managed trust company) carrying on trust company business, or investment company business, each of whom has been registered by the Commission as a member of the same group under an Order made under Articles 8, 9, 10 and 42 of the Law that prescribes how an application for registration may be made under the Law by a person intending to carry on trust company business or investment business, as the case may be.

12 Exemptions

- (1) The Commission may, on the application of a registered person, exempt the person from compliance with all or any part of Articles 2 to 11.
- (2) The Commission shall not grant an exemption unless it is of the opinion that by virtue of the trust company business, or the investment business, or both, the registered person carries on or intends to carry on, no customer or client of the person is likely to be prejudiced if the exemption is granted.
- (3) An exemption may be granted subject to the registered person complying with conditions specified by the Commission.
- (4) An exemption granted under paragraph (1) shall be of no effect if the registered person fails to comply with any condition imposed under paragraph (3).
- (5) The Commission may revoke an exemption granted under this Article to a registered person if it is satisfied that a customer or client of the person is or has been prejudiced by the exemption.

13 Circumstances to be communicated to the Commission by auditors, accountants and others

- (1) The circumstances in which matters to which Article 18 of the Law applies shall be communicated to the Commission are circumstances that give a registered person's auditor (whether appointed by virtue of this Order or otherwise) or any reporting person in respect of the registered person reasonable cause to believe –
 - (a) that a ground for revoking a registration specified in Article 9(4) of the Law (other than Article 9(4)(a)) has occurred or may occur in respect of the registered person; or
 - (b) that as a result of a breach of a requirement of a Code of Practice (not being a requirement the Commission has waived) or of a legal

requirement, or of a breach of internal controls or procedures, or both, a customer or client of the registered person has incurred, or is at significant risk of incurring, a material loss.

- (2) In this Article “reporting person”, in respect of a registered person, means an auditor, accountant or other person nominated or approved by the Commission in respect of the person in accordance with Article 8(5) or 32(4) of the Law.

14 Revocation

The Financial Services (Trust Company Business (Accounts, Audits and Reports)) (Jersey) Order 2000, and the Financial Services (Investment Business (Accounts, Audits and Reports)) (Jersey) Order 2001, shall be revoked.

15 Transitional provisions

- (1) If, immediately before the day on which this Order comes into force, there was an accounting period in relation to a registered person, details of which were provided to the Commission in accordance with Article 2 of the Financial Services (Trust Company Business (Accounts, Audits and Reports)) (Jersey) Order 2000, the period shall be taken to have been approved in relation to the person under Article 2 of this Order, but may be altered under Article 2 of this Order.
- (2) A period that was, immediately before the day on which this Order comes into force, an accounting reference period in relation to a registered person in accordance with the Financial Services (Investment Business (Accounts, Audits and Reports)) (Jersey) Order 2001, shall be taken to be the accounting period approved under Article 2 of this Order in relation to the person, but may in accordance with paragraph (6) of this Article be altered under that Article.
- (3) A person who was, immediately before the day on which this Order comes into force, a person approved under Article 4 of the (Trust Company Business (Accounts, Audits and Reports)) (Jersey) Order 2000 to be the auditor in relation to a registered person shall be taken to have been approved as an auditor under Article 3 of this Order in relation to the registered person.
- (4) A person who was, immediately before the day on which this Order comes into force, the auditor, for the purposes of Article 6 of the Financial Services (Investment Business (Accounts, Audits and Reports)) (Jersey) Order 2001, in relation to a registered person, shall be taken to have been approved as an auditor under Article 3 of this Order in relation to the registered person.
- (5) If a registered person was, immediately before the day on which this Order comes into force, a person exempted under the repealed Orders from a requirement of one of those Orders that corresponds to a requirement of this Order, the exemption shall continue in force in relation to the person (but may be repealed by the Commission under

Article 12) as if it were an exemption from the requirement in this Order granted under Article 12.

- (6) If a registered person was, immediately before the day on which this Order comes into force, permitted to provide to the Commission consolidated financial statements under any of the repealed Orders –
 - (a) the person shall be taken to have been granted an approval under Article 11; and
 - (b) the approval may be revoked under Article 11.
- (7) In this Article, “repealed Orders” means the Financial Services (Trust Company Business (Accounts, Audits and Reports)) (Jersey) Order 2000, and the Financial Services (Investment Business (Accounts, Audits and Reports)) (Jersey) Order 2001, as in force immediately before this Order comes into force.

16 Citation and commencement

- (1) This Order may be cited as the Financial Services (Trust Company and Investment Business (Accounts, Audits and Reports)) (Jersey) Order 200 .
- (2) This Order shall come into force 7 days after it is made.



Jersey

APPENDIX C

Draft Financial Services (Trust Company Business Assets) (Jersey) Order 200-



Jersey

FINANCIAL SERVICES (TRUST COMPANY BUSINESS ASSETS) (JERSEY) ORDER 200-

Explanatory Note

This Order replaces the Financial Services (Trust Company Business (Assets – Customer Money)) (Jersey) Order 2000 with expanded provisions covering other assets, namely investments and immovable property.

Part 1 contains the interpretation provisions.

Part 2 repeats the existing requirements relating to customer money.

Part 3 contains new provisions relating to investments and immovable property concerned with safekeeping of those assets and of their documents of title. There are requirements with respect to documents of title stored electronically and also a duty on the registered person to keep the assets separate from property beneficially owned by the registered person.

Part 4 contains general requirements applicable to all trust company business assets covered by Parts 2 and 3. The registered person must ensure that those assets are not used for unauthorized purposes. There are requirements in respect of insuring the assets and their documents of title.

Part 5 provides for record-keeping requirements. The earlier Order on Customer money is revoked and there is provision for the citation of the Order.

The Order was made on with a coming into force date of



Jersey

FINANCIAL SERVICES (TRUST COMPANY BUSINESS ASSETS) (JERSEY) ORDER 200-

Arrangement

Article

PART 1	
PRELIMINARY	
1 Interpretation.....	5
PART 2	
REQUIREMENTS RELATING TO CUSTOMER MONEY	
2 Application of Part 2.....	7
3 Records of customer money to be kept.....	7
4 Reconciliation of customer money	7
5 Interest on customer money	7
6 Customer money not to be mixed with other money	8
7 Use of customer money.....	8
8 Customer money in a customer pooled bank account	8
PART 3	
REQUIREMENTS RELATING TO INVESTMENTS AND IMMOVABLE PROPERTY	
9 Application of Part 3.....	9
10 Safekeeping of investments and immovable property	9
11 Safekeeping of documents - general	9
12 Safekeeping of documents by the registered person	9
13 Safekeeping of documents held by a person who is not the registered person's own nominee	10
14 Storage of documents of title.....	11
15 Segregation	11
PART 4	
GENERAL REQUIREMENTS.....	1

16	Application of Part 4.....	11
17	Unathorized purpose	11
18	Insurance	11

PART 5

MISCELLANEOUS..... 1

19	Record keeping.....	12
20	Revocation.....	12
21	Citation and commencement	12





Jersey

FINANCIAL SERVICES (TRUST COMPANY BUSINESS ASSETS) (JERSEY) ORDER 200-

Made [date to be inserted]
Coming into force [date to be inserted]

THE MINISTER FOR ECONOMIC DEVELOPMENT, in pursuance of Articles 21 and 42 of the Financial Services (Jersey) Law 1998 and on the recommendation of the Jersey Financial Services Commission, orders as follows –

PART 1

PRELIMINARY

1 Interpretation

In this Order, unless the context otherwise requires –

“approved bank”, in relation to a customer bank account, means –

- (a) if the account is opened at a branch in Jersey, a person registered under the Banking Business (Jersey) Law 1991; and
- (b) if the account is opened at a branch outside Jersey –
 - (i) an institution authorized under the Banking Act 1987 of the United Kingdom,
 - (ii) a credit institution (as defined in EEC Directive No. 77/780) established in any other Member State of the European Community and duly authorized by the relevant supervisory authority in that Member State,
 - (iii) an institution authorized under the Banking Act 1975 of the Isle of Man (as amended),
 - (iv) an institution authorized under the Banking Supervision (Bailiwick of Guernsey) Law 1994,
 - (v) a building society registered and incorporated under the Building Societies Act 1986 of the United Kingdom that operates a deposit-taking business (within the meaning of

the Banking Act 1987 of the United Kingdom) without restriction, or

- (vi) a bank that is a company in the same group as an institution described in paragraph (a) or (b)(i) to (iv) of this definition;

“bank” means any institution that lawfully carries on deposit-taking business in the country in which it was established;

“customer”, in respect of a registered person registered to carry on trust company business, means –

- (a) a person who has entered into an agreement for the provision of services to be provided by the registered person when carrying on that trust company business; or
- (b) a person who has received or may receive the benefit of services provided or arranged by the registered person when carrying on that trust company business;

“customer bank account” means a bank account –

- (a) that holds the money of one or more customers and of no other persons;
- (b) that is in the name of a registered person or under the registered person’s control; and
- (c) that is a current or deposit account or placement (or, if the bank is a building society within paragraph (b)(v) of the definition of “approved bank”, is a deposit (and not a share) account);

“customer money”, in respect of a registered person registered to carry on trust company business, means trust company business assets consisting of money that the registered person has control of, or is otherwise responsible for, which the registered person is required to safeguard in accordance with the responsibilities the registered person has accepted in the course of carrying on that trust company business;

“customer pooled bank account”, in respect of a registered person registered to carry on trust company business, means a bank account that is opened by and in the name of the registered person that holds or is intended to hold customer money in respect of 2 or more customers of the registered person, but does not include a designated joint account;

“designated joint account”, in respect of a registered person, means a bank account that is opened by and in the name of the registered person that holds or is intended to hold customer money in respect of 2 or more customers of the registered person where –

- (a) those customers agreed in writing when the account was opened that it would be a designated joint account; and
- (b) money in the account is to be used to finance a joint enterprise;

“document of title” includes a certificate that evidences title;

“joint enterprise” means an enterprise into which the persons participating enter for commercial purposes related to a business carried on by those persons; and, where a person participating is a company, each

company with which it is connected shall also be regarded as a person participating in the enterprise;

“Law” means the Financial Services (Jersey) Law 1998;

“money”, in respect of customer money, includes cash, cheques and other payable orders and money deposited in accounts, in each case, in any currency;

“own nominee” means a person who is controlled by, and acts only in accordance with, the directions or instructions of the registered person;

“trust company business assets” means customer money, investments and immovable property.

PART 2

REQUIREMENTS RELATING TO CUSTOMER MONEY

2 Application of Part 2

Save as provided by paragraph (2), this Part applies to a registered person registered to carry on trust company business.

3 Records of customer money to be kept

- (1) A registered person must keep adequate records of customer money.
- (2) The records must –
 - (a) show each transaction in respect of the money in a manner that allows the transaction to be identified and traced;
 - (b) be kept in a manner that allows the balance due to each customer to be identified and traced; and
 - (c) be in a form that allows the records to be reconciled on a timely basis so that any error can be corrected promptly.

4 Reconciliation of customer money

A registered person must promptly carry out a reconciliation between the records of customer money kept by the registered person and any statement received from a bank in which customer money is kept.

5 Interest on customer money

- (1) A registered person must in so far as it is reasonable and practicable to do so ensure that interest is received on customer money.
- (2) A registered person must credit interest received on a customer’s money to the customer.

- (3) Paragraphs (1) and (2) shall not apply to any extent the customer otherwise agrees.

6 Customer money not to be mixed with other money

- (1) A registered person must ensure that in so far as it is possible and practicable to do so customer money and other money is not mixed.
- (2) It shall be a defence for a registered person charged with an offence under paragraph (1) to show that when the registered person became aware that the money was mixed it was separated within 2 days of it being possible and practicable to do so.

7 Use of customer money

- (1) A registered person must ensure that a customer's money is not used for another customer without proper authority.
- (2) A registered person must ensure that customer money is not disbursed unless it is –
- (a) properly payable to a customer;
 - (b) properly payable by or on behalf of, or in respect of a customer; or
 - (c) otherwise properly transferred.

8 Customer money in a customer pooled bank account

- (1) A registered person must ensure that if customer money is kept in a customer pooled bank account –
- (a) the account is with an approved bank;
 - (b) the account includes words or other information in its title that clearly indicates it to be a bank account for customer money of the registered person and not an account for money that belongs beneficially to the registered person; and
 - (c) an undertaking is given by the approved bank.
- (2) The undertaking must be to the effect that the bank –
- (a) acknowledges that money standing to the credit of the account is and shall be accepted by the bank as being held by the registered person as a trustee; and
 - (b) accordingly undertakes not to combine the account with any other account nor to exercise any right of set-off or counterclaim or any security interest against money in the account in respect of a debt or other obligation owed to it by the registered person.
- (3) A registered person must ensure that a customer pooled bank account is not knowingly overdrawn.

PART 3

REQUIREMENTS RELATING TO INVESTMENTS AND IMMOVABLE PROPERTY

9 Application of Part 3

- (1) This Part applies to a registered person registered to carry on trust company business who has control of, or is otherwise responsible for, investments or immovable property in the course of that business.
- (2) This Part does not apply to customer money.

10 Safekeeping of investments and immovable property

- (1) A registered person must ensure –
 - (a) that only the registered person or a person the registered person considers appropriate –
 - (i) acts as the registered holder of investments or immovable property; or
 - (ii) acts as the custodian of a document of title to investments or immovable property; and
 - (b) in situations where the registered person has formally assumed responsibility for the appointment of an investment manager or a manager of immovable property, that only a person the registered person considers appropriate so acts.
- (2) If, in a case specified in paragraph (1), the registered person appoints a person considered appropriate, the registered person must document, implement and regularly review the registered person's policy for the selection of such a person.
- (3) A registered person must document, implement and enforce adequate procedures and controls to protect the investments or immovable property for which the registered person is responsible.

11 Safekeeping of documents - general

- (1) A registered person shall be responsible in accordance with this Part for the safekeeping of any documents of title to investments or immovable property beneficially owned by a customer of the registered person that have come into the registered person's possession or control.
- (2) The registered person shall remain so responsible until the documents are delivered as required by contract or other formal arrangement.

12 Safekeeping of documents by the registered person

Where a registered person is responsible for the safekeeping of any documents of title to investments or immovable property beneficially owned by a customer

of the registered person, unless the documents are properly in the custody of a person the registered person considers appropriate –

- (a) the registered person must hold the documents in the registered person's possession and in safe custody and must not part with possession of any of them to any person other than to the customer or on his or her instructions;
- (b) where the title to the documents passes by delivery, they must be held in such a manner that –
 - (i) it is readily apparent that the investments or immovable property to which they relate are not beneficially owned by the registered person, and
 - (ii) the beneficial owner of each investment or separate area of immovable property can be identified at all times.

13 Safekeeping of documents held by a person who is not the registered person's own nominee

- (1) A registered person must not employ, to hold documents of title to investments or immovable property beneficially owned by a customer of the registered person, the services of a person who is not the registered person's own nominee, unless –
 - (a) the registered person and the person have agreed in writing that –
 - (i) the person will not part with possession of the documents otherwise than to the registered person or on the registered person's instructions,
 - (ii) the documents will be held in such a manner that it is readily apparent that the investments or immovable property to which they relate do not belong to the registered person or the registered person's nominee, and
 - (iii) the person will, not less than once every 6 months, and on the request of the registered person, prepare and deliver to the registered person a statement –
 - (A) made up as at the date within the previous month that is specified by the registered person, and
 - (B) specifying in relation to each investment or separate area immovable property the documents of title held; and
 - (b) the person has acknowledged in writing to the registered person that the person will not have or claim any lien or right of retention over, or any right to sell, the documents of title to the investments or immovable property placed in the person's custody, to offset the indebtedness of the registered person or a customer, except where –
 - (i) that customer is the title holder of the investments or immovable property,
 - (ii) the beneficial owner (or the legal owner, if he or she has capacity to do so) has consented, or

-
- (iii) the indebtedness is only in respect of charges relating to the administration or custody of the investments or immovable property.
 - (2) A registered person who makes an agreement with the person in accordance with paragraph (1)(a) must not authorize the person to release any documents of title to the customer's investments otherwise than as required by contract or other formal arrangement.

14 Storage of documents of title

- (1) If title to investments or immovable property is recorded electronically the registered person shall ensure that customers' entitlements are separately identifiable from those of the registered person in the records of the person maintaining records of the entitlement.
- (2) A registered person holding documents beneficially owned by a customer of the registered person, title to which passes by delivery, must ensure that the documents are stored so as to minimize any risk of their loss due to theft, fire or flood.

15 Segregation

In so far as is reasonably practicable the registered person must ensure that the investments or immovable property are kept separate and readily distinguishable from property beneficially owned by the registered person.

PART 4

GENERAL REQUIREMENTS

16 Application of Part 4

This Part applies to a registered person registered to carry on trust company business who has possession or control of customer money, investments or immovable property, including title documents to investments or immovable property, in the course of that business.

17 Unauthorized purpose

The registered person must ensure that the trust company business assets are not used for unauthorized purposes.

18 Insurance

- (1) A registered person who, in accordance with this Order, is responsible for the safety of any trust company business assets and any document of title relating to such assets, must maintain adequate insurance cover.

- (2) Where a registered person has arranged insurance cover under this Article, the registered person must establish, document and regularly review a scheme to ensure that the assets are adequately insured.

PART 5

MISCELLANEOUS

19 Record keeping

- (1) A registered person must ensure that accounting records kept in compliance with this Order, whether in electronic form or any other form –
- (a) are so stored as to minimize any risk of their loss due to theft, fire, flood, corruption or unauthorized erasure;
 - (b) are so stored as to prevent unauthorized access; and
 - (c) are backed up or otherwise duplicated so that copies are available if the originals are lost, destroyed, corrupted or erased.
- (2) A registered person must retain a record required to be kept under this Order for at least 10 years.

20 Revocation

The Financial Services (Trust Company Business (Assets – Customer Money)) (Jersey) Order 2000 is revoked.

21 Citation and commencement

This Order may be cited as the Financial Services (Trust Company Business Assets) (Jersey) Order 200- and shall come into force on



Jersey

APPENDIX D

Draft Financial Services (Advertising) (Jersey) Order 200-



Jersey

FINANCIAL SERVICES (ADVERTISING) (JERSEY) ORDER 200-

Arrangement

Article

1	Interpretation.....	3
2	Altered advertisement.....	3
3	Publishers.....	3
4	Identification of issuer.....	4
5	General principles.....	4
6	Details and copies of advertisements to be retained.....	5
7	Articles do not apply to certain advertisements by overseas persons	5
8	Unsolicited material.....	5
9	Twelve-month exemption for pre-existing advertising material.....	6
10	Citation and commencement	6



Jersey

FINANCIAL SERVICES (ADVERTISING) (JERSEY) ORDER 200-

Made [date to be inserted]
Coming into force [date to be inserted]

THE MINISTER FOR ECONOMIC DEVELOPMENT, in pursuance of Articles 31 and 42 of the Financial Services (Jersey) Law 1998 and on the recommendation of the Jersey Financial Services Commission, orders as follows –

1 Interpretation

- (1) In this Order –
- “broadcast” means published by radio, television, Internet or otherwise electronically, and whether to the public or to a section of the public;
- “Law” means the Financial Services (Jersey) Law 1998;
- “written”, in relation to a financial service advertisement, includes printed or in such electronic form that the advertisement can, by the use of a program that is readily available, be easily rendered in a form that may be read by the human eye.
- (2) For the purposes of this Order, a written or broadcast financial service advertisement is taken to be issued on each occasion on which it appears.

2 Altered advertisement

For the purposes of this Order, if an advertisement is altered, the resulting advertisement is taken to be a new advertisement.

3 Publishers

For the purposes of this Order, a person whose business it is to publish, or to arrange the publication of, advertisements (whether written or broadcast) shall not be taken to issue a financial service advertisement merely because he or she publishes it or arranges its publication if –

-
- (a) he or she receives the advertisement for publication in the ordinary course of his or her business; and
 - (b) the matters contained in the advertisement are not, wholly or in part, devised or selected by him or her or by any person under his or her direction or control.

4 Identification of issuer

- (1) A written or broadcast financial service advertisement shall specify –
 - (a) the name of the person who issues it;
 - (b) the name of the person who (as provider and not as client) would transact the financial service business to which the advertisement relates; and
 - (c) the principal geographical address in Jersey for the receipt by that person of postal correspondence or electronic communications, or both, in relation to the transaction of the financial service business to which the advertisement relates.
- (2) This Article does not apply in relation to any of the following –
 - (a) an advertisement that consists only of the communication of the name of a business;
 - (b) an advertisement that consists only of a statement that a business named in the statement has sponsored a specified event, organization or person;
 - (c) an advertisement that consists only of a prospectus (being a prospectus within the meaning of the Collective Investment Funds (Unclassified Funds) (Prospectuses) (Jersey) Order 1995).

5 General principles

A written or broadcast financial service advertisement shall –

- (a) make it clear that it is a financial service advertisement;
- (b) be clear, fair and not misleading;
- (c) state that the person who (as provider and not as client) would transact any financial service business to which the advertisement relates is authorized to transact financial service business;
- (d) name the authority that has given the authorization referred to in paragraph (c), whether that authority is the Commission, a relevant supervisory authority or another authority;
- (e) not claim to have been approved by the Commission, a relevant supervisory authority or any other authority; and
- (f) not claim that any service provided in financial service business to which the advertisement relates has been approved by the Commission, a relevant supervisory authority or another authority.



6 Details and copies of advertisements to be retained

For the purposes of Article 31(3)(c) of the Law, a requirement in respect of a written or broadcast financial service advertisement is that the person who issues the advertisement shall keep, for 10 years after the last date on which the advertisement was issued –

- (a) a copy or recording of the advertisement;
- (b) a record of the occasions on which the advertisement was issued;
- (c) a record of the identity of the person who approved the form and content of the advertisement;
- (d) a record of the date on which that approval was given;
- (e) a record of the identity of the person who approved the issue of the advertisement;
- (f) a record of the date on which that approval was given; and
- (g) a record of where and how the advertisement was disseminated.

7 Articles do not apply to certain advertisements by overseas persons

- (1) Articles 1 – 6 do not apply to a written financial service advertisement that consists of a response from an overseas person to an unsolicited approach from a person whose principal place of residence is Jersey (if a natural person) or who is incorporated in Jersey (if a body corporate).
- (2) Articles 1 – 6 do not apply to a written financial service advertisement that –
 - (a) is issued (whether in person, by post or otherwise) in Jersey by an overseas person personally to a client of the overseas person;
 - (b) relates to a type or class of service that the overseas person has previously provided for the client; and
 - (c) has for its subject matter such subject matter as the client would reasonably expect to be contacted about by the overseas person.
- (3) In this Article “overseas person” means a person who –
 - (a) has no place of business in Jersey from which he or she carries on financial service business in or from Jersey; and
 - (b) is not a company incorporated in Jersey.

8 Unsolicited material

For the purposes of Article 31(3)(c) of the Law, it is a requirement of this Order that a financial service advertisement not be issued unsolicited personally to a person (whether in person or by post or otherwise) if he or she has indicated to the person who carries on the financial service business to which the advertisement relates that the first person does not want financial service advertisements to be issued to him or her by, or on behalf of, the second person.

9 Twelve-month exemption for pre-existing advertising material

This Order shall not apply to a written or broadcast financial service advertisement that is issued –

- (a) before the anniversary of the day when this Order comes into force; and
- (b) only in or as part of sales material, or marketing material, that was prepared in its final form before that day.

10 Citation and commencement

This Order may be cited as the Financial Services (Advertising) (Jersey) Order 200- and shall come into force 7 days after it is made.





Jersey

APPENDIX E

Draft Financial Services (Investment Business (Overseas Persons – Exemption)) (Amendment) (Jersey) Order 200-



Jersey

FINANCIAL SERVICES (INVESTMENT BUSINESS (OVERSEAS PERSONS - EXEMPTION)) (AMENDMENT) (JERSEY) ORDER 200-

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE MINISTER FOR ECONOMIC DEVELOPMENT, in pursuance of Articles 7(2)(a)(ii) and (b) and 42 of the Financial Services (Jersey) Law 1998 and on the recommendation of the Jersey Financial Services Commission, orders as follows –

1 Article 1 amended

In Article 1 of the Financial Services (Investment Business (Overseas Persons – Exemption)) (Jersey) Order 2001 –

- (a) for paragraph (1)(c) there shall be substituted the following sub-paragraph –
 - “(c) the issue in Jersey by an overseas person of an investment advertisement.”;
- (b) after paragraph (1) there shall be inserted the following paragraph –
 - “(1A) Paragraph (1)(c) has effect only if the following conditions are fulfilled –
 - (a) the issue is not by telephone or in person;
 - (b) Articles 1 to 6, and Article 8, of the Financial Services (Advertising) (Jersey) Order 200- are complied with in relation to the advertisement and its issue as if those Articles applied in relation to the advertisement and its issue;
 - (c) the advertisement solicits a person in Jersey to enter into a specified transaction.”;
- (c) for paragraph (4)(a)(ii) there shall be substituted the following clause –
 - “(ii) was solicited by the overseas person by the issue (otherwise than by telephone or in person) of an investment advertisement in relation to which and to the issue of which Articles 1 to 6, and Article 8, of the

Financial Services (Advertising) (Jersey) Order 200- were complied with as if those Articles had applied in relation to the advertisement and its issue; or”;

- (d) for paragraph (4)(b) there shall be substituted the following subparagraph –

“(b) an approach made by the overseas person by the issue (otherwise than by telephone or in person) of an investment advertisement in relation to which and to the issue of which Articles 1 to 6, and Article 8, of the Financial Services (Advertising) (Jersey) Order 200- were complied with as if those Articles had applied in relation to the advertisement and its issue.”;

- (e) in paragraph (5)(a) for the words “relevant authority” there shall be substituted the words “relevant supervisory authority”;

- (f) for paragraph (7)(a)(ii) there shall be substituted the following clause –

“(ii) was solicited by that other person in Jersey by the issue (otherwise than by telephone or in person) of an investment advertisement in relation to which and to the issue of which Articles 1 to 6, and Article 8, of the Financial Services (Advertising) (Jersey) Order 200- were complied with as if those Articles had applied in relation to the advertisement and its issue; or”;

- (g) for paragraph (7)(b) there shall be substituted the following subparagraph –

“(b) an approach made by that other person in Jersey by the issue (otherwise than by telephone or in person) of an investment advertisement in relation to which and to the issue of which Articles 1 to 6, and Article 8, of the Financial Services (Advertising) (Jersey) Order 200- were complied with as if those Articles had applied in relation to the advertisement and its issue.”.

2 Citation and commencement

This Order may be cited as the Financial Services (Investment Business (Overseas Persons – Exemption)) (Amendment) (Jersey) Order 200- and shall come into force on the same day as the Financial Services (Advertising) (Jersey) Order 200- comes into force.



Jersey