JFSC
JERSEY FINANCIAL SERVICES COMMISSION

POSITION PAPER NO. 3 2007

IMPLEMENTATION OF THE HANDBOOK FOR THE PREVENTION AND DETECTION OF MONEY LAUNDERING AND THE FINANCING OF TERRORISM

Policy response on key issues arising from Consultation Paper No. 4 2006 and preparation for implementation of the revised Money Laundering Order and Handbook

ISSUED APRIL 2007

POSITION PAPER

If you require any assistance or clarification, wish to discuss any aspect of this paper, or have any observations please contact:

Helen Holmes
Senior Manager, International & Policy
Jersey Financial Services Commission,
PO Box 267,
Nelson House,
David Place,
St Helier,
Jersey JE4 8TP
Telephone: +44 (0) 1534 822104
Facsimile: +44 (0) 1534 822001
Email: h.holmes@jerseyfsc.org

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1.2 The purpose of this document is to update members of the finance industry concerning progress in revising these elements of Jersey's framework to counter money laundering and the financing of terrorism ("**AML/CFT**"), to set out some areas where the Commission expects regulated businesses to begin preparations for the revised requirements, and to set out the Commission's policy in response to key areas of concern raised during the consultation process.

WHO WILL BE AFFECTED?

1.3 The policy response to Consultation Paper No. 4 2006 will result in amendments to the draft Money Laundering (Jersey) Order 200- ("**Money Laundering Order**"), and as a result will impact all businesses carrying on financial services business (activities listed in Schedule 2 to the Proceeds of Crime (Jersey) Law 1999).

1.4 The Commission's expectations for preparations for implementation of the Money Laundering Order and Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism ("**Handbook**") will be relevant to persons regulated by the Commission.

2 - PROGRESS UPDATE

UPDATE ON PROGRESS IN REVISING THE FRAMEWORK TO COUNTER MONEY LAUNDERING AND THE FINANCING OF TERRORISM

Money Laundering Order and Handbook

2.1 The Commission is currently producing a revised draft of the Money Laundering Order and Handbook, which will be discussed with the AML Steering Group during April 2007. A final version of the Money Laundering Order and Handbook will then be released in June 2007, allowing businesses a six month period to implement the new measures[1].

2.2 The application of certain concessions to trust company businesses is to be revised - in line with the approach set out in Section 4 of this Position Paper. The detailed drafting to implement this position will be discussed with the AML Steering Group and interested industry bodies - before approval of the Money Laundering Order and publication of the Handbook.

2.3 Additionally, work is ongoing in relation to drafting for sector specific sections of the Handbook and for the treatment of existing customers. It is the intention of the Commission to issue draft text for discussion with industry steering groups, as well as for wider industry consultation, during 2007.

Wire transfers

2.4 The Commission has recently issued a Position Paper on implementation in Jersey of Financial Action Task Force ("**FATF**") Special Recommendation VII (**"SR VII")** on wire transfers:

Position Paper No.1 2007 FATF SR VII

Oversight of money service business

2.5 The Commission has recently published a feedback paper on implementation in Jersey of an oversight regime for money service business (in line with FATF Special Recommendation VI on alternative remittance systems):

Feedback paper - Money Service Business

[1] Subject to approval of the Money Laundering Order by the Minister for Treasury & Resources.

Schedule 2 of the Proceeds of Crime (Jersey) Law 1999

2.6 As part of the work to update Jersey's anti-money laundering framework, the sectors covered by Schedule 2 of the Proceeds of Crime (Jersey) Law 1999 ("**Schedule 2**") (and therefore subject to the Money Laundering Order) are under review. A consultation paper proposing amendments to existing definitions and an extension of the sectors covered by Schedule 2 is to be issued shortly.

2.7 A connected consultation paper will also address proposals to oversee compliance with AML/CFT requirements by sectors listed (or to be listed) in Schedule 2.

3 - PREPARATION FOR IMPLEMENTATION OF THE HANDBOOK

OVERVIEW

3.1 In the period before the revised Money Laundering Order and revised Handbook are released, it is expected that regulated businesses will begin preparations for the new measures. In doing so, businesses should have regard to the draft Money Laundering Order and Handbook issued in May 2006 (Consultation Paper No. 4 2006), and in particular Section 2 of the Handbook concerning corporate governance requirements and the need for appropriate systems and controls to manage the risk of money laundering and terrorist financing.

3.2 The Money Laundering (Jersey) Order 1999 already requires businesses to maintain appropriate procedures of internal control to prevent money laundering and terrorist financing. The revised Money Laundering Order will also explicitly require businesses to maintain procedures for monitoring and testing the effectiveness of systems and internal controls. Regulated businesses are also required by regulatory legislation and Codes of Practice issued under regulatory legislation[2] to have effective risk management systems and to guard against financial crime. To this end, the Handbook will require regulated businesses to have specific safeguards in place.

3.3 Feedback received from respondents to the consultation documents (published on the Commission's website - www.jerseyfsc.org) has focused much of the revision on the customer identification and verification provisions of Section 4 of the draft Handbook, which may result in material changes to some of the detailed requirements and guidance included in Section 4. However, the Commission does not expect that the provisions set out below will be modified.

3.4 Supervision examinations performed before and during the six month implementation period, while not testing compliance with the new requirements, will consider the steps underway to achieve compliance.

[2] The Financial Services (Jersey) Law 1998, the Banking Business (Jersey) Law 1991 and the Insurance Business (Jersey) Law 1996.

PREPARATION FOR THE NEW REQUIREMENTS

3.5 In preparation for the new requirements, the Commission expects regulated businesses to undertake the following measures:

Corporate governance

3.6 Perform and document an assessment of the business' exposure to money laundering and terrorist financing risk (referred to as a business risk assessment in Section 2.3 of the draft Handbook).

3.7 Establish a formal strategy and policy to protect the business and its reputation from money laundering and terrorist financing risk.

3.8 Review the adequacy of existing risk management systems and controls, in light of the business risk assessment and taking into account the level of compliance of the business (refer to Section 2.3.3 of the draft Handbook for further detail).

3.9 Ensure that policies and procedures designed to prevent and detect money laundering and terrorist financing are fully documented.

3.10 Consider whether there are internal (including cultural) barriers that inhibit the business' ability to appropriately manage money laundering and terrorist financing risk.

3.11 Ensure that responsibilities for the management of money laundering and terrorist financing risk are clearly apportioned, particularly, the responsibilities of the Money Laundering Reporting Officer and the Money Laundering Compliance Officer (refer to Sections 2.5 and 2.6 of the draft Handbook for further detail).

Customer due diligence information and customer risk assessment

3.12 Review the business' customer take-on policies and procedures to ensure that these capture the first four stages of the customer due diligence process described in Section 3.3 of the draft Handbook.

3.13 Taking into account the conclusions of the business risk assessment, develop a system of customer risk assessment appropriate for the business' customer base which will result in a risk classification being allocated to each customer (refer to Section 3 of the draft Handbook for further detail and guidance).

3.14 Where the business already has a customer risk assessment system, review this system to ensure that it continues to be appropriate for the nature of the products and services offered and for the business' customer base.

3.15 Review the business' policies and procedures in relation to the ongoing management of customer relationships, to ensure that changes in customer due diligence information are

captured, and that recorded customer due diligence information, including the customer risk assessment, is updated as appropriate (refer to Section 3 of the draft Handbook for further detail and guidance).

Other preparations

3.16 Review the situation regarding the provisions to counter money laundering and terrorist financing in place in any overseas offices, branches or subsidiaries, to ensure that these are consistent with the expectations set out at Section 1.4 of the draft Handbook.

3.17 Review the business' customer monitoring policies and procedures (whether manual or automated) to ensure that these will incorporate the circumstances required by Section 5 of the draft Handbook. The revised Handbook will contain further guidance in relation to monitoring.

3.18 Review the business' money laundering and terrorist financing training and awareness programme to ensure that it addresses the business' needs and, in particular, covers the following areas:

3.18.1 Provides training concerning the business' own policies and procedures to prevent and detect money laundering and terrorist financing;

3.18.2 Raises awareness of key obligations arising from the enactments in Jersey relating to money laundering and terrorist financing;

3.18.3 Provides training in the recognition and handling of suspicious transactions or other suspicious activity; and

3.18.4 Monitors and tests the effectiveness of the training and awareness programme.

3.19 Review the system for vetting prospective relevant employees and for monitoring the competence and probity of existing relevant employees, to ensure that employees support the business' risk management systems and controls.

3.20 Review the business' record keeping policies and procedures, to ensure that these are in line with the requirements set out in Section 8 of the draft Handbook.

4 - COMMISSION POLICY POSITION

COMMISSION POLICY POSITION IN RESPONSE TO COMMENTS RECEIVED ON CONSULTATION PAPER

4.1 Comments received in relation to key issues highlighted by respondents to Consultation Paper No. 4 2006 (issued on 15 May 2006) are summarised below. The Commission's policy response to these issues is presented in italicised text following each issue.

4.2 The following section should be read in conjunction with Consultation Paper No. 4 2006 and feedback paper published in November 2006:

Feedback Paper - Draft Handbook.

4.3 The application of certain concessions to trust company businesses is considered from paragraph 4.28 of this paper onwards.

ISSUE 1 - IMPLICATIONS OF A RISK BASED APPROACH (FLEXIBILITY VERSUS CERTAINTY)

4.4 Respondents noted that the move to an increased risk based approach to managing money laundering and terrorist financing risk (including customer due diligence and relationship monitoring) would result in the Commission placing greater reliance on regulated businesses to appropriately manage risk, and by permitting and advocating greater flexibility also require businesses to exercise greater discretion in the way in which they respond to risk. While respondents welcomed this flexibility, several, including Jersey Finance Limited ("**JFL**") and the Jersey Association of Trust Companies ("**JATCo**"), highlighted that businesses were likely to be uncomfortable with the reduction of the "safe harbour" that would otherwise be provided by more prescriptive requirements. JATCo suggested that the new regime should continue to provide a "safe harbour" by incorporating a standard approach, or selection of approved approaches to risk management, e.g. approved transaction monitoring methodologies.

4.5 The majority of the concerns highlighted above were focused on the implications for businesses of failing to apply an appropriate risk based approach, and on the approach the Commission and prosecuting authorities intend taking when failings are identified. These concerns have been heightened following the recent conviction for failure to comply with the Money Laundering (Jersey) Order 1999, which has led businesses to mistakenly believe that, if the Commission, or prosecuting authorities, note just one failure to, for example, appropriately identify a customer, apply enhanced procedures in respect of a politically exposed person, or submit a suspicious activity report, this will in itself result in prosecution.

4.6 All respondents were supportive of the balance struck in the Handbook between the levels of flexibility and prescription provided. However, many respondents requested additional

guidance in certain areas, in particular in relation to new areas of focus such as relationship monitoring and the inclusion of an objective test in reporting procedures (see below for further feedback on the proposal to introduce an objective test).

ISSUE 1 – POLICY RESPONSE

*4.7 Provide additional guidance in the Handbook in relation to implementing a risk based approach, taking into account current projects of the FATF and Basel Committee on Banking Supervision ("**Basel**"), and also additional guidance concerning relationship monitoring and an objective test in reporting procedures (refer also to issue 2, below).*

4.8 Provide assurance as to the Commission's expectations when conducting onsite examinations by expanding the policy note issued by the Commission concerning referrals to the Attorney General dated 3 March 2006. Highlight that, when considering the materiality of breaches of AML/CFT requirements and whether enforcement action is appropriate, it is unlikely that action will be pursued where the business is able to demonstrate that it had taken "all reasonable steps and exercised due diligence to avoid committing the offence", a statutory defence available for breaches of the Money Laundering (Jersey) Order 1999.

4.9 Confirm to industry that generic examination findings will be regularly published by the Commission, to assist in understanding the Commission's expectations. Ensure that the implementation period for the Handbook and revised Money Laundering Order provides an adequate lead in time for businesses (a minimum of 6 months), and provide assurance that in the period following implementation, the Commission will maintain a collaborative approach with industry to achieving compliance with the new requirements.

ISSUE 2 - INTRODUCTION OF AN OBJECTIVE TEST FOR SUSPICIOUS ACTIVITY REPORTING PROCEDURES

4.10 Many respondents (from the banking, investment management and accounting sectors) were comfortable with the introduction of an objective test into the requirement to have reporting procedures in the draft Money Laundering Order, on the basis that this requirement has been in place in the equivalent UK anti-money laundering legislation since 2004.

4.11 However, some respondents were less comfortable with the proposal and asked for additional guidance on the meaning of "suspicion" and "reasonable grounds for suspicion", and also for clarification as to the standards expected from more inexperienced members of staff, who may not be as adept at identifying circumstances where there are reasonable grounds for suspicion, notwithstanding the existing legal obligation to train staff to recognise suspicious activity.

4.12 Other concerns raised included the ability of the Commission and law enforcement agencies to use the benefit of hindsight to unreasonably criticise (or pursue investigations into) apparent breaches of reporting requirements, as it may be easier to identify circumstances when reasonable grounds for suspicion are present when retrospectively reviewing files, than when involved with the ongoing administration of the customer.

4.13 Some respondents requested that the timing of the introduction of an objective test be consistent with its introduction in competitor jurisdictions.

ISSUE 2 - POLICY RESPONSE

4.14 Retain the objective test in the draft Money Laundering Order reporting procedures requirement, on the basis that this is a well established UK concept, it is a requirement of the FATF Recommendations and the Second and Third EU Money Laundering Directives[3], and many respondents have reported that they are comfortable with the provision. Both Guernsey and the Isle of Man have draft legislation which will implement reporting requirements incorporating an objective test.

4.15 In order to allay concerns, provide the additional guidance requested concerning the meaning of "reasonable grounds for suspicion" and provide additional clarification as to the training and reporting expectations for more inexperienced members of staff. Request law enforcement agencies to consider whether guidance could be given concerning the key factors which might lead to investigations into breaches of reporting requirements.

ISSUE 3 - INTRODUCTION OF AN ABSOLUTE REQUIREMENT FOR THE IDENTIFICATION OF EACH NEW CUSTOMER

4.16 While some respondents were not comfortable with an explicit requirement to perform customer identification procedures for every customer, many respondents commented that it was useful to provide a clear identification requirement which ensured that the expectations as to such requirements were unambiguous.

4.17 Some respondents noted that the way in which the provision was currently drafted might lead businesses to adopt an inappropriate "tick box" approach to compliance with their business' own identification procedures, reducing the business' appetite for applying a more flexible risk based approach.

ISSUE 3 - POLICY RESPONSE

4.18 Retain the absolute requirement for satisfactory evidence of identity to be held for every new customer, as this is consistent with the FATF Recommendations, the Third EU Money Laundering Directive and the expectations of the Commission. Review the drafting of Article 27 of the draft Money Laundering Order to ensure that references to identification procedures do not result in loss of flexibility in applying a risk based approach to methods of obtaining satisfactory evidence of identity.

4.19 Ensure that it is clear that the objective of Article 27 is clearly communicated, i.e. that satisfactory customer due diligence be obtained for every customer, while permitting businesses flexibility in the way in which customer due diligence procedures are carried out according to a risk based approach.

4.20 Ensure that, in communicating the Commission's approach to supervision and enforcement of anti-money laundering measures, it is clear that the Commission will not have expectations of "zero failure"

[3] The Third Money Laundering Directive is to be implemented before 15 December 2007.

when supervising compliance, but will take into account whether the business had taken reasonable measures to achieve compliance.

ISSUE 4 - RESPONSIBILITIES OF THE MONEY LAUNDERING COMPLIANCE OFFICER

4.21 Respondents requested that the draft Money Laundering Order and the draft Handbook more clearly establish that the business (and its board and senior management) is responsible for compliance with statutory and regulatory requirements, and that it is the role and responsibility of the Money Laundering Compliance Officer to assist the business in achieving this objective.

ISSUE 4 - POLICY RESPONSE

4.22 *Review drafting of the Handbook and Money Laundering Order to better reflect the respective roles of the business and its Money Laundering Compliance Officer – emphasise that compliance is the responsibility of the business, which is to establish a compliance function to achieve that objective.*

ISSUE 5 - EQUIVALENT JURISDICTIONS

4.23 The list of equivalent jurisdictions (currently set out in Appendix D to the Guidance Notes) is of relevance when considering whether it is possible to place reliance on overseas intermediaries, or to accept introductions from overseas introducers. Respondents expressed mixed views as to whether they preferred to have the flexibility to themselves assess whether jurisdictions, other than those on a list issued by the Commission, have equivalent AML/CFT standards, or whether they preferred for there to be a definitive Commission issued list.

4.24 Those supporting the definitive list suggested the following reasons:

- The provision of certainty;
- Ensuring that the adequacy of the overseas jurisdiction had been determined to a satisfactory level, and so better protect Jersey's reputation; and
- Ensuring a level playing field between Jersey businesses and also with the other Crown Dependencies.

4.25 It was noted that, if a definitive list were established, there should be an effective mechanism for recommending additional jurisdictions for inclusion on that list.

ISSUE 5 - POLICY RESPONSE

4.26 *Retain for the short term the current position whereby the Commission issues a non-definitive list of jurisdictions which it considers to have equivalent customer due diligence measures in place, and continues to establish criteria by which financial services businesses may themselves undertake assessments, if they so wish, of other jurisdictions to determine whether these also have equivalent AML/CFT provisions. In the medium term, continue to monitor whether other jurisdictions, such as the UK, are moving from issuing a non-definitive list of jurisdictions to a restrictive list.*

ISSUE 6 - BUSINESS RELATIONSHIPS CONNECTED WITH TRUST COMPANY BUSINESSES

4.27 Many responses to the consultation paper commented on the proposals for introduced and intermediary relationships connected with trust company businesses. In particular, views were given concerning:

- Whether the Money Laundering Order should separately classify Jersey trust company businesses from other businesses regulated by the Commission [Issue 6.1]; and
- Whether it should be possible for designated relationships and pooled relationships operated by trust company businesses to be operated on an undisclosed basis (i.e. without providing information concerning the underlying customer and any beneficial owners and controllers) [Issue 6.2].

ISSUE 6.1 - CLASSIFICATION OF TRUST COMPANY BUSINESSES

Introduced relationships

4.28 The consultation paper proposed that provisions concerning introduced relationships be incorporated into the Money Laundering Order to provide certainty concerning the use of third parties to undertake aspects of the customer due diligence process. The proposals for introducers will permit persons meeting certain criteria to be used as introducers. For example, in relation to Jersey introducers, this would enable financial services businesses to accept introductions from all businesses regulated by the Commission. An introduction certificate containing customer and beneficial owner and controller information will be required.

Intermediary relationships

4.29 However, in order to meet the expectations of the FATF Recommendations, the proposals in respect of intermediary relationships as set out in the draft Money Laundering Order and draft Handbook differed depending on the category of intermediary. The FATF, and wider international opinion, considers that relationships with "financial institutions" (banks, investment businesses, collective investment funds and insurers) are lower risk, but does not accept that relationships with trust company businesses fall into this category, as the sector is perceived to be more vulnerable to abuse by those seeking to launder funds or finance terrorism, due to the reduced transparency available where activities are conducted using companies, trusts and other structures. As a result, while FATF Recommendation 5 permits reduced measures to be established for lower risk sectors, and lists sectors considered to present lower risk, trust company businesses are not included within this list.

4.30 The majority of respondents supported the principle that Jersey trust company businesses should be categorised in the same way as other sectors regulated by the Commission and respondents have noted that the sector has suffered substantial costs in complying with regulatory and anti-money laundering requirements. However, respondents' views were mixed as to appropriate requirements and levels of disclosure of customer information where a trust company business was acting as an intermediary on behalf of its underlying customers,

some highlighting concerns that relationships where underlying customer information remained undisclosed presented increased risks, contradicting the consensus view concerning the classification of trust company business noted above.

4.31 In its submission, JFL has asked that, should the Commission not feel able to provide trust company businesses with the same status as that of other regulated businesses due to the approach presently required by the FATF, the Commission make a clear statement that it is its intention to secure full equivalence of treatment for all regulated businesses in the medium to long term. In taking this position, JFL has acknowledged that it is likely that Jersey's AML/CFT regime may be seen to be non-equivalent if trust company businesses are given the same status as other sectors regulated by the Commission.

ISSUE 6.1 - POLICY RESPONSE

4.32 The initial proposals in the draft Money Laundering Order and draft Handbook sought to enable the Island to demonstrate that relationships with trust company businesses were unilaterally lower risk, by proposing additional safeguards be put in place, such as requiring the commission of anti-money laundering compliance reviews to be conducted by independent experts. However, since the issue of the draft Money Laundering Order and draft Handbook, it has become apparent that the FATF expects that jurisdictions will operate within the parameters for lower risk set out in FATF Recommendation 5, and will not extrapolate those parameters further to other sectors.

4.33 As a result, it is not possible to more closely align the approach for intermediary business with trust companies to the approach for intermediary business with financial institutions, and a revised approach for intermediary relationships with trust company businesses is presented below (issue 6.2). This revised approach will require both designated and pooled accounts to be operated by trust company businesses on a disclosed basis (i.e with disclosure to the accepting business of customer due diligence information concerning the underlying customer), unless, in respect of pooled relationships, the underlying customers fall into specific lower risk categories.

4.34 While the Commission supports the principle that relationships with trust company businesses should be treated in the same way as relationships with other regulated businesses, in order to do so, there will need to be acceptance internationally that the sector presents only low risk of abuse by money launderers and terrorist financers. The Commission will maintain under review the position concerning intermediary relationships with trust company businesses in light of international expectations and information concerning the risk posed by Jersey trust company businesses.

4.35 The Commission will also review the drafting of the Money Laundering Order provisions concerning intermediary relationships (Articles 17 and 18 of the draft Money Laundering Order, consultation paper No.4 2006) to reduce any external perception, to the extent possible, that Jersey trust company businesses are viewed differently to other Jersey prudentially regulated businesses.

4.36 The Commission will continue to lobby international standard setters concerning the status of regulated trust company businesses.

ISSUE 6.2 - REQUIREMENTS FOR TRUST COMPANY BUSINESSES TO OPERATE ON A DISCLOSED BASIS

4.37 Respondents did not provide a consensus view in response to this point.

4.38 Respondents from the banking sector expressed support for disclosure requirements for intermediaries, both for trust company businesses and in some cases also for intermediaries from other financial sectors, some suggesting that a basic customer profile (e.g. information concerning the settlor and principal beneficiaries, as is current practice in Guernsey) should be provided with each intermediary relationship, others advocating such profiles for higher risk customers only, with broad access to underlying customer information on demand. There was wider support amongst respondents to have access to customer information for designated relationships and for higher risk relationships. The desire of respondents to understand and be able to manage customer risk (mainly driven by group requirements) was cited as the reason for these views. Some respondents highlighted that group procedures would, whether or not a non-disclosure concession was available under Jersey provisions, require them to obtain underlying customer information upfront.

4.39 JATCo and JFL, with some limited support from respondents from the banking sector, were supportive of a similar non-disclosure concession proposed for other prudentially regulated financial services businesses also being applied to relationships where a Jersey trust company business acts as an intermediary for both pooled and designated relationships. However, JFL has reluctantly accepted that it may not be possible in the short term to provide trust company businesses with the same concession as other prudentially regulated businesses.

4.40 Reasons given to support the view that businesses should be able to operate undisclosed relationships with trust company businesses, whether pooled or designated, were as follows:

- A desire for equality of treatment of Jersey prudentially regulated businesses;
- Concern that holding customer information would lead to increased legal and reputational risk; and
- Unease in sharing customer information with other financial service providers who may use it for unauthorised purposes, such as marketing, notwithstanding that such use would breach data protection legislation.

4.41 JFL has proposed that it should be possible for all trust company business intermediary relationships to be operated on an undisclosed basis, whether pooled or designated, if certain additional controls/due diligence are applied to those relationships. For example, JFL has suggested that where a trust company business has provided a certificate of compliance from an independent expert, the business should be able to operate both pooled and designated accounts on the same undisclosed basis.

4.42 Some respondents suggested that the requirements could be less prescriptive, and instead require the accepting business to adopt a risk based approach to each of its intermediary relationships, and to itself determine the appropriate measures to be applied to each

intermediary relationship, which may or may not involve disclosure of information concerning the underlying customers. JFL, however, has also highlighted the advantages of consistent requirements being applied to all trust company businesses, minimising opportunities for regulatory arbitrage, and has reported that the Jersey Bankers' Association ("**JBA**") is of the view that the concession for trust company businesses requiring designated accounts to be operated on a disclosed basis, as set out in the draft Handbook, should remain.

ISSUE 6.2 - POLICY RESPONSE

Provisions for designated trust company business relationships:

4.43 *While FATF Recommendation 5 permits, in lower risk scenarios, trust company businesses to operate pooled relationships on an undisclosed basis, FATF Recommendation 5 does not provide a regime where the trust company business is able to operate a designated relationship on the same undisclosed basis. FATF Recommendation 5 also makes reference to the Basel paper, Customer Due Diligence for Banks (October 2001), which explicitly states that where a professional intermediary is operating an account on behalf of a single underlying customer, the bank should identify the underlying customer. As a result, a concession enabling trust company businesses to operate designated accounts on an undisclosed basis is likely to adversely impact Jersey's ability to demonstrate compliance with FATF Recommendation 5.*

4.44 *In order to reduce the likelihood of receiving an unfavourable rating of compliance with FATF Recommendation 5, it is proposed that the provision for trust company business designated relationships, in line with the Guernsey and Isle of Man requirements, and FATF expectations for such relationships, require upfront disclosure of information concerning the relationship and its beneficial owners and controllers. In revising the initial proposals, the Commission intends that the provisions for designated relationships better recognise the reduction in risk achieved by this upfront disclosure of underlying customer information, by aligning the requirements in relation to designated accounts operated by trust company businesses with those where a financial institution or trust company business acts as an introducer (which are less onerous). This revision will result in a simplified regime that merges the provisions for designated relationships with trust company businesses (previously in Article 17 of the draft Money Laundering Order) with Article 19, which sets the requirements for relationships introduced by financial institutions and trust company businesses.*

4.45 *The advantages to such a proposal are set out below:*

- *The framework would provide one simpler route, whether business from a TCB was introduced or intermediary business, i.e. the accepting business would not be required to consider designated relationships opened for trusts (always intermediary) differently to those opened for client companies (which may be either introduced or intermediary/nominee).*

- *Guernsey and the Isle of Man consider both designated intermediary relationships and introduced relationships under one "introducer" regime, similar to FATF Recommendation 9.*

- *Applying the provisions of FATF Recommendation 9 to designated trust company business relationships as well as to introduced relationships, rather than the provision of FATF Recommendation 5, will reduce potential impact on the rating for FATF Recommendation 5 (the key FATF Recommendation concerning customer due diligence), as FATF Recommendation 5 does*

not clearly provide for designated relationships with trust company businesses.

4.46 *However, if the provisions for designated relationships with trust company businesses are aligned with those for introduced relationships, the impact will be that the accepting business will retain responsibility for the performance of satisfactory customer due diligence procedures having been conducted by the trust company business, as is the case for introduced relationships. While this distinction is not immaterial, the practical difference will be minimal, as this responsibility will be discharged wherever the accepting business has taken reasonable measures to confirm that the trust company business meets the introducer criteria.*

Provisions for pooled trust company business relationships:

4.47 *As noted above, due to a developing understanding of the approach being applied to assessments against the FATF Recommendations, and as a result of the drafting of the concessionary regime provided for in FATF Recommendation 5, the initial proposals for pooled accounts have been revised, in consultation with an industry steering group comprising members of the trust company business sector, the banking sector, JATCo and the JBA. Additionally, the Commission conducted a survey in December 2006 to understand use of pooled accounts by the trust company business sector. While the detail of the revised requirements has yet to be finalised and discussed with the industry steering group, the policy underlying the revised approach is set out below.*

4.48 *Industry members who identify that the policy proposals set out below will present significant practical issues are recommended to feed these issues to the Commission either directly or via a representative body.*

4.49 *The provisions for pooled relationships with trust company businesses will be consistent with those for designated relationships (as set out above), unless the customer falls into a specified lower risk category, or unless the pooled product itself is lower risk. This means that the default position will require the upfront disclosure of customer due diligence information in respect of all customers whose assets are being put into a pooled relationship, for example, by providing a customer profile containing information concerning the relationship and its beneficial owners and controllers.*

4.50 *Low risk customers*

- *Employee benefit schemes established for institutional investors.*

4.51 *Low risk products*

- *"COBO only" schemes - schemes administered by a regulated financial services business, but which require consent only under the Control of Borrowing (Jersey) Order 1958.*
- *Aggregated customer monies ("aggregated deposits") placed by a trust company business where these originate from a Jersey bank and where the bank confirms that the customer monies have originated only from designated accounts held by the bank and controlled by the trust company business in respect of which both the bank and trust company business hold full customer due diligence information (or alternatively constitute monies from a pooled account controlled by the trust company business where both the bank and trust company business hold full customer due diligence information on the underlying customers). Refer to the diagram at Appendix B for*

further detail.

- *"Temporary accounts" operated by a Jersey trust company business that do not hold money for longer than 40 days and are used only for the following purposes:*
    - *to receive funds on behalf of new structures where designated accounts have yet to be established (customer due diligence information must be disclosed to the bank where funds are held for longer than 40 days);*
    - *to hold funds pending customer instructions where relationships have been exited;*
    - *to facilitate ad hoc cheque payments where designated accounts do not otherwise have this facility; or*
    - *to facilitate the aggregation of statutory fees for onward payment.*

4.52 The proposals for "temporary accounts" will also permit such accounts to be used to hold monies for longer periods for customers whose assets are illiquid but require banking services only in respect of low value and low frequency transactions, such as for the payment of administration and statutory fees.

4.53 The approach set out above would prevent trust company businesses from routing all payments to and from customers' designated accounts through a "client account".

4.54 This policy takes into account the situation in Guernsey and the Isle of Man. Additionally, it is understood that after 15 December 2007, where currently possible in the European Union, implementation of the Third EU Money Laundering Directive will require trust company business relationships either to be operated on a designated and disclosed basis, or where funds are pooled, the disclosure of customer due diligence information in relation to each underlying customer.

APPENDIX A

Glossary

Designated relationship/account

A relationship/account established by an intermediary on behalf of a single customer or relationship, including relationships involving sub-accounts for each underlying customer. Where sub-accounts are established, each sub-account is a separate designated relationship/account.

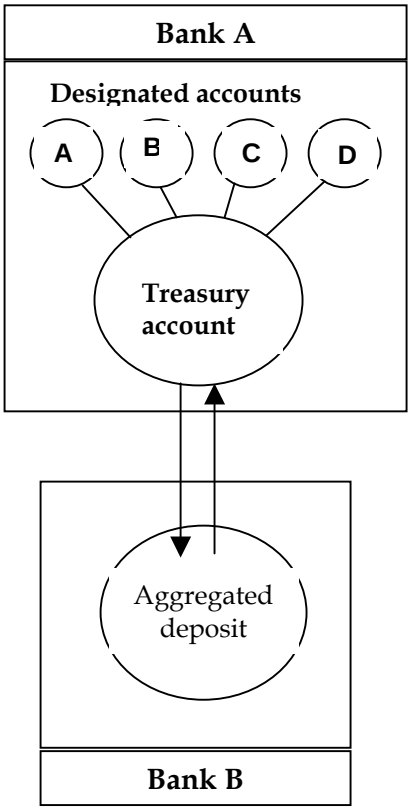
Pooled relationship/account

A relationship/account established by an intermediary on behalf of more than one customer, or which will contain the money of more than one customer. A relationship containing a series of sub-accounts is not a pooled relationship, but is a series of designated relationships.

A pooled account may also be referred to as "client account" or "customer money account", and will include "designated joint accounts", as defined in the Financial Services (Trust Company Business (Assets-Customer Money)) (Jersey) Order 2000, which hold customer money pooled for the purposes of joint ventures.

APPENDIX B

Aggregated deposits



A trust company business holding designated accounts with a bank (Bank A) may aggregate funds from those accounts into a separate "treasury account", from which monies may be placed on deposit with other banks (Bank B).

Bank B may accept the aggregated deposit from the "treasury account" on an undisclosed basis if the trust company business and Bank A confirm to it that the "treasury account" has been funded only by the designated accounts controlled by the trust company business with Bank A in respect of which both the bank and trust company business hold full customer due diligence information, and Bank B repays the deposit to the "treasury account", i.e. does not permit third party funding/payments.