Assessment Methodology on the implementation of the objectives and principles of securities regulation

Principles relating to Secondary markets

Completed by
Jersey Financial Services Commission

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Part I. Preliminary Information on Markets

“The level of regulation will depend upon the proposed market characteristics, including the structure of the market, the sophistication of market users and rights of access and the types of products traded. In some cases, it will be appropriate that a trading system should be largely exempt from direct regulation but will require approval from the relevant regulator after proper consideration by the regulator of the type of approval (or exemption) necessary.”

The following questions are designed to enable you to provide readers with the necessary context needed for an accurate understanding of your particular regulatory structure. Please feel free to share any additional information that you believe is relevant for this purpose.

Secondary markets in Jersey

In addition to traditional organized exchanges, secondary markets should be understood to include various forms of off-exchange market systems.

There are no secondary securities markets operating in Jersey, either in the form of traditional organized exchanges or off-exchange trading systems. Where Jersey incorporated companies or other entities require access to secondary markets, this is achieved through listing on secondary markets in other jurisdictions, such as the Channel Islands’ Stock Exchange (based in Guernsey), London Stock Exchange, or other European bourses, and the Jersey entity would accordingly be required to meet the listing requirements of that market.

The primary market is subject to control. Any issue of shares or other security by Jersey companies and other entities is governed under the Borrowing Control (Jersey) Law 1947 [the Borrowing Control Law] and the circulation of offers for sale of securities and of prospectuses in Jersey is governed by one or more of the Borrowing Control Law, Companies (Jersey) Law 1991 [the Companies Law] or the Collective Investment Funds (Jersey) Law 1988 [the Collective Investment Funds Law]. Relevant legislative provisions are outlined in the following paragraphs.

The Control of Borrowing (Jersey) Order 1958 [the Control of Borrowing Order], made under the Borrowing Control Law, governs the raising of funds in Jersey by any body corporate through the issue of shares (Article 3(2) for overseas companies and Article 4 for Jersey incorporated companies), and the issue for any purpose by any body corporate of shares, debentures or other security if the shares, debentures or other security is to be registered in Jersey or if the body corporate is a Jersey company (Article 4B(1)).

The Control of Borrowing Order (Articles 6, 8(1)(c) and 9(1)(c)) also governs the circulation in Jersey of any offer for subscription, sale or exchange of any securities (including shares,

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1 Compare text of Objectives and Principles 13.3 at 43.
debentures, units of a unit trust, interests in a limited partnership and interest in a limited liability partnership) if the issuer of the securities is not a company incorporated in Jersey or a trust or partnership governed or established under the relevant Jersey Law. In the case of offers for securities of corporate issuers and unit trusts, there are some exemptions from the requirement to obtain prior consent for the prospectus to be issued where the issuer has no “relevant connection” with the Island (e.g. the control or management or administration of the issuer is not carried out in Jersey): the exemption is available either if the same prospectus is validly circulating in the UK or in Guernsey; or if the circulation is to a “restricted circle of persons”, one of the criteria for which is that there are no more than 50 such offers made in the Island.

Prospectuses issued by Jersey incorporated companies are governed by the Companies (Jersey) Law 1991 if the company is a public company (e.g. has more than 30 members) and is not an open-ended collective investment fund. Prospectuses issued by an open-ended collective investment fund that is a company or unit trust established in Jersey must comply with the requirements of the Collective Investment Funds (Unclassified Funds) (Prospectuses) (Jersey) Order 1995, or the Collective Investment Funds (Recognized Funds) (General Provisions) (Jersey) Order 1988,[the “Funds Prospectus Orders”] as applicable, according to the type of fund.

The means by which the Control of Borrowing Order governs the above activities is through the requirement that anyone wishing to raise funds in Jersey, or to circulate to the public any offer for subscription, sale or exchange of shares, debentures or other securities, must first obtain the consent of the Jersey Financial Services Commission [the Commission] to do so. The Commission is permitted to grant consent and may impose any conditions on the grant of consent as it deems appropriate.

The Companies Law and the Companies (General Provisions) (Jersey) Order 2002 require that the consent of the Registrar of Companies must be obtained before any person circulates a prospectus in Jersey or before a Jersey company circulates, or procures the circulation of, a prospectus outside of Jersey. An open-ended investment company that holds a permit under the Collective Investment Funds (Jersey) Law 1988,is exempt from the this requirement, but must comply instead with the requirements of the Funds Prospectus Order.

A prospectus is defined as being an invitation to the public(i.e. not to a “restricted circle of persons”) to become a member of a company or to acquire or apply for any securities. The Companies (General Provisions) (Jersey) Order 2002 establishes the information and statements which the prospectus is required to contain and allows the Registrar to require further information concerning the prospectus.

Provisions dealing with collective investment funds are covered in the self assessment of principles relating to collective investment funds.
As a result of the absence of secondary markets in Jersey, IOSCO Principles 25, 26, 27 and 29 are not applicable to Jersey. A response has only been complied to questions under Principle 28: Regulation to detect and deter manipulation and other unfair trading practices.

1. **Types of markets** - Please describe in general terms the specific types of securities markets that have been authorised to operate in your jurisdiction. For this purpose, please be specific as to the precise nature of the market (e.g., organised membership exchange, demutualised exchange, non-domestic electronic system with terminals placed in your jurisdiction, inter-dealer market, telephone market, electronic trade matching system, electronic bulletin board, proprietary trading system, or automated order routing system provided by an intermediary or other third party).

   **Answer 1:** As there are no secondary markets operating in Jersey, this question is not applicable to Jersey.

2. **Market users** – Please describe in general terms the categories of market users (e.g., retail, commercial, institutional, domestic, non-domestic) of these markets.

   **Answer 2:** As there are no secondary markets operating in Jersey, this question is not applicable to Jersey.

3. **Rights of access** – Please describe in general terms the categories of persons/firms who may directly access the markets (i.e., predominantly members but any other category such as licensees, subscribers, qualified customers provided non-intermediated access and any limitations or required filters).

   **Answer 3:** As there are no secondary markets operating in Jersey, this question is not applicable to Jersey.

4. **Products** - List the types of financial instruments subject to regulation that are traded on securities markets (as defined broadly above) in your jurisdiction. For example:

   a. equity securities;
   b. corporate debt;
   c. sovereign debt;
   d. sub-sovereign debt;
   e. supra-sovereign debt;
   f. futures;
   g. options;
   h. warrants;
   i. other securities and futures-related derivatives (e.g., stock index futures);
   j. commodity-based derivatives;
   k. Other (please describe).
Identify the applicable regulator for each type of product (you may incorporate by reference your responses to the “Regulators” survey).

Are trades or prices in any other products (e.g., over-the-counter products) reported to the markets or clearing facilities of the markets (see footnote 5). If so, specify.

**Answer 4:** As there are no secondary markets operating in Jersey, this question is not applicable to Jersey.

5. **Size and complexity of markets** – Please provide a quantitative measure of the size of the markets in your jurisdiction (e.g., volume of trading, daily turnover, number of issues in which there is active trading, capitalization, types of listings if more than one, etc.) and any linkage arrangements. Also specify whether short sales or stock loans are permitted.

**Answer 5:** As there are no secondary markets operating in Jersey, this question is not applicable to Jersey.

6. **Excluded or exempt markets** - Which markets are excluded or exempt from registration? Are there types of markets that may do business in your jurisdiction that do not require authorisation? If so, please describe these markets in general terms. Do you have the authority to exempt markets from any or all authorisation requirements or disapply regulatory requirements to any securities markets? If “yes,” please identify the statute or rule providing such authority, the policy reasons for such rule, the applicable criteria, and describe in general terms any applicable regulatory requirements (e.g., antifraud, anti-manipulation, record-keeping requirements).

**Answer 6:** As there are no secondary markets operating in Jersey, this question is not applicable to Jersey.

7. **Clearing facilities** – Please describe the clearing, settlement and custodial arrangements serving the markets listed and any linkages between markets or such facilities within or outside your jurisdiction.

**Answer 7:** As there are no secondary markets operating in Jersey, this question is not applicable to Jersey.
**Part II. Implementation of the Principles**

**Principle 25: The establishment of trading systems including securities exchanges should be subject to regulatory authorisation and oversight.**

*Who must be authorised*

25–1. Taking into account the markets identified above, which, if any, of the following types of entities or persons must be “authorised”?

- a. exchanges;
- b. exchange members/subscribers doing proprietary business;
- c. exchange members/subscribers doing customer business;
- d. clearing members;
- e. non-exchange members (i.e., person for which exchange member or direct member carries an omnibus account);
- f. shareholders or member-type owners;
- g. system operators;
- h. system providers;
- i. other system users;
- j. entities responsible for enforcing rules or contract terms (if different from the entities identified in “a” or “g”);
- k. clearing organisations;
- l. trade guarantors;
- m. custodians.

*Statutory or administrative standards*

25–2. Please describe in general terms the statutory or administrative standards for authorisation of markets.

In answering, please describe:

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2 For purposes of this survey, the term “authorisation” includes all forms of regulatory action whereby the regulator gives permission to the market to carry on business (e.g., licensing, recognition, registration, designation, etc.), whether licensed as a market or a broker-dealer. If authorised as a broker-dealer, you may cross-reference the Intermediary survey if appropriate.

3 “System operator” is the organisation that is responsible [overall] for the system, such as an exchange, or other owner or sponsor.

4 “System providers” are the organisation(s) that provide(s) the hardware, software and/or communications network and related services.

5 “System users” are the persons authorised to execute transactions on the system such as a broker-dealer or, in some cases, managers of collective investments or end-users.
a. the relevant statutory or administrative text relied upon;

b. which authority analyzes the application and grants the authorisation;

c. what triggers the requirement to be authorised (e.g., “presence” of market or instrumentality of market in your jurisdiction, owning market, executing orders, executing trades, making a market, clearing trades, carrying trades, providing matching, providing compliance, providing bookkeeping, etc.);

d. the extent to which the authorising authority relies on judgments made by others, such as self-regulatory organisations (SRO) or regulators in other jurisdictions or financial sectors; and

e. whether clearing arrangements are separately authorised.

**Authorisation criteria**

The following questions address the criteria that are examined by the regulator in reviewing an application by a securities market for authorisation.

If different standards are imposed with respect to any of the following criteria based on differences in market structure; sophistication of market users; rights of access; or products, please describe in general terms any such differences.

**Operator competence or fitness**

25–3. Describe in general terms what measures, tests, factors or standards you use to assess competency or fitness of the system operator(s).

In answering this question, please specify:

the persons or entities subject to these standards, for example: the exchange’s key personnel, any entity to which the exchange has delegated/outsourced the operation of the system.

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6 *E.g.*, whether the market: is floor trading or electronic, is order-driven or price-driven, is for profit or non-profit, membership or demutualised, is limited to dealers, has self-regulatory responsibilities.

7 *E.g.*, retail or institutional, speculative or hedging.

8 *E.g.*, membership or non-membership organisation; provides direct access to its trade matching facility to intermediaries and/or customers; provides cross-border direct access; permits remote (foreign) membership

9 *E.g.*, equities, derivatives, financial products, equity indexes, equity options, futures and options on futures, product underlying a derivative.
Please also specify whether there are predefined conduct or other factors that would prevent or disqualify an operator from authorisation and, if so, describe these in general terms.

Operator oversight

25–4. Are the system operator and the system required to satisfy the regulator that regulatory standards can be met on an ongoing basis?

25–5. Is the operator of a system which assumes principal, settlement, guarantee or performance risk required to comply with any prudential and other requirements designed to reduce the risk of non-completion of transactions (e.g., mandatory margin assessment and collection, capital or financial resources, member contributions, guaranty fund, credit or position limits)? Please specify.

Admission of products to trading; listing

25–6 Please describe in general terms whether the regulator is required to be informed of the types of product to be traded on the trading system. Are there listing criteria or criteria for contract trading instrument terms and conditions. If “yes,” please describe in general terms any review process.

25–7 Please describe in general terms whether the regulator is required to approve the rules governing the trading of the product and, if so, please describe the applicable standards. In answering this question, please describe in general terms how the standards for product design and trading rules address preventing market abuse such as manipulation and ensuring a fair, orderly, efficient, transparent and liquid market.

Admission of participants to the trading system (access)

25–8 Please describe in general terms how your regulatory system ensures that access to a trading system or exchange is fair and objective. Do you oversee the criteria for admission and can admission denials be appealed? In answering this question, please note, if applicable, any express access requirements regarding specific categories of market participants (e.g., non-shareholders, nonmembers, dealers, market members, remote/non-domestic members, and “locals”).

25–9 Please describe in general terms any special rules or requirements regarding fair and objective access to electronic trading systems. In answering, please discuss the specific objectives of such rules or requirements.

For example, discuss any requirements that ensure that:

a. response time is equivalent for all system participants;
b. all system users have an equal ability to connect and to maintain the connection to the system;

c. that all equivalent “inputs” (e.g., volume and order type) by system users are treated fairly and equally; and

d. that links or interfaces with other systems (e.g., clearing systems, order routing systems, quotation vendors) are treated fairly.

Provision of trading information

25-10 Please describe in general terms how your regulatory system ensures that similarly situated market participants have equitable access to trading information? In so doing, refer to the trading information specified in response to 25-14 and 27.

25-11 Please describe in general terms, if applicable, any different standards that apply with regard to access to pre-trade information based on participant categories. In answering this question, explain briefly the justification for such differences and describe how your regulatory system ensures that such differential access does not unfairly disadvantage any participant.

Routing of orders

25-12 Please describe in general terms how, if applicable, your regulatory system ensures (in the context of initial authorisation of a system) that a system’s order routing procedures are clearly disclosed to the regulator and to market participants, are applied fairly and are not inconsistent with relevant securities regulations (e.g., explain requirements with respect to client precedence or prohibition of front-running or trading ahead of customers).

Trade execution

25-13 Please describe in general terms how your regulatory system ensures that execution rules are disclosed to the regulator and to market participants, and are fairly applied to all participants.

In answering this question, please address the following if present in your regulatory system:

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10 See Principle 3 discussion at pp. 21-25 in Screen-Based Trading Systems for Derivative Products (IOSCO Document No. 4, 1990). These are illustrative “best practices” developed in the context of trading systems for derivative products and not intended to limit or define practices for securities systems.

11 Regulatory issues may depend on whether orders are transmitted to an organised regulated market or to other alternative trade execution and matching systems. See discussion in paragraphs 67-73 in Issues in the Regulation of Cross-Border Proprietary Screen-Based Trading Systems (IOSCO Document No. 42, 1994).
a. What standards govern order execution (e.g., open and competitive, best execution, customer first, time frame to fill order)?

b. For automated systems, whether you review or require third party review of the trade matching or execution algorithm\textsuperscript{12} and if so, the review standards?

c. Specify whether there is an audit trail requirement and, if so, describe in general terms the required components of the audit trail requirement (e.g., customer designation, time of trade, etc.).

\textit{Post trade reporting and publication}

25-14 Please describe in general terms how your regulatory system ensures that information on completed trades is provided on the same basis to all participants. \textit{In answering this question, please address any transaction record-keeping and reporting requirement and the relevant time frame.}

\textit{Supervision of system and participants by the operator}

25-15 Please describe in general terms how, and the standards (or guidance) by which, the regulator assesses for purposes of initial authorisation “the reliability of all arrangements made by the operator for the monitoring, surveillance and supervision of the trading system and its participants to ensure fairness, efficiency, transparency and investor protection, as well as compliance with securities legislation.”\textsuperscript{13}

\textit{Note: If the market or any other entity has self-regulatory responsibilities please include a brief description of those responsibilities in your response and cross-reference to the appropriate response to Principles 6 and 7 in the Regulators Survey.}

\textsuperscript{12} The order execution algorithm is the set of rules that determines the processing and matching of orders entered into the automated system. The more complex the system, the more importance needs to be attached to appropriate design to prevent market abuses. See, issues in the Regulation of Cross-Border Proprietary Screen-Based Trading Systems, Paragraph 74 (IOSCO Document No. 42, 1994). A review of the rules that have been transcribed in the algorithm is a key factor in assessing whether a screen-based trading system would promote the broad objectives of fairness and efficiency. In reviewing an algorithm, the relevant regulatory authorities should consider the availability of information about current orders and transactions in the system. For further discussion, see Principle 3, at pp.16-20, Screen-Based Trading Systems for Derivative Products (IOSCO Document No. 4, June 1990).

\textsuperscript{13} See, \textit{Principles and Objectives} text 13.3.
Please indicate by “yes” or “no” whether the approval process for a new exchange or trading system examines whether the market or system has requirements or arrangements in place to address any of the following:

If “yes,” please briefly describe how the regulator gauges the sufficiency of these requirements or arrangements.

If “no,” please indicate if the regulator or other authority (e.g., SRO) has the requirement or responsibility.

Means to monitor trading conduct
   a. Review for insider trading;
   b. Review for abuse of material, non-public information;
   c. Review for abuse of or disclosure of customer orders;
   d. Review of staff or operator for compliance with rules or professional standards;
   e. Procedures to address or limit conflicts of interest regarding those who have access to information about customer trades or proprietary trades.

Means to supervise system
   a. Handling of error accounts;
   b. Trade allocation of bunched or block orders;
   c. Handling of unmatched trades;
   d. Modification of orders entered into the system;
   e. Requirements for maintaining records and reporting failed trades;
   f. Technical standards (e.g., capacity or performance);
   g. Procedures related to operational failures;
   h. Record-keeping and retention;
   i. Procedures for holding client funds and securities (financial integrity);
   j. Amount of leverage in the system;
   k. Procedures for the clearing and settlement of trades and delivery of securities.

Means to identify and address disorderly trading conditions (market surveillance)
   a. Review for wash trading;
   b. Review for price manipulation;
   c. Review for congestion or cornering;
   d. Review for unusual price or volume movements;
   e. Requirement to maintain orderly market;
   f. Communication of price sensitive information to the market;
   g. Procedures related to release of information;
   h. Powers to stop or modify trading (e.g., trading halts, price limits, position limits, liquidation only trading, and/or emergency powers).

Means to deal with non-compliant conduct
   a. Dispute resolution and appeal procedures;
   b. Reports of suspected breaches of law, exchange or system rules;
c. Requirement to investigate complaints;
d. Market disciplinary powers and procedures.

If there are any other methods or techniques of oversight or supervision than those set forth above, please specify.

Trading disruptions

25-16 Please describe in general terms whether the market operator, regulatory authority or other agency (please specify) has the power to suspend or halt trading, set margin, position limits, price limits, “circuit breakers” or otherwise intervene in the market? If “yes,” please describe any limits, standards or review procedures that apply to such interventions.

Availability of rules to market participants

25-17 Please describe any requirements that ensure that all market rules and operating procedures are available to market participants.

Principle 26: There should be ongoing regulatory supervision of exchanges and trading systems, which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike a balance between the demands of different market participants.

26-1 Please describe in general terms how, and the standards (or guidance) by which, the regulator directly assesses the continuing compliance of the system or exchange with the initial authorisation requirements. In so doing, refer as applicable to the subject matter areas addressed under 25-3 to 25-17 above.

In answering this question, also please address:

a. the standards or guidance,\(^{14}\) if any, which govern the assessment of continued compliance;

b. any regulatory requirements and/or any regulatory power to ensure that the exchange/market/system enforces its own rules and procedures; and

\(^{14}\) “The regulator should identify the information it requires to verify performance and effectiveness of the market authorities responsibilities, particularly as they relate to the integrity of the market, to monitor risks and to be able to respond to such risks.” Supervisory Framework for Markets at p. 9 (IOSCO Document No. 90, May 1999).
c. any differences in your surveillance or auditing procedures and/or authority based on differences in the structure of the market, and explain the rationale for such differences.

26-2 Describe in general terms the regulatory procedure, if any, to re-examine or withdraw an exchange and/or a trading system’s license or initial authorisation, modify its rules or order that particular action be taken, if it is determined that the system is unable to comply with the conditions of its initial authorisation?

*In answering this question, please note whether, and if so, the circumstances under which, the rules of the system or exchange are provided to the regulator for review and/or approval.*

[See also Principle 28]

**Principle 27: Regulation should promote transparency of trading.**

27-1 What are the requirements or arrangements for providing pre-trade (i.e., posting of bids and offers) and post-trade (i.e., last sale price and volume of transaction) information to market users?

Please describe in general terms any other transparency requirements (such as publication of cautionary announcements and price sensitive information)?

27-2 What requirements are there for reporting of pre- and post- trade information to the regulator (or access of the regulator to pre- and post- trade information to which market participants have access)?

Please describe the frequency and timing of reports and what is reported.

**Principle 28: Regulation should be designed to detect and deter manipulation and other unfair trading practices.**

*In responding to these questions, reference may be made to responses to other IOSCO implementation surveys.*

28-1 Are market manipulation, market cornering, misleading statements, insider trading, frontrunning and other fraudulent or deceptive conduct prohibited?

*If “yes,” please specify whether by general civil legislation, criminal law, administrative law or market rules, provide relevant citations, and describe any administrative powers that are available to obtain compliance with these laws and rules.*
Answer 28-1: Yes. The Financial Services (Jersey) Law 1998, the Collective Investment Funds (Jersey) Law 1988 and the Company Securities (Insider Dealing) (Jersey) Law 1988 prohibit these activities and provide the Commission with powers to facilitate the investigation of any suspected offences.

Article 8(1) of the Company Securities (Insider Dealing) (Jersey) Law 1988 [the Insider Dealing Law] prohibits an individual who is, or at any time in the preceding 6 months has been, knowingly connected with a company from dealing on a recognized stock exchange in securities of that company if he has information which –

a) he holds by virtue of being connected with the company;

b) it is reasonable to expect that a person connected with the company and in same position not to disclose the information; and

c) he knows is unpublished price sensitive information in relation to those securities.

Article 8(2) of the Insider Dealing Law extends the provisions of Article 8(1) to dealing in shares in another company, where the person in Article 8(1) has information relating to a transaction between the company to which he is connected and that other company.

Article 8(3) and 8(4) prohibit any person who knowingly receives (directly or indirectly) unpublished price sensitive information from a person connected with a company from dealing in securities of that company, or any other company where the information relates to a transaction with that other company.

Article 9(3) prohibits a public servant (or former public servant) who holds unpublished price sensitive information, or anyone who knowingly receives price sensitive information from a public servant (or former public servant), from dealing on a recognized stock exchange in any relevant securities, or from procuring any other person to deal in any such securities, or from communicating any unpublished price sensitive information to a third party for the purpose of dealing in any such securities.

An individual who contravenes Articles 8 or 9 shall be liable on conviction for a term of imprisonment not exceeding 7 years or a fine, or both.

Article 15 of the Insider Dealing Law gives the Commission powers to appoint an inspector to investigate reports of suspected insider dealing, provides the inspector with powers to require information and the production of documents and to require any person to provide assistance in connection with the investigation. Article 16 of the Insider Dealing Law provides the inspector with the ability to apply to the Bailiff (the head of Jersey’s judiciary) for a warrant to search premises in the course of an insider dealing investigation. Powers available to the Commission under Articles 15 and 16 may
also be exercised at the request of another jurisdiction, whether or not an offence has been committed in Jersey.

Article 27(1) of the Financial Services (Jersey) Law 1998 [the Financial Services Law] and Article 9(1) of the Collective Investment Funds (Jersey) Law 1988 [the Collective Investment Funds Law] prohibit any person from knowingly or recklessly making a misleading or false statement, promise or forecast, or from concealing any material facts, for the purpose of inducing another person from entering into an arrangement or investment agreement to buy or sell any investment (or fund units, with respect to the Collective Investment Funds Law), whether listed on an exchange or not.

Article 27(2) of the Financial Services Law and Article 9(2) of the Collective Investment Funds Law prohibit any person from engaging in any course of conduct which creates a false or misleading impression as to the market in or price or value of any investment (or fund units, with respect to the Collective Investment Funds Law), if he does so for the purpose of creating that impression and inducing another person to buy or sell that investment. An offence under Article 27 of the Financial Services Law or Article 9 of the Collective Investment Funds Law attracts a term of imprisonment of up to 10 years or a fine, or both.

The Commission is given the power, by Article 29(2) of the Financial Services Law and Article 8 of the Collective Investment Funds Law, to serve a notice on any person believed to hold information or documents required for the purpose of investigating an offence under Article 27 of the Financial Services Law or Article 9 of the Collective Investment Funds Law. Article 29(3) gives the Commission, or an agent of the Commission, the power to enter the premises of anyone on whom the Commission has served a notice under Article 29(2); similar provisions are contained within Article 19 of the Collective Investment Funds Law. Powers available to the Commission under Article 29 of the Financial Services Law and Article 8 of the Collective Investment Funds Law may also be exercised at the request of another jurisdiction, whether or not an offence has been committed in Jersey.

28-2 Please describe in general terms your overall regulatory approach to detect and deter such conduct (e.g., direct surveillance, inspection, reporting, product design requirements, position limits, settlement price rules or market halts complemented by vigorous enforcement of the law and trading rules).  

Answer 28-2: As there are no secondary markets operating in Jersey, this question is not applicable to Jersey.

However, Jersey’s anti-money laundering legislation supports the detection and deterrence of such criminal activities.

15 Compare text Objectives and Principles, 13.6 at 45
IOSCO MEMBER SELF ASSESSMENT
Principles relating to secondary markets

The Proceeds of Crime (Jersey) Law 1999 creates a criminal offence where a person either knows or suspects that property is the proceeds of criminal conduct and assists another to retain the benefit of that property, such as any proceeds derived from insider dealing or market manipulation (Article 32), and where a person conceals, disguises, converts or transfers property, or removes property from Jersey where he either knows or has reasonable grounds to suspect that the property represents another’s proceeds of criminal conduct (Article 34(2)).

Article 37 of the Proceeds of Crime Law imposes additional requirements on financial services businesses (including banks, insurance companies, collective investment funds, investment businesses and trust and company service providers) concerning the identification of customers, the reporting of suspicious activity and such other procedures of internal control as may be appropriate to forestall and prevent money laundering, by requiring compliance with the Money Laundering (Jersey) Order 1999. These requirements ensure that financial services businesses operating in Jersey vet their customers and monitor customer activity in order to identify any suspicious activity, such as suspected insider dealing.

The Commission has issued guidance notes as to how it expects financial services businesses to meet the requirements of the Money Laundering Order. Compliance with the Money Laundering Order and the guidance notes is tested by the Commission when it carries out onsite inspections of regulated businesses. Non-compliance with the guidance notes may be viewed by the Commission as an indication that the regulated business is not fit and proper to hold a licence to carry out a regulated activity.

28-3 Please specifically indicate whether any of the following requirements or arrangements are used and by whom (i.e., the regulator and/or the exchange to detect and deter manipulation, etc.):

a. the reporting of specified trade information to the market and/or to the regulator;
b. product design or listing criteria (including for options or other derivatives);
c. market position limits;
d. settlement price requirements;
e. trading halts / suspensions;
f. real-time monitoring of trading; other monitoring;
g. exception reports;
h. large trader, exposure/concentration or other reports;
i. review for insider trading or other market abuses;
j. initiating or referring the matter to criminal proceedings;
k. fines;
l. revocation or suspension of membership or access authorisation;
m. other (please specify).

Answer 28-3: As there are no secondary markets operating in Jersey, this question is not applicable to Jersey.
However, the Commission investigates reports of suspected insider dealing, through the appointment of an inspector, under the powers in Articles 15 and 16 of the Insider Dealing Law. Reports of suspected insider dealing may arise locally, however, as there are no secondary markets operating in Jersey, reports will be requests from overseas authorities for assistance in investigating suspected insider dealing on overseas secondary markets where a connection with Jersey has been identified. Where an investigation conducted by the Commission identifies evidence that an offence may have been committed in Jersey, the case is referred to the Attorney General for criminal prosecution. The penalty for committing an offence under the Insider Dealing Law is a term of imprisonment for up to seven years or a fine or both.

Facilitation by a regulated financial services business of market abuse may be viewed by the Commission as an indication that the regulated business is not fit and proper to hold a licence to carry out a regulated activity.

28-4 Please describe the specific arrangements in place for the continuous monitoring of trading on the markets.\(^{16}\) Describe who performs such monitoring, its frequency, and the possible consequences when such information detects possible unusual and potentially improper trading (e.g., investigations, market intervention).

**Answer 28-4:** As there are no secondary markets operating in Jersey, this question is not applicable to Jersey.

28-5 Are there requirements or arrangements in place to monitor and/or address domestic cross-market trading abuses? If “yes,” please indicate whether these are: \(^{17}\)

- a. information sharing arrangements (regulatory and/or enforcement related);
- b. arrangements to provide assistance in investigations;
- c. arrangements to provide assistance for surveillance;
- d. arrangements to provide inspections of authorised persons;
- e. other (please specify).

Please indicate which of the above categories “a” through “e” include arrangements with foreign regulators and/or markets.

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\(^{16}\) Essential elements of monitoring compliance include: monitoring the day-to-day trading activity in the markets (through a market surveillance program); (2) monitoring the conduct of market intermediaries (through examination of business operations); and (3) collecting and [analyzing] information gathered from these activities. See Supervisory Framework for Markets (IOSCO Document No. 90, 1999) at p. 9.

\(^{17}\) Please cross-reference to any of your answers to Principle 11 and/or 12 of the “Regulators” survey that would provide more detail.
Answer 28-5: Due to the absence of a Jersey secondary market, and the Commission being the sole regulator of securities within Jersey, there is no requirement for any domestic arrangements to facilitate monitoring of domestic cross-market trading abuses.

The Insider Dealing Law and the Financial Services Law provide the Commission with gateways through which the Commission may assist overseas authorities in the investigation of suspected insider dealing and market manipulation. Article 15(1)(b) of the Insider Dealing Law enables the Commission to appoint an inspector to investigate a suspected contravention of the insider dealing laws of another country or territory where a person in Jersey is concerned in the suspected contravention or where a person in Jersey may have information or documents which may be of assistance in the investigation of any such contravention. The Commission has to date provided assistance to a number of overseas authorities in cases of suspected insider dealing.

Article 33 of the Financial Services Law permits the Commission to exercise its powers to obtain information and documents (Article 29), to investigate (Article 30) and to enter premises (Article 31) at the request of or to assist an overseas supervisory authority. Article 33 also permits the Commission to communicate any information in the possession of the Commission to an overseas supervisory authority, either at the request of that authority or spontaneously for the purposes of assistance, where the Commission is satisfied that the overseas authority will treat the information communicated with appropriate confidentiality and that either-

a) the power is exercised in order to assist the authority in the exercise of its supervisory functions; or

b) the exercise of the power has been requested by the authority and requested only for the purposes of obtaining assistance for the authority in the exercise of one or more of its supervisory functions.

To support the legislative gateways for communication of information and provision of assistance, the Commission has a number of memoranda of understanding in place with overseas regulatory authorities, which include memoranda specifically addressing co-operation for the purposes of investigating suspected insider dealing and market manipulation; such memoranda are held with the Securities Commissions of Germany, France, the United Kingdom and the United States of America. The purpose of the memoranda of understanding is to establish the procedures by which information is exchanged and so to facilitate timely and effective co-operation. The Commission is also a party to the IOSCO multi-lateral memorandum of understanding.
Principle 29: Regulation should aim to ensure the proper management of large exposures, default risk and market disruption.

**Large exposures**

29-1 Please describe in general terms how market authorities monitor “large exposures” (i.e., open positions that are sufficiently large to pose a risk to the market or to a clearing firm)?

Please include in your answer:

a. Which market authority is responsible for such monitoring (i.e., market, regulator, clearing organisation).

b. Whether quantitative or qualitative “trigger levels” have been adopted and, if so, describe generally.

c. The frequency of monitoring.

29-2 Please describe in general terms any arrangements among market authorities to share information on large exposures of common market participants or on related products with regulators and markets:

(a) in their own domestic jurisdiction; and

(b) in another jurisdiction.

29-3 Please describe in general terms whether the regulator and/or the market have access to information on the size and beneficial ownership of large positions held by direct customers directly? Through market members?

29-4 Please describe in general terms whether the regulator and/or the market have power to compel customers or market members carrying or controlling large positions to reduce their exposures or to post increased margin.

29-5 Please describe in general terms what actions can be taken by the regulator and/or the market if a market member does not make the relevant information available to the

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18 The term “market authority” is used, for purposes of large exposures, to refer to the authority in a particular jurisdiction, which has statutory or regulatory powers with respect to the exercise of certain regulatory functions over a market. The relevant market authority, depending on the jurisdiction, may be a regulatory body, a self-regulatory organisation and/or the market itself.” Report on Cooperation Between Market Authorities and Default Procedures (IOSCO Document No. 49, 1996) at p.2.

19 Please cross-reference to any of your answers to Principle 11 and/or 12 of the “Regulators” survey that would provide more detail.
market authority (regulator or exchange)? Please indicate specifically whether any of the following remedial actions may be taken:

a. impose limitations on future trading;
b. require liquidation of positions;
c. increase margin requirements;
d. revoke trading privileges;
e. suspend from trading;
f. increase capital of carrying firm.

**Transparency of default procedures**

29-6 Please describe in general terms the arrangements by which markets’ default procedures are made available to market participants.

Indicate “yes” or “no” if such procedures disclose:20

a. The circumstances in which action may be taken and the procedure for identifying such circumstances?

b. The treatment of both proprietary and customer positions, funds and assets, including the kinds of cases where customer positions are transferred and those where positions are liquidated?

c. Where liquidation is called for, a description of the concrete terms and conditions therefore?

d. The mechanisms to address defaulting members’ and/or clearinghouse’s obligations to market counterparties?

e. The mechanisms to address the defaulting member’s obligations to its customers?

f. A description of how each of the information items above might be affected, if at all, by the occurrence of other events, such as insolvency proceedings.

**Effectiveness of default procedures**

29-7 Does the applicable law permit markets (clearing houses) to dispose of collateral or to liquidate or transfer positions under market rules without interference from bankruptcy law? Does applicable law protect a customer’s trades or positions in the market from its intermediary’s default? If “yes,” describe in general terms.

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29-8 Have markets implemented the necessary arrangements for:\(^21\)

   a. distinguishing firm and customer positions, deposit collateral and accrual proceeds (in order to facilitate transfers);

   b. identifying the underlying nature of participants in omnibus accounts (in jurisdictions where materially related firms may be liable for the obligations of the failing firm);

   c. contingency plans addressing the procedures to be implemented to minimize the adverse effects of a firm default; and

   d. identifying, monitoring and placing restrictions on members who may default?

**Principle 30.** Systems for clearing and settlement of securities transactions should be subject to regulatory oversight, and designed to ensure that they are fair, effective and efficient and that they reduce systemic risk.

The Technical Committee of IOSCO and the Committee on Payment and Settlement Systems have directed the Task Force on Securities Settlement Systems to complete development of a comprehensive assessment methodology with respect to the Recommendations for Securities Settlement Systems (November 2001) by the end of 2002. In order to avoid unnecessary duplication, formal assessment of this Principle will be deferred pending further action by the IOSCO/CPSS Task Force.\(^22\)

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\(^{21}\) See, generally, id. at 24-25.

\(^{22}\) In the interim, please refer to the key questions (Section 5) of the CPSS/IOSCO Recommendations for Securities Settlement Systems (IOSCO Document No. 115, 2001) to undertake a self-examination or to address assessments that may be undertaken in the course of a Financial Sector Assessment Program review conducted by the World Bank and International Monetary Fund.