



Jersey Financial
Services Commission

Consultations on miscellaneous amendments to regulatory legislation

We are proposing maintenance amendments to the laws that regulate the financial services industry and other non-financial businesses and professions in Jersey

Issued: November 2017

Consultation No. 11 2017

Consultation Paper

The Jersey Financial Services Commission (**JFSC**) invites comments on this consultation paper.

Comments should reach Jersey Finance Limited (**JFL**) by 9 February 2018.

Responses should be sent to:

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Alternatively, responses may be sent directly to the JFSC by 16 February 2018. 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 JFSC.

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

It is the policy of JFL (unless otherwise requested or agreed) to collate all responses and share them verbatim with the JFSC on an anonymised basis (with reference made only to the type of respondent, e.g. individual, law firm, trust company etc.) This collated, anonymised response will, typically, be placed in JFL's permanent electronic archive which is currently open to all JFL members.

Glossary of Terms

AIF Amendment Regulations	Alternative Investment Funds (Amendment) (Jersey) Regulations 201-
AIF Regulations	Alternative Investment Funds (Jersey) Regulations 2012
amending legislation	collectively, the <ul style="list-style-type: none"> › <i>AIF Amendment Regulations</i> › <i>Miscellaneous Provisions Law</i> › <i>Miscellaneous Provisions Regulations</i> › <i>Recognized Funds PCO Amendment Order</i>
Bankruptcy Law	Bankruptcy (Désastre) (Jersey) Law 1990
BBJL	Banking Business (Jersey) Law 1991
CIFJL	Collective Investment Funds (Jersey) Law 1988
Commission Law	Financial Services Commission (Jersey) Law 1998
FSJL	Financial Services (Jersey) Law 1998
FSMA	Financial Services and Markets Act 2000 of the <i>UK</i>
JFSC	Jersey Financial Services Commission
IBJL	Insurance Business (Jersey) Law 1996
Lloyd's	Society of Lloyd's insurance market
Miscellaneous Provisions Law	Financial Regulation (Miscellaneous Provisions No.5) (Jersey) Law 201-
Miscellaneous Provisions Regulations	Financial Regulation (Miscellaneous Provisions) (Amendment of Laws) (Jersey) Regulations 201-
principal person	<ul style="list-style-type: none"> › with respect to the <i>BBJL</i> means a director, controller and manager as defined in Article 1 of the <i>BBJL</i>; › with respect to the <i>AIF Regulations</i> shall have the meaning assigned to it in Regulation 4 thereof; › with respect to the <i>CIFJL</i>, the <i>FSJL</i> and the <i>SBJL</i> shall have the meaning assigned to it in Article 1 of the respective law; and › with respect to the <i>IBJL</i> means a chief executive and shareholder controller as defined in Article 1 of the <i>IBJL</i> and any individual intending to act, or acting, as a director.

Recognized Funds PCO	Collective Investment Funds (Recognized Funds) (Permit Conditions for Functionaries) (Jersey) Order 1988
Recognized Funds PCO Amendment Order	Collective Investment Funds (Recognized Funds) (Permit Conditions for Functionaries) (Amendment No. 4) (Jersey) Order 201-
regulated business	a person who is registered, or holds a permit or certificate, as applicable, under one or more of the <i>regulatory laws</i>
regulatory laws	the <i>AIF Regulations</i> , the <i>BBJL</i> , the <i>CIFJL</i> , the <i>FSJL</i> , the <i>IBJL</i> and the <i>SBJL</i>
restricted information	non-public information that the <i>JFSC</i> obtains in the course of carrying out its functions under the <i>regulatory laws</i>
SBJL	Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008
UK	United Kingdom

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1 Executive Summary

1.1 Overview and background

- 1.1.1 The legislative changes proposed in this consultation paper consist of a miscellany of items, the need for which has been identified over the past two or three years as a result of the use and continuous review of the regulatory processes undertaken by the JFSC.
- 1.1.2 Due to the nature of the changes, some will require primary legislation to effect, others secondary legislation. As a consequence, the *amending legislation* consists of one Order, two sets of Regulations and one law.
- 1.1.3 The *amending legislation* is shown in full in Appendices B to E.

1.2 What is proposed and why?

- 1.2.1 In summary, the *amending legislation* would:
 - 1.2.1.1 resolve issues in the *regulatory laws* that currently prevent, or limit the circumstances in which, *restricted information* may be disclosed by the JFSC to *Lloyd's*, professional bodies (such as those for the accountancy and legal professions) and pension supervisors;
 - 1.2.1.2 ensure that the *principal person* provisions in the *regulatory laws* consistently apply to liquidators of *regulated businesses* (whether appointed under a bankruptcy or otherwise) and administrators of bankrupt *regulated businesses*;
 - 1.2.1.3 update the *Recognized Funds PCO* to take account of the establishment of the Channel Islands Financial Ombudsman;
 - 1.2.1.4 bring the *BBJL* and the *IBJL* into line with the other *regulatory laws* so that a registration and permit, respectively, may be revoked where a bank or insurance company has failed to pay a fee due to the JFSC;
 - 1.2.1.5 update provisions in the *AIF Regulations* to make them consistent with those in the *CIFJL*;
 - 1.2.1.6 make a number of administrative amendments to the *regulatory laws*, the *Commission Law* and the *Bankruptcy Law*.

1.3 Who would be affected?

- 1.3.1 The legislative changes that would be made by the *amending legislation* have the potential to variously affect a range of persons including *regulated businesses*, liquidators of *regulated businesses*, and administrators of bankrupt *regulated businesses*.

2 Consultation

2.1 Basis for consultation

- 2.1.1 The *JFSC* has issued this consultation paper in accordance with Article 8(3) of 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”.

2.2 Responding to the consultation

- 2.2.1 The *JFSC* invites comments in writing from interested parties on the proposals included in this consultation paper.

2.3 Next steps

- 2.3.1 Following the consideration of responses to this consultation and the making of any changes deemed necessary to the *amending legislation* the *JFSC* will recommend it to the Chief Minister.
- 2.3.2 If the Chief Minister is content with the *amending legislation*:
- 2.3.2.1 the *AIF Amendment Regulations* and the *Miscellaneous Provisions Regulations* would need to be considered by the States Assembly and, if adopted, would come into force seven days later;
 - 2.3.2.2 the *Miscellaneous Provisions Law* would need to be considered by the States Assembly and, if adopted, would come into force one month after registration¹;
 - 2.3.2.3 the *Recognized Funds PCO Amendment Order* would come into force the day after it is made by the Chief Minister.

¹ Registration occurs shortly after a law is approved by the Privy Council.

3 The JFSC

3.1 Overview

- 3.1.1 The *JFSC* 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 JFSC's functions

- 3.2.1 The *Commission Law* prescribes that the *JFSC* 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;
 - 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; and
 - 3.2.1.5 such other functions as are conferred on the *JFSC* by any other Law or enactment.

3.3 Guiding principles

- 3.3.1 The *JFSC'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, malpractice, 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
 - 3.3.1.4 the need to counter financial crime in both Jersey and elsewhere.

4 The Amending Legislation

4.1 Introduction

- 4.1.1 This section describes, and explains the reasons for, the legislative changes that would be made by the *amending legislation*.
- 4.1.2 Necessarily, the information in this section sometimes paraphrases provisions of the *amending legislation*, so readers are encouraged to consider the actual text, which is shown in Appendices B to E.

4.2 Disclosure of restricted information to Lloyd's, professional bodies and pension supervisors

- 4.2.1 Each of the *regulatory laws* provide that information received by the *JFSC* under, or for the purposes of, the relevant law is *restricted information* and cannot be onward disclosed unless permitted by an 'information gateway' set out in the law (for example, see Articles 37 and 38 of the *FSJL*).
- 4.2.2 Currently, each *regulatory law* has information gateways that allow the *JFSC* to disclose *restricted information*, in appropriate circumstances, to overseas regulators equivalent to the *JFSC* (which the *regulatory laws* refer to as "relevant supervisory bodies"²), professional bodies (such as those for the accountancy and legal professions) and other relevant bodies such as financial services ombudsmen, law enforcement agencies, etc.
- 4.2.3 The provisions of the *amending legislation* described below are intended to resolve issues that, in the *JFSC*'s opinion, inappropriately prevent, or limit the circumstances in which, the *JFSC* may disclose *restricted information* to *Lloyd's*, professional bodies and pension supervisors.

Lloyd's

- 4.2.4 The *JFSC* may, from time to time, hold *restricted information* that would be relevant to the supervisory functions carried out by *Lloyd's*.
- 4.2.5 *Lloyd's* is regulated in the *UK* by the Financial Conduct Authority and the Prudential Regulation Authority under the *FSMA*.
- 4.2.6 However, *Lloyd's* is unusual in that, despite being regulated under the *FSMA*, its Council (**the governing body**) is responsible, pursuant to the *Lloyd's Acts 1871-1982* for supervising the business of insurance underwritten at *Lloyd's*.
- 4.2.7 Because of this unusual arrangement, it is uncertain that *Lloyd's* meets the statutory definition of a "relevant supervisory authority" (see paragraph 4.2.2 above). Accordingly, there is some doubt that the *JFSC* can pass *restricted information* to *Lloyd's*, despite the fact that the *JFSC* may hold relevant information.

² "relevant overseas supervisory authority" in the *SBJL*.

- 4.2.9 To resolve this uncertainty, the *Miscellaneous Provisions Regulations* and the *AIF Amendment Regulations* would amend the *regulatory laws* to specifically provide an information gateway to allow the *JFSC* to disclose *restricted information* to *Lloyd's* for the purpose of enabling or assisting it to exercise any of its supervisory functions.
- 4.2.10 The relevant amendments can be found in Articles 1(c), 2(b), 3(b), 4(c) and 5(d) of the *Miscellaneous Provisions Regulations* and Regulation 12(b) of the *AIF Amendment Regulations*.

Question 1:

Do you have any observations on, or concerns about, the proposed information gateway to *Lloyd's*?

If you do, please state in detail what your observation or concern is and the reason for it.

Professional bodies

- 4.2.11 The *regulatory laws* each contain an information gateway that allows the *JFSC* to pass *restricted information* to a professional body (such as those for the accountancy and legal professions) but only where it would assist the body to discharge its functions in relation to a person who has failed, or is alleged to have failed, to meet the professional body's standards of conduct.³
- 4.2.12 This narrow wording of the information gateway prevents the *JFSC* disclosing *restricted information* to a professional body in other circumstances where it would enable or assist the body to carry out its supervisory functions – for example, where the body is vetting a person for potential membership and needs to determine whether the person is “fit and proper”.
- 4.2.13 To resolve this, the *Miscellaneous Provisions Regulations* and the *AIF Amendment Regulations* would amend the *regulatory laws* to:
- 4.2.13.1 remove the current restriction on disclosing *restricted information* only where it would assist the professional body to discharge its functions in relation to a person who has failed, or is alleged to have failed, to meet the professional body's standards of conduct; and
 - 4.2.13.2 simply provide for the information gateway to allow *restricted information* to be disclosed to a professional body to enable or assist the body to exercise any of its supervisory functions.
- 4.2.14 The relevant amendments can be found in Articles 1(c), 2(d), 3(b), 4(c) and 5(b) of the *Miscellaneous Provisions Regulations* and Regulation 12(a) of the *AIF Amendment Regulations*.

³ The information gateway in the *SBIL* does not contain this restriction.

Question 2:

Do you have any observations on, or concerns about, the proposed amended information gateway to professional bodies?

If you do, please state in detail what your observation or concern is and the reason for it.

Pension supervisors

- 4.2.15 Whilst the *JFSC* does not regulate pension schemes or those who provide services to them (unless also providing *FSJL* services), it periodically receives requests for *restricted information* from pension supervisors, for example to confirm, or otherwise, that a person is “fit and proper” to act in some capacity connected with a pension scheme.
- 4.2.16 Currently, none of the *regulatory laws* provide the *JFSC* with an information gateway to disclose *restricted information* to a pension supervisor, despite the fact that the *JFSC* may hold relevant information.
- 4.2.17 To resolve this, the *Miscellaneous Provisions Regulations* and the *AIF Amendment Regulations* would amend the *regulatory laws* to provide an information gateway to allow the *JFSC* to disclose *restricted information* to a pension supervisor for the purpose of enabling or assisting it to exercise any of its supervisory functions.
- 4.2.18 The amended *regulatory laws* would define a pension supervisor as, “*any entity (whether in Jersey or elsewhere) responsible in whole or in part for the supervision of pension funds, plans, schemes or arrangements*”. This definition mirrors the criteria to be met by a body seeking to become a member of the International Organisation of Pension Supervisors, the international standard-setter for pension supervision.
- 4.2.19 The relevant amendments can be found in Articles 1(a) & (b), 2(a) & (c) & (e), 3(a) & (b), 4(a) & (b), and 5(a) & (d) of the *Miscellaneous Provisions Regulations* and Regulations 2(c) and 12(b) of the *AIF Amendment Regulations*.

Question 3:

Do you have any observations on, or concerns about, the proposed information gateway to pension supervisors?

If you do, please state in detail what your observation or concern is and the reason for it.

4.3 Principal person provisions: liquidators and administrators

- 4.3.1 Provisions in the *regulatory laws* require a person who wishes to become a *principal person* of a *regulated business*⁴ to obtain a “no objection” confirmation from the JFSC. This enables the JFSC to assess whether or not the person is “fit and proper” for the proposed *principal person* role. An example of the relevant statutory provision can be found in Article 13(1) of the *FSJL*.
- 4.3.2 In addition, the *regulatory laws* provide the JFSC with certain powers over *principal persons*. These include powers to: issue them with directions (for example, see Article 23(2)(b) of the *FSJL*); compel them to provide information to the JFSC (for example, see Article 32 of the *FSJL*); require them to co-operate with a JFSC investigation (for example, see Article 33(3) of the *FSJL*).
- 4.3.3 The key purpose of the *principal person* provisions is to protect customers and clients of *regulated businesses* by ensuring that persons holding senior positions are fit and proper.
- 4.3.4 In the JFSC’s view, liquidators of *regulated businesses* and administrators of bankrupt *regulated businesses* perform an important function and, accordingly, should be subject to the *principal person* provisions in the *regulatory laws*. However, presently there are two lacunae in the *regulatory laws*, which mean that is not always the case:
- 4.3.4.1 in the *AIF Regulations*, the *CIFJL*, the *FSJL* and the *SBJL*, a liquidator of a *regulated business* appointed in circumstances other than a bankruptcy (for example, under a “just and equitable” winding-up under Article 155 of the Companies (Jersey) Law 1991) does not presently come within the *principal person* provisions; and
- 4.3.4.2 in the *BBJL* and the *IBJL* neither a liquidator (whether appointed under a bankruptcy or otherwise) nor an administrator of a bankrupt *regulated business* presently come within the *principal person* provisions.
- 4.3.5 The intention is that these two lacunae are removed. The relevant amendments can be found in Articles 2(c)-(h), 3(a), 4(a), 6(c)-(h) and 7(a) of the *Miscellaneous Provisions Law* and Regulation 3 of the *AIF Amendment Regulations*.

Question 4:

Do you have any observations on, or concerns about, the proposed consistent inclusion of liquidators of *regulated businesses* (whether appointed under a bankruptcy or otherwise) and administrators of bankrupt *regulated businesses* in the *principal person* provisions?

If you do, please state in detail what your observation or concern is and the reason for it.

⁴ Except for a business registered under the *SBJL*.

4.4 Recognized Funds PCO and the Channel Islands Financial Ombudsman

- 4.4.1 The business of a functionary of a recognized fund falls within the scope of the Channel Islands Financial Ombudsman.
- 4.4.2 Currently, Article 18(1)(c) of the *Recognized Funds PCO* requires that where a complaint is made to a functionary of a recognized fund, the functionary must remind the complainant that:
 - 4.4.2.1 it is open to the complainant to report the matter to the *JFSC*; and
 - 4.4.2.2 if the complainant is dissatisfied with the outcome of the functionary's investigation of the complaint, the complainant may ask the *JFSC* to investigate the complaint.
- 4.4.3 The references in Article 18(1)(c) to the *JFSC* are no longer appropriate with complaints about functionaries of recognized funds now falling within the remit of the Channel Islands Financial Ombudsman.
- 4.4.4 Article 1 of the *Recognized Funds PCO Amendment Order* would substitute the outdated references to the *JFSC* with references to the "Office of the Financial Services Ombudsman" (the formal statutory name for the Jersey office of the Channel Islands Financial Ombudsman).

Question 5:

Do you have any observations on, or concerns about, the proposed amendment to the *Recognized Funds PCO*?

If you do, please state in detail what your observation or concern is and the reason for it.

4.5 Banks and insurers: failure to pay JFSC fees

- 4.5.1 Unlike the other *regulatory laws*, the *BBJL* and the *IBJL* do not include a provision that would allow the *JFSC* to revoke the registration of a bank or the permit of an insurance company, respectively, where a fee due to the *JFSC* has not been paid.
- 4.5.2 Whilst revoking a registration or permit would be a last resort in the event of an unpaid fee, the *JFSC* considers that the *BBJL* and the *IBJL* should provide for such a possibility, not least to ensure consistency across the *regulatory laws*.
- 4.5.1 The proposed amendments to the *BBJL* and the *IBJL* can be found in Articles 2(b) and 6(b), respectively, of the *Miscellaneous Provisions Law*.

Question 6:

Do you have any observations on, or concerns about, the proposed statutory provision that would allow the *JFSC* to revoke the registration of a bank or the permit of an insurance company where a fee due to the *JFSC* has not been paid?

If you do, please state in detail what your observation or concern is and the reason for it.

4.6 AIF Regulations: making consistent with the CIFJL

- 4.6.1 In 2014, the Financial Regulation (Miscellaneous Provisions No. 2) (Jersey) Law 2014 amended certain powers granted under the *CIFJL*⁵ to the *JFSC* and the Royal Court. Although the *AIF Regulations* are, to a large extent, modelled on the *CIFJL*, because of a timing issue the amendments made to the *CIFJL* by that 2014 law were not also made to the *AIF Regulations*.
- 4.6.2 As a consequence, the *AIF Regulations* and the *CIFJL* are no longer consistent.
- 4.6.3 The Financial Regulation (Miscellaneous Provisions No. 2) (Jersey) Law 2014 made three substantive changes to the *CIFJL*:
- 4.6.3.1 it made the information-gathering powers of the *JFSC* consistent with other *regulatory laws* and widened them in certain respects (for example, any employee/former employee of a *regulated business* was brought into scope);
 - 4.6.3.2 it enhanced the powers of the Royal Court to make restitution orders, specifically where the provider of the false and misleading information is not the party that transacted with the ‘wronged’ investor;
 - 4.6.3.3 it enhanced the co-operation powers of the *JFSC* so that the *JFSC* may now issue a direction to a *regulated business* in order to assist an overseas regulatory authority.
- 4.6.4 Regulations 2 to 11 and 14 & 15 of the *AIF Amendment Regulations* would make the same changes to the *AIF Regulations* so that they are once again consistent with the *CIFJL*.

Question 7:

Do you have any observations on, or concerns about, the proposed amendments that would make the *AIF Regulations* once again consistent with the *CIFJL*?

If you do, please state in detail what your observation or concern is and the reason for it.

⁵ The equivalent powers in the *BBJL*, the *IBJL* and the *SBJL* were amended at the same time.

4.7 Administrative amendments

- 4.7.1 As well as the substantive amendments described in the preceding paragraphs of this chapter, the *amending legislation* would also make a number of administrative amendments to the *regulatory laws*, as described below.

Published fees – additional consequential amendments

- 4.7.2 The Financial Services Commission (Amendment No. 4) (Jersey) Law 2007 amended the *Commission Law* to enable the JFSC to set regulatory fees by means of a “published” fees notice. (Previously, regulatory fees were “prescribed” by Ministerial Order.)
- 4.7.3 However, when that 2007 law was enacted, a consequential amendment to the language of Article 9(4)(g) of the *FSJL* was overlooked. It still refers to regulatory fees being “prescribed” rather than being “published”. This would be corrected by means of Article 4(c) of the *Miscellaneous Provisions Law*.
- 4.7.4 The 2007 law also repealed paragraph (7) of Article 9 of the *FSJL* but a consequential amendment to the wording of Article 9(4)(g) of the *FSJL* was overlooked. Article 4(c) of the *Miscellaneous Provisions Law* would also correct that.

Commission Law – cross-reference correction

- 4.7.5 Currently, Article 21C of the *Commission Law* incorrectly cross-refers to paragraph 2(b) of that Article, instead of paragraph 1(b).
- 4.7.6 This would be corrected by means of Article 5(c) of the *Miscellaneous Provisions Law*

SBJL – redundant provision

- 4.7.7 Article 7(d) of the *Miscellaneous Provisions Law* would delete paragraph (12) of Article 34 of the *SBJL*, which became redundant when amendments made by the Proceeds of Crime (Supervisory Bodies) (Amendment of Law) (Jersey) Regulations 2008 came into force.

AIF Regulations – additional consequential amendments

- 4.7.8 When the *AIF Regulations* were enacted, two necessary consequential amendments were not made:
- 4.7.8.1 a person granted a certificate under the *AIF Regulations* should have been included as an additional type of *regulated business* that the JFSC may make an application to the Royal Court, pursuant to the *Bankruptcy Law*, to be declared en désastre;
- 4.7.8.2 a person granted a certificate under the *AIF Regulations* should have been included as an additional type of *regulated business* that the *Commission Law* states may be routinely examined by the JFSC.
- 4.7.9 It is proposed that the necessary consequential amendments to the *Commission Law* and the *Bankruptcy Law* would be made by Articles 1 and 5(a), respectively, of the *Miscellaneous Provisions Law*.

Human Rights text

- 4.7.10 The *Commission Law* and the *regulatory laws* each contain a limitation of liability clause, which provides that the JFSC and its employees etc., shall not be liable in damages for anything done or omitted in the discharge of their functions, unless it is shown that the act or omission was in bad faith.
- 4.7.11 The drafting convention for such limitation of liability clauses has recently been updated. They now routinely state that the limitation does not apply so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000. That Article provides that it is unlawful for a public authority to act in a way which is incompatible with the Convention for the Protection of Human Rights and Fundamental Freedoms.
- 4.7.12 In line with this updated drafting convention, the limitation of liability clauses in the *Commission Law* and the *regulatory laws* would be updated by means of Articles 2(a), 3(d), 4(b), 5(b), 6(a) and 7(b) of the *Miscellaneous Provisions Law* and Regulation 16 of the *AIF Amendment Regulations*.

Amendments to information gateways – enabling provisions

- 4.7.13 With the one exception referred to in paragraph 4.7.14 below, the *regulatory laws* include a provision that enables all of the Articles related to ‘information gateways’ (see paragraph 4.2.1 above) to be amended by secondary legislation (**Regulations**), rather than by primary legislation.
- 4.7.14 However, in the *CIFJL* one Article that relates to information gateways – Article 30 (“Attachment of conditions [to a disclosure of information]”) - can presently only be amended by primary legislation. This is inconsistent with the approach in the other *regulatory laws*.
- 4.7.15 This inconsistency would be removed by the amendment shown in Article 3(c) of the *Miscellaneous Provisions Law*.

Information gathering provisions – minor clarificatory amendments

- 4.7.16 Article 32 of the *FSJL* (and the equivalent in the other *regulatory laws*) provides the JFSC with the power to require certain defined persons to provide information and documents that the JFSC needs to perform its functions.
- 4.7.17 Article 32(9) currently provides that where the JFSC retains documents it may retain them for:-
- “(a) for a period of one year; or
- (b) if with that period proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings.”

- 4.7.18 To give greater clarity to that provision, the words, “whichever is the later”, are to be added at the end of paragraph (b) of Article 32(9) *FSJL*. The same amendment would be made to the equivalent provisions in the other *regulatory laws*. The relevant amendments can be found in Articles 2(e)(ii), 3(b)(i), 4(d)(i), 6(c)(i) and 7(c)(i) of the *Miscellaneous Provisions Law*.
- 4.7.19 In addition, in the definition of “agent” and “officer” in Article 32(10) *FSJL* and the equivalent provision in the other *regulatory laws*, the words “in any provision”, which are superfluous, are to be deleted. The relevant amendments can be found in Articles 2(e)(iii), 3(b)(ii), 4(d)(ii), 6(c)(ii) and 7(c)(ii) of the *Miscellaneous Provisions Law*.

Question 8:

Do you have any observations on, or concerns about, the proposed administrative amendments?

If you do, please state in detail what your observation or concern is and the reason for it.

5 Cost Benefit Analysis

5.1 Costs to Industry

- 5.1.1 None of the amendments that would be made by the *amending legislation* are expected to result in substantive additional costs for Industry.

5.2 Costs to the JFSC

- 5.2.1 It is not expected that the JFSC will incur any substantive additional costs as a result of any of the proposed amendments.

5.3 Benefits

- 5.3.1 The amendments would variously ensure consistency across the *regulatory laws*, correct identified issues (such as missing consequential amendments) and generally help the JFSC to perform its functions more effectively.

6 Summary of Questions

Page	Question
10	<p>Question 1:</p> <p>Do you have any observations on, or concerns about, the proposed information gateway to <i>Lloyd's</i>?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p>
11	<p>Question 2:</p> <p>Do you have any observations on, or concerns about, the proposed amended information gateway to professional bodies?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p>
11	<p>Question 3:</p> <p>Do you have any observations on, or concerns about, the proposed information gateway to pension supervisors?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p>
12	<p>Question 4:</p> <p>Do you have any observations on, or concerns about, the proposed consistent inclusion of liquidators of <i>regulated businesses</i> (whether appointed under a bankruptcy or otherwise) and administrators of bankrupt <i>regulated businesses</i> in the <i>principal person</i> provisions?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p>
13	<p>Question 5:</p> <p>Do you have any observations on, or concerns about, the proposed amendment to the <i>Recognized Funds PCO</i>?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p>
13	<p>Question 6:</p> <p>Do you have any observations on, or concerns about, the proposed statutory provision that would allow the <i>JFSC</i> to revoke the registration of a bank or the permit of an insurance company where a fee due to the <i>JFSC</i> has not been paid?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p>

Page	Question
14	<p>Question 7</p> <p>Do you have any observations on, or concerns about, the proposed amendments that would make the <i>AIF Regulations</i> once again consistent with the <i>CIFJL</i>?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p>
17	<p>Question 8:</p> <p>Do you have any observations on, or concerns about, the proposed administrative amendments?</p> <p>If you do, please state in detail what your observation or concern is and the reason for it.</p>

Appendix A

List of representative bodies who have been sent this consultation paper:

- › Association of English Solicitors Practising in Jersey
- › Channel Islands Financial Ombudsman
- › Chartered Institute for Securities & Investments
- › Institute of Chartered Secretaries and Administrators, Jersey branch
- › Institute of Directors – Jersey branch
- › Insurance Institute of Jersey
- › Jersey Association of Trust Companies
- › Jersey Bankers' Association
- › Jersey Chamber of Commerce and Industry Incorporated
- › Jersey Compliance Officers Association
- › Jersey Consumer Council
- › Jersey Estate Agents Association
- › Jersey Finance Limited
- › Jersey Funds Association
- › Jersey International Insurance Association
- › Jersey Motor Trades Federation
- › Jersey Society of Chartered and Certified Accountants
- › Law Society of Jersey
- › Personal Finance Society
- › Society of Trust and Estate Practitioners (STEP), Jersey Branch
- › Chartered Financial Advisors (UK)
- › Jersey Association of Directors and Officers

Appendix B: Alternative Investment Funds (Amendment) (Jersey) Regulations 201-



Jersey

ALTERNATIVE INVESTMENT FUNDS (AMENDMENT) (JERSEY) REGULATIONS 201-

Report

Consultation Draft

Explanatory Note

These Regulations amend the Alternative investment Funds (Jersey) Regulations 2012 (the “principal Regulations” as defined in *Regulation 1*). They principally amend provisions to make them uniform with those used in the Collective Investment Funds (Jersey) Law 1988.

Regulation 1 defines “principal Regulations”, a term used throughout these Regulations, as the Alternative Investment Funds (Jersey) Regulations 2012.

Regulation 2 amends Regulation 2 of the principal Regulations so as to replace the definition “books and papers” with a new definition “documents” and to introduce a definition “pension supervisor”, as meaning any entity responsible in whole or in part for the supervision of pension funds, plans, schemes or arrangements.

Regulation 3 amends Regulation 4 of the principal Regulations to include with the definition “principal person” a liquidator of a person’s affairs (whether or not appointed under a bankruptcy) or an administrator of a bankrupt person.

Regulation 4 amends Regulation 12(3) of the principal Regulations to ensure that the Court takes into account the interest of the public when making a decision as to the time that an act of the Jersey Financial Services Commission (“Commission”) may take effect.

Regulation 5 substitutes Regulation 14 of the principal Regulations, which enables the Commission and certain persons to demand information or documents for the purpose of enforcement of the principal Regulations.

Regulation 6 inserts a new provision into Regulation 18 of the principal Regulations to enable the Commission to require verification of information provided about key persons or principal persons (as defined in the principal Regulations).

Regulation 7 amends Regulation 23(3) of the principal Regulations consequential on the introduction of the definition “documents”.

Regulation 8 amends Regulation 31(8) of the principal Regulations consequential on the introduction of the definition “documents”.

Regulation 9 amends Regulation 32 of the principal Regulations consequential on the introduction of the definition “documents”.

Regulation 10 amends Regulation 33 of the principal Regulations (which enables warrants to be granted for search and entry) so as to change cross references and certain expressions as a consequences of the substitution of Regulation 14 and of the introduction of the definition “documents”.

Regulation 11 amends Regulation 34 of the principal Regulations to enable the Commission to exercise its powers to give directions in order to assist other regulators of financial services.

Regulation 12 amends Regulation 38 of the principal Regulations to permit disclosure of restricted information to a pension supervisor (in Jersey or elsewhere) and to the Society of Lloyd’s.

Regulation 13 amends Regulation 39 of the principal Regulations to provide that information must not be disclosed to a pension supervisor or to the Society of Lloyd’s unless the Commission is satisfied that any conditions it sets in respect of the disclosure are or will be complied with.

Regulation 14 amends Regulation 41(7) of the principal Regulations to change a cross reference, consequential to the new Regulation 14.

Regulation 15 amends Regulation 43 of the principal Regulations to provide the circumstances when the Court may make an order making a certificate holder’s business subject to such supervision, restraint or conditions as the Court may specify; make such ancillary orders as the Court thinks desirable; and order such steps to put a person back to the position in which they were before a transaction was entered into.

Regulation 16 amends Regulation 46 to insert a provision to make it clear that despite the States, the Chief Minister and the Commission, any Commissioner and any person acting as an officer, servant or agent of the Commission not being liable for anything done or omitted in the discharge of any function under the Regulations unless it is shown that the act or omission was in bad faith, such limitation of liability does not apply so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000.

Regulation 17 gives the title of these Regulations and provides for them to come into force 7 days after they are made.



ALTERNATIVE INVESTMENT FUNDS (AMENDMENT) (JERSEY) REGULATIONS 201-

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Article 2 of the European Union Legislation Implementation (Jersey) Law 2014, have made the following Regulations –

1 Interpretation

In these Regulations “principal Regulations” means the Alternative Investment Funds (Jersey) Regulations 2012.

2 Regulation 2 amended

In Regulation 2 of the principal Regulations –

- (a) the definition “books and papers” and “books or papers” shall be deleted;
- (b) after the definition “Directive 2011/61/EU” there shall be inserted the following definition –
 - “ ‘documents’ includes accounts, deeds, writings and information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its provision or production include references to providing or producing a copy of the information in legible form;”;
- (c) after the definition “partnership” there shall be inserted the following definition –
 - “ ‘pension supervisor’ means any entity (whether in Jersey or elsewhere) responsible in whole or in part for the supervision of pension funds, plans, schemes or arrangements;”.

3 Regulation 4 amended

In Regulation 4 of the principal Regulations, for paragraph (e) there shall be substituted the following paragraph –

- “(e) subject to paragraph (f), a liquidator of a person’s affairs (whether or not appointed under a bankruptcy) or an administrator of a bankrupt person;”.

4 Regulation 12 amended

For Regulation 12(3) of the principal Regulations there shall be substituted the following paragraph –

- “(3) If, on the application of the Commission, the Court is satisfied that it is in the best interests of existing or potential participants in an AIF to which a certificate relates, or of the public, that paragraph (1) should not have effect, or should cease to have effect in a particular case, or that the period specified in paragraph (1) should be reduced, the Court may so order.”.

5 Regulation 14 substituted

For Regulation 14 of the principal Regulations there shall be substituted the following Regulation –

“14 General power to require information and documents

- (1) The Commission, an officer or an agent may by notice in writing served on a defined person require the person to do either or both of the following –
 - (a) to provide the Commission, an officer or an agent, at such times and places as are specified in the notice, with such information or documents as are specified in the notice and as the Commission, an officer or an agent reasonably requires the person to provide for the purposes of the performance of the Commission’s functions under these Regulations;
 - (b) to attend at such times and places as may be specified in the notice and answer such questions as the Commission, an officer or agent reasonably requires the person to answer for the purposes of the performance of the Commission’s functions under these Regulations.
- (2) If the Commission has reasonable grounds to suspect that a person has contravened Regulation 7 or 15, the Commission, an officer or an agent may, by notice in writing served on that person, require the person to do either or both of the following –
 - (a) to provide the Commission, an officer or an agent, at such times and places as are specified in the notice, with such information or documents as are specified in the notice and as the Commission, an officer or an agent reasonably requires for the purposes of investigating the suspected contravention;
 - (b) to attend at such times and places as are specified in the notice and answer such questions as the Commission, an officer or an agent reasonably requires the person to answer for the purpose of investigating the suspected contravention.
- (3) In a case where the Commission, an officer or an agent may, by notice in writing served on a person under paragraph (1) or (2), require the person to provide information or documents, the Commission, an officer or an agent may in addition or instead require any other person (by notice in writing served on the latter person) who appears to be in possession of some or all of the information or documents to do something that the Commission, an officer or an agent could have required the first-mentioned person to do under sub-paragraph (a) or (b) of that paragraph.
- (4) An officer or an agent may, on producing if required evidence of his or her authority, enter, at a reasonable time, any premises occupied by a person on whom a notice has been served under paragraph (1), (2) or (3), or any other premises where information or documents are kept by such person, for the purpose of obtaining there the information or documents required by that notice, putting the questions referred to in paragraph (1)(b) or (2)(b) or of exercising the power conferred by paragraph (8), as the case may be.

- (5) If the Commission, an officer or an agent serves notice on a person under paragraph (1) or (2), the Commission, officer or agent may, by the same or another notice served on the person, require the person to provide verification, in accordance with the latter notice, of any information, or documents, required from the person under paragraph (1) or (2) (as the case may be).
- (6) The Commission, an officer or an agent may by notice in writing served on a person specified in paragraph (15) require the person to provide a report, by an accountant, or other person with relevant professional skill, nominated or approved by the Commission and appointed by the person served with the notice under this paragraph, being a report –
 - (a) on, or on any aspect of, any information, documents, or questions, that the Commission, an officer or an agent could require the person, by notice under paragraph (1) or (2), to provide or answer (whether or not notice has in fact been served on the person under paragraph (1) or (2)); and
 - (b) in such form (if any) as the notice under this paragraph may specify.
- (7) If, under this Regulation, a person provides documents in the person's possession but claims a lien on the documents so provided, the provision of the documents shall be without prejudice to the lien.
- (8) The power under this Regulation to require documents to be provided includes power –
 - (a) if the documents are provided, to retain them, to take copies of them or to take extracts from them, and to require the person providing the documents, or any person who appears to possess information relating to the documents, to provide an explanation of them; or
 - (b) if the documents are not provided, to require the person to whom the requirement was directed to state, to the best of the person's knowledge and belief, where they are.
- (9) If documents provided under this Regulation are retained under paragraph (8)(a) the documents may be so retained –
 - (a) for a period of one year; or
 - (b) if within that period proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings, whichever is the later.
- (10) If the person providing a document that is retained under paragraph (8)(a) requires the document for the purpose of the person's business and requests the document (or a copy of it) from the Commission, the Commission shall supply the person with a copy of the document as soon as practicable.
- (11) If a person fails without reasonable excuse to comply with a requirement imposed on the person under this Regulation or obstructs an officer, or agent, exercising powers under paragraph (4), the person shall be guilty of an offence and liable to imprisonment for a term of 6 months and a fine.
- (12) Nothing in this Regulation shall require the disclosure or provision by a person to the Commission, an officer or an agent of information, or documents, that the person would, in proceedings in the Court, be entitled to refuse to disclose or to provide on the grounds of legal professional privilege, except, if the person is a lawyer, the name and address of his or her client.
- (13) A statement made by a person in compliance with a requirement imposed under this Regulation shall not be used by the prosecution in evidence against the person in any

criminal proceedings except proceedings under paragraph (11) or proceedings under any provision of Regulation 23 other than paragraph (6) of Regulation 23.

(14) In this Regulation –

‘agent’ means an agent of the Commission, being an agent who has been authorized by the Commission to perform the functions set out or referred to in that provision;

‘defined person’ means any of the following persons –

- (a) a fund person;
- (b) a person who was a fund person at any time;
- (c) a person who is a principal person, or key person, in relation to another person who is a fund person or was a fund person at any time;
- (d) a person who was at any time a principal person, or key person, in relation to another person who is a fund person or was a fund person at, before or after that time;
- (e) a person who is, or was at any time, an associate in relation to a defined person within the meaning of sub-paragraph (c) or (d);
- (f) a person who is an employee of, or party to a contract for services with, another person who is a fund person or was a fund person at any time;
- (g) a person who was at any time an employee of, or party to a contract for services with, another person who is a fund person or was a fund person at, before or after that time;
- (h) a person who is an employee of a person who is a party to a contract for services with another person who is a fund person;
- (i) a person who was at any time an employee of a person who was at that time a party to a contract for services with another person who was a fund person at that time;

‘fund person’ means a service provider or an AIF entity;

‘officer’ means an officer of the Commission, being an officer who has been authorized by the Commission to perform the functions set out or referred to in that provision.

(15) For the purposes of paragraph (6), the following persons are specified –

- (a) a person within sub-paragraph (a) or (b) of the definition of ‘defined person’ in paragraph (14) or a person within sub-paragraph (c) or (d) of that definition (other than as a key person);
- (b) a person who the Commission has reasonable grounds to suspect has contravened Regulation 7.

(16) For the avoidance of doubt, in sub-paragraph (d), (g) or (i) of the definition of ‘defined person’ in paragraph (14), the reference to a person who was a fund person includes such a person who is no longer in existence at the time when the relevant function is exercised under this Regulation.

(17) For the avoidance of doubt –

- (a) a time that is specified for the purposes of any provision of this Regulation may be, but is not required to be, expressed in terms of times, dates, intervals, periods or time limits; and
- (b) a document, or information, that is specified for the purposes of any provision of this Regulation may be, but is not required to be, specified in terms of one or more classes or descriptions.”.

6 Regulation 18 amended

After Regulation 18(8) of the principal Regulations there shall be inserted the following paragraph –

“(8A) Notice under paragraph (8) may include a requirement that the person concerned or the certificate holder (as the case may be) provide verification, in accordance with the notice, of any information or documents referred to in that paragraph.”.

7 Regulation 23 amended

In Regulation 23(3) of the principal Regulations, for the words “books or papers” in both places where they occur there shall be substituted the word “documents”.

8 Regulation 31 amended

In Regulation 31(8)(a) of the principal Regulations the words “book or” shall be deleted.

9 Regulation 32 amended

In Regulation 32 of the principal Regulations –

- (a) in paragraph (1) -
 - (i) in sub-paragraph (a), for the words “information, books or papers are or are likely to be” there shall be substituted the words “any information or document is, or is likely to be,”;
 - (ii) in paragraph (1) for the words “of information, books or papers” there shall be substituted the words “of any information, or document,”;
- (b) in paragraph (2) for the words “information, books or papers” in both places where they occur there shall be substituted the words “information or documents”.

10 Regulation 33 amended

In Regulation 33 of the principal Regulations –

- (a) for paragraph (1) there shall be substituted the following paragraph –

“(1) If the Bailiff is satisfied by information on oath that there is reasonable cause to suspect that –

- (a) if a notice were given under Regulation 14 it would not be complied with;
- (b) if any person were required to produce documents under Regulation 14, those documents would be likely to be removed, tampered with or destroyed;
- (c) a specified person has failed in any respect to comply with a notice or requirement referred to in sub-paragraph (a) or (b);
- (d) a specified person has not provided complete information or documents in response to a notice or requirement referred to in sub-paragraph (a) or (b);
- (e) an officer, or agent, within the meaning of Regulation 14 has been or may be obstructed in exercising a power under Regulation 14(4); or
- (f) an inspector appointed under Regulation 31 has been or may be obstructed in exercising a power under Regulation 31(6),

the Bailiff may grant a warrant under this paragraph.”;

- (b) in paragraphs (2)(b), (c) and (e) and (4), (5) and (7) for the words “books or papers” wherever occurring there shall be substituted the word “documents”;
- (c) in paragraph (8) for the words “information, books or papers” there shall be substituted the words “information or documents.”.

11 Regulation 34 amended

In Regulation 34 of the principal Regulations –

- (a) after paragraph (1)(c) there shall be inserted the following sub-paragraph –
 - “(ca) the power to give a direction under Regulation 20;”;
- (b) for paragraph (6)(a)(i) there shall be substituted the following clause –
 - “(i) in Regulation 14 to a contravention of Regulation 7 or of Regulation 15, or”.

12 Regulation 38 amended

In Regulation 38 of the principal Regulations –

- (a) in paragraph (6), for the words after clause (iii) there shall be substituted the words “to any person or body (whether in Jersey or elsewhere) responsible for setting standards of conduct for any profession and having powers to discipline persons who fail to meet those standards for the purpose of enabling or assisting that person or body to exercise any of its supervisory functions.”;
- (b) after paragraph (7) there shall be inserted the following paragraphs –
 - “(7A) Regulation 35 does not preclude the disclosure of information by the Commission for the purpose of enabling or assisting a pension supervisor to exercise any of its supervisory functions.
 - (7B) Regulation 35 does not preclude the disclosure of information by the Commission to the Society of Lloyd’s (being organs constituted by or under the Lloyd’s Act 1982 of the United Kingdom) for the purpose of enabling or assisting that Society to exercise any of its supervisory functions.”.

13 Regulation 39 amended

In Regulation 39 of the principal Regulations, for the words “38(5), (6) or (7)” there shall be substituted the words “38(5), (6), (7), (7A) or (7B)”.

14 Regulation 41 amended

In Regulation 41(7) of the principal Regulations, in the definition “approved professional” for the word “14(2)” there shall be substituted the word “14(6)”.

15 Regulation 43 amended

In Regulation 43 of the principal Regulations, for paragraphs (7) and (8) there shall be substituted the following paragraphs –

- “(7) Where, on the application of the Commission, the Court is satisfied that –
 - (a) a certificate holder (referred to in this Regulation as ‘holder’) –

- (i) is not, in terms of Regulation 9(7)(a), a fit and proper person to carry on business in relation to an AIF, being business that the holder is purporting to carry on,
- (ii) is not fit to carry on business in relation to an AIF to the extent to which the holder is purporting to do, or
- (iii) has, in relation to an AIF, failed, or is likely to fail, to comply with a provision or direction as described in paragraph (4)(a); and
- (b) it is desirable for the Court to act under this paragraph for the protection of participants or potential participants in that or any other AIF in relation to which the holder carries on or purports to carry on business,

the Court may, as it thinks just, make an order making the holder's business subject to such supervision, restraint or conditions from such time and for such periods as the Court may specify, and may also make such ancillary orders as the Court thinks desirable.

- (8) If, on an application made under paragraph (7), the Court is satisfied that a holder has –
 - (a) by entering into any transaction with another person, contravened Regulation 7;
 - (b) contravened Regulation 15 with the result that another person has been induced to enter into a transaction with the holder or with a third person;
 - (c) entered into any transaction with another person who was induced to enter into the transaction as a result of the contravention of Regulation 15 by a third person; or
 - (d) by entering into any transaction with another person, contravened any condition applicable to the holder (whether attached to a certificate or prescribed by Order) or any direction given to the holder under Regulation 20,
 the Court may order any one or more of those persons (and any other person who appears to the Court to have been knowingly concerned in the contravention) to take such steps as the Court may direct for restoring one or more of the persons to the position in which they were before the transaction was entered into.”.

16 Regulation 46 amended

After Regulation 46(1) there shall be inserted the following paragraph –

- “(1A) Paragraph (1) does not apply so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000.”.

17 Citation and commencement

These Regulations may be cited as the Alternative Investment Funds (Amendment) (Jersey) Regulations 201- and shall come into force 7 days after they are made.

Appendix C: Financial Regulation (Miscellaneous Provisions No.5) (Jersey) Law 201-



Jersey

FINANCIAL REGULATION (MISCELLANEOUS PROVISIONS NO. 5) (JERSEY) LAW 201-

Report

Consultation draft

Explanatory Note

Article 1 amends the Bankruptcy (Désastre) (Jersey) Law 1990 to enable the Jersey Financial Services Commission (the “Commission”) to make an application for a declaration that the property of a person is *en désastre* in the case of a person who holds or has held a certificate under the Alternative Investment Funds (Jersey) Regulations 2012.

The Banking Business (Jersey) Law 1991, the Collective Investment Funds (Jersey) Law 1988, the Financial Services (Jersey) Law 1998, the Financial Services Commission (Jersey) Law 1998, the Insurance Business (Jersey) Law 1996 and the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 all contain a provision that has the effect of limiting liability for anything done or omitted in the discharge of purported discharge of any function under the particular Law or any enactment made under the particular Law (other than any act or omission that was in bad faith). This Law (*at Article 2(a), 3(d), 4(b), 5(b), 6(a) and 7(b)*) amends each of those laws to further provide that the provision limiting liability does not apply so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000.

Article 2 further amends the Banking Business (Jersey) Law 1991 –

- (a) to provide that the Commission may refuse to grant an application for registration under that Law if the person has not paid a fee that is payable under that Law (*Article 2(b)*);
- (b) to enable the Commission to give directions to a liquidator of a person registered under that Law (whether or not appointed under a bankruptcy) or an administrator of a bankrupt registered person’s affairs (*Article 2(c)*);
- (c) to prohibit a person from becoming a liquidator of a person registered under that Law (whether or not appointed under a bankruptcy) or an administrator of a bankrupt registered person’s affairs unless the Commission has notified that person in writing that there is no objection to his or her becoming such a liquidator or administrator (*Article 2(d)*);

- (d) to require a liquidator of a person registered under that Law (whether or not appointed under a bankruptcy) or an administrator of a bankrupt registered person's affairs to provide information or documents to the Commission or an officer or agent; to require any documents to be retained for the periods specified in that Law (*Article 2(e)*); and to give assistance to any person appointed to make a report in respect of a person who is or has been a registered person under that Law (*Article 2(f)*);
- (e) to permit disclosure by an auditor of information about a liquidator of a registered person (whether or not appointed under a bankruptcy) or an administrator of a bankrupt registered person's affairs (*Article 2(g)*); and
- (f) to provide that where an offence under that Law committed by a body corporate is proved to have been committed with the consent or connivance of, or attributable to any neglect on the part of a liquidator or an administrator, then the liquidator or administrator, as the case may be will also be guilty of the offence and liable in the same manner as the company to the penalty provided for that offence (*Article 2(h)*).

Article 3 further amends the Collective Investment Funds (Jersey) Law 1988 –

- (a) to amend the definition “principal person so that it includes a person who has been appointed a liquidator of a person's affairs (whether or not appointed under a bankruptcy) or an administrator of a bankrupt person (*Article 3(a)*); and
- (b) to require any documents to be retained for periods specified in that Law (*Article 3(b)*)
- (c) to extend the power to make Regulations under Article 30A of the Collective Investment Funds (Jersey) Law 1988 so that the prohibition on disclosure of information by certain persons, unless the person to whom or which disclosure is made complies with certain conditions, can be extended by Regulations to other persons (*Article 3(c)*).

Article 4 further amends the Financial Services (Jersey) Law 1998 –

- (a) to amend the definition “principal person” so that it includes a person who has been appointed a liquidator of the person (whether or not appointed under a bankruptcy) or an administrator of a bankrupt person's affairs (*Article 4(a)*);
- (b) to provide that the Commission may refuse to grant an application for registration under that Law if the person has not paid a fee that is payable under that Law (*Article 4(c)*); and
- (c) to require any documents to be retained for the periods specified in that Law (*Article 4(d)*).

Article 5 further amends the Financial Services Commission (Jersey) Law 1998 –

- (a) to provide that a person granted a certificate under Regulation 9 of the Alternative Investment Funds (Jersey) Regulations 2012 is a “supervised entity” with the consequence that the Commission may require such a person to supply information to and answer questions and allow officers or agents of the Commission to enter premises of that person; (*Article 5(a)*); and
- (b) to correct a cross reference (*Article 5(c)*).

Article 6 further amends the Insurance Business (Jersey) Law 1996 –

- (a) to provide that the Commission may refuse to grant an application for registration under that Law if the person has not paid a fee that is payable under that Law (*Article 6(b)*);
- (b) to require any documents to be retained for the periods specified in that Law (*Article 6(c)(i)*);
- (c) to amend the definition “defined person” so that it includes a person who has been appointed a liquidator of a person’s affairs (whether or not appointed under a bankruptcy) or an administrator of a bankrupt person (*Article 6(c)(ii)*);
- (d) to require a liquidator of a person registered under that Law (whether or not appointed under a bankruptcy) or an administrator of a bankrupt registered person’s affairs to provide information, documents or assistance to competent persons (*Article 6(d)*). Competent persons are appointed by the Commission to investigate and report to the Commission on the nature conduct or state of the permit holder’s insurance business or any particular aspect of it, and the integrity, competence, financial standing or organization of the permit holder.);
- (e) to permit disclosure by an auditor of information about a liquidator of a registered person (whether or not appointed under a bankruptcy) or an administrator of a bankrupt registered person’s affairs (*Article 6(e)*);
- (f) to prohibit a person from becoming a liquidator of a person registered under that Law (whether or not appointed under a bankruptcy) or an administrator of a bankrupt registered person’s affairs unless the Commission has notified that person in writing that there is no objection to his or her becoming such a liquidator or administrator (*Article 6(f)*);
- (g) to enable the Commission to give directions to a liquidator of a person registered under that Law (whether or not appointed under a bankruptcy) or an administrator of a bankrupt registered person’s affairs (*Article 6(g)*); and
- (h) to provide that where an offence under that Law committed by a limited liability partnership or company is proved to have been committed with the consent or connivance of, or attributable to the any neglect on the part of a liquidator (whether or not appointed under a bankruptcy) of such a person or an administrator of such a bankrupt person’s affairs, then the liquidator or administrator, as the case may be will also be guilty of the offence and liable in the same manner as the partnership or company to the penalty provided for that offence (*Article 6(h)*).

Article 7 further amends the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 to –

- (a) amend the definition “principal person” so that it includes a person who has been appointed a liquidator of a person (whether or not appointed under a bankruptcy) or an administrator of a bankrupt person’s affairs (*Article 8(a)*);
- (b) to require any documents to be retained for the periods specified in that Law (*Article 6(c)(i)*).

Article 8 gives the title of this Law and provides for it to come into force one month after it is registered.



Jersey

FINANCIAL REGULATION (MISCELLANEOUS PROVISIONS NO. 5) (JERSEY) LAW 201-

A LAW to further amend the Bankruptcy (Désastre) (Jersey) Law 1990, the Banking Business (Jersey) Law 1991, the Collective Investment Funds (Jersey) Law 1988, the Financial Services (Jersey) Law 1998, the Financial Services Commission (Jersey) Law 1998, the Insurance Business (Jersey) Law 1996 and the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Bankruptcy (Désastre) (Jersey) Law 1990 amended

In Article 3(1)(c)(ii) of the Bankruptcy (Désastre) (Jersey) Law 1990, after the words “Law 1988” there shall be inserted the words “or the Alternative Investment Funds (Jersey) Regulations 2012”.

2 Banking Business (Jersey) Law 1991 amended

In the Banking Business (Jersey) Law 1991 –

- (a) after Article 7(1) there shall be inserted the following paragraph –
 - “(1A) Paragraph (1) does not apply so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000.”;
- (b) after Article 10(3)(g) there shall be added the following sub-paragraph –
 - “(h) person A has failed to pay any fee published in accordance with Article 48E that is payable under Article 48E.”;
- (c) in Article 21(2)(b), after the words “registered person” there shall be inserted the words “, or a liquidator of a registered person (whether or not appointed under a bankruptcy) or an administrator of a bankrupt registered person’s affairs,”;
- (d) in Article 24 –

- (i) in paragraph (1) after the words “registered person” there shall be inserted the words “, or a liquidator of a registered person (whether or not appointed under a bankruptcy) or an administrator of a bankrupt registered person’s affairs,”
- (ii) in paragraph (1)(a) and (1)(b) for the words “or such a manager” there shall be substituted the words “, such a manager or such a liquidator or administrator”,
- (iii) in paragraph (3), after the words “registered person” there shall be inserted the words “, or a liquidator of a registered person (whether or not appointed under a bankruptcy), or an administrator of a bankrupt registered person’s affairs”,
- (iv) in paragraph (4), after the words “the registered person” in the second place where it appears, there shall be inserted the words “, or a liquidator of the registered person (whether or not appointed under a bankruptcy), or where the registered person is bankrupt, an administrator of the bankrupt registered person’s affairs,”
- (v) for paragraph (9)(b) there shall be substituted the following sub-paragraph –
 - “(b) becomes a director, controller, key person of any class, or manager, of a registered person, or a liquidator of a registered person (whether or not appointed under a bankruptcy) or an administrator of a bankrupt registered person’s affairs, without having been served with a notice by the Commission under paragraph (1)(b) to the effect that the Commission does not object to the person’s so becoming a director, controller, key person of the relevant class or of any class, manager, liquidator or administrator,”
- (vi) in paragraphs (10) and (11), after the words “registered person” there shall be inserted the words “, or a liquidator of a registered person (whether or not appointed under a bankruptcy) or an administrator of a bankrupt registered person’s affairs”;
- (e) in Article 26 –
 - (i) for paragraph (4) there shall be substituted the following paragraph –
 - “(4) The Commission, an officer or an agent may by notice in writing served on any person who is, or is to be, a director, controller or manager of a registered person, or a liquidator of a registered person (whether or not appointed under a bankruptcy) or an administrator of a bankrupt registered person’s affairs, require the person to provide the Commission, an officer or an agent, at such times as may be specified in the notice, with such information or documents as the Commission, an officer or an agent may reasonably require for determining whether the person is a fit and proper person to be a director, controller, manager, liquidator or administrator (as the case may be) of that registered person.”
 - (ii) in paragraph (10) –
 - (A) at the end of paragraph (b) for the full-stop there shall be substituted a comma,
 - (B) after paragraph (b) there shall be added the words “whichever is the later,”
 - (iii) in paragraph (15) –
 - (A) in the definitions “agent” and “officer” the words “, in any provision,” shall be deleted,
 - (B) in the definition “defined person”, after sub-paragraph (l) there shall be inserted the following sub-paragraph –
 - “(m) any person who at any time has been appointed a liquidator of a registered person (whether or not appointed under a bankruptcy) or an administrator of a bankrupt registered person’s affairs.”;
- (f) in Article 28(5), after the words “Article 26(7)” there shall be inserted the words “, any liquidator or administrator”;
- (g) in Article 34 –

- (i) for paragraphs (2)(a) and (2)(b) there shall be substituted the following sub-paragraphs –
 - “(a) the registered person or former registered person, or any associated body of such a person;
 - (b) a director, controller or manager, or former director, controller or manager, of a registered person or former registered person; or
 - (c) a liquidator of a registered person (whether or not appointed under a bankruptcy) or an administrator of a bankrupt registered person’s affairs.”;
- (ii) for paragraphs (3)(b) and (3)(c) there shall be substituted the following sub-paragraphs –
 - “(b) a director, controller or manager, or a proposed director, controller or manager of a registered person or applicant for registration;
 - (c) a former director, controller or manager of a registered person or former registered person; or
 - (d) a liquidator of a registered person (whether or not appointed under a bankruptcy) or an administrator of a bankrupt registered person’s affairs.”;
- (h) in Article 52(1), after the word “capacity,” there shall be inserted the words “or by a liquidator of a registered person (whether or not appointed under a bankruptcy) or an administrator of a bankrupt registered person’s affairs,”.

3 Collective Investment Funds (Jersey) Law 1988 amended

In the Collective Investment Funds (Jersey) Law 1988 –

- (a) in Article 1(1), in the definition “principal person”, for paragraph (e) there shall be substituted the following sub-paragraph –
 - “(e) subject to paragraph (f), a person who has been appointed a liquidator of a person’s affairs (whether or not appointed under a bankruptcy) or an administrator of a bankrupt person;”;
- (b) in Article 9 –
 - (i) in paragraph (9) –
 - (A) at the end of paragraph (b) for the full-stop there shall be substituted a comma,
 - (B) after paragraph (b) there shall be added the words “whichever is the later,”,
 - (ii) in paragraph (14), in the definitions ‘agent’ and ‘officer’, the words “, in any provision,” shall be deleted;
- (c) in Article 30A –
 - (i) for the words “Articles 27, 28 and 29” there shall be substituted the words “Articles 27, 28, 29 and 30”,
- (d) after Article 36(1) there shall be inserted the following paragraph –
 - “(1A) Paragraph (1) does not apply so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000.”.

4 Financial Services (Jersey) Law 1998 amended

In the Financial Services (Jersey) Law 1998 –

- (a) in Article 1(1), in the definition “principal person” for the words “in relation to a person who has become bankrupt, includes a person who has been appointed as liquidator or administrator of the person’s affairs;” there shall be substituted the words “includes a person who has been appointed a liquidator of the person (whether or not appointed under a bankruptcy) or an administrator of a bankrupt person’s affairs;”;
- (b) after Article 6(1), there shall be inserted the following paragraph –
 “(1A) Paragraph (1) does not apply so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000.”;
- (c) for Article 9(4)(g) there shall be substituted the following sub-paragraph –
 “(g) if the registered person fails to pay any fee published under paragraph (6) that is payable.”;
- (d) in Article 32 –
 - (i) in paragraph (9) –
 - (A) at the end of paragraph (b) for the full-stop there shall be substituted a comma,
 - (B) after paragraph (b) there shall be added the words “whichever is the later,”
 - (ii) in paragraph (14), in the definitions “agent” and “officer” the words “, in any provision,” shall be deleted.

5 Financial Services Commission (Jersey) Law 1998 amended

In the Financial Services (Jersey) Law 1998 –

- (a) in Article 8(4), after paragraph (d) there shall be added the following sub-paragraph –
 “(e) a person granted a certificate under Regulation 9 of the Alternative Investment Funds (Jersey) Regulations 2012.”;
- (b) after Article 9(1) there shall be inserted the following paragraph –
 “(1A) Paragraph (1) does not apply so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000.”.
- (c) in Article 21C(2), for the word “(2)(b)” there shall be substituted the word “(1)(b)”.

6 Insurance Business (Jersey) Law 1996 amended

In the Insurance Business (Jersey) Law 1996 –

- (a) after Article 4(1) there shall be inserted the following paragraph –
 “(1A) Paragraph (1) does not apply so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000.”.
- (b) after Article 7(4)(j) there shall be inserted the following sub-paragraph –
 “(k) if the applicant fails to pay any fee published under Article 43D that is payable.”;
- (c) in Article 10 –
 - (i) in paragraph (9),
 - (A) at the end of paragraph (b) for the full-stop there shall be substituted a comma,

- (B) after paragraph (b) there shall be added the words “whichever is the later,”,
- (ii) in paragraph (14) –
 - (A) in the definitions “agent” and “officer” the words “, in any provision,” shall be deleted,
 - (B) in the definition “defined person”, after sub-paragraph (i) there shall be inserted the following sub-paragraph –
 - “(j) a person who at any time has been appointed a liquidator of a permit holder (whether or not appointed under a bankruptcy) or an administrator of a bankrupt permit holder’s affairs.”;
- (d) in Article 11(3), for the words “an employee, banker, auditor or legal adviser (subject to paragraph (9)) of a permit holder who is under investigation under paragraph (1) –” there shall be substituted the words “a director, shareholder controller, chief executive, employee, banker, liquidator (whether or not appointed under a bankruptcy), administrator of a bankrupt permit holder’s affairs. auditor or legal adviser (subject to paragraph (9)) of a permit holder who is under investigation under paragraph (1), or any person appointed to make a report in respect of that permit holder under Article 10(6) –”,
- (e) in Article 21–
 - (i) in paragraph (2) –
 - (A) in sub-paragraph (b) the word “or” at the end shall be deleted,
 - (B) at the end of paragraph (c) there shall be inserted the word “or”,
 - (C) after sub-paragraph (c) there shall be inserted the following sub-paragraph –
 - “(d) a person who at any time has been appointed a liquidator (whether or not appointed under a bankruptcy) or administrator of a bankrupt permit holder’s affairs.”;
 - (ii) in paragraph (3), –
 - (A) in sub-paragraph (e) the word “or” at the end shall be deleted,
 - (B) at the end of paragraph (f) there shall be inserted the word “or”,
 - (C) after sub-paragraph (f) there shall be inserted the following sub-paragraph –
 - “(g) a person who at any time has been appointed a liquidator (whether or not appointed under a bankruptcy) or administrator of a bankrupt permit holder’s affairs.”;
- (f) in Article 23 –
 - (i) in paragraph (1), after the words “the permit holder” there shall be inserted the words “, liquidator of the permit holder (whether or not appointed under a bankruptcy) or administrator of a bankrupt permit holder’s affairs”,
 - (ii) in paragraph (4), after the words “permit holder” there shall be inserted the words “, or the permit holder’s liquidator (whether or not appointed under a bankruptcy) or administrator of a bankrupt permit holder’s affairs”,
 - (iii) in paragraph (5)(a), after the words “permit holder” there shall be substituted the words “ or liquidator (whether or not appointed under a bankruptcy) or, where the person is bankrupt, the administrator of the bankrupt permit holder’s affairs”,
 - (iv) for sub-paragraph (6)(b) to the end of paragraph (6) there shall be substituted the following –
 - “(b) has been appointed as the permit holder’s actuary or liquidator (whether or not appointed under a bankruptcy) or the administrator of the bankrupt permit holder’s affairs,

is not a fit and proper person to be (as the case requires) a director, chief executive, key person of that class, or shareholder controller, in relation to the permit holder, or the permit holder's actuary or liquidator (whether or not appointed under a bankruptcy), or the administrator of the bankrupt permit holder's affairs, the Commission shall serve on the person and on the permit holder a written notice of objection, directing that the person shall not, as the case requires –

- (i) continue to be, or become, a director, chief executive, key person of the particular class, or shareholder controller, in relation to the permit holder, or
- (ii) continue to be the permit holder's actuary or liquidator or the administrator of the bankrupt permit holder's affairs.”,
- (v) in paragraph (7)(b) and (9)(b), after the word “actuary” there shall be inserted the words “or liquidator (whether or not appointed under a bankruptcy) or the administrator of the bankrupt permit holder's affairs”;
- (g) in Article 36(2)(b), after the words “permit holder” there shall be inserted the words “the permit holder's liquidator (whether or not appointed under a bankruptcy) or the administrator of a bankrupt permit holder's affairs.”;
- (h) in Article 39(3) –
 - (i) in sub-paragraph (a), the word “or” at the end shall be deleted, and
 - (ii) after sub-paragraph (a) there shall be inserted the following sub-paragraph –
 - “(aa) a liquidator (whether or not appointed under a bankruptcy) of such a person or an administrator of such a bankrupt person's affairs; or”.

7 **Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 amended**

In the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 –

- (a) in Article 1(1) in the definition “principal person” for the words “in relation to a person who has become bankrupt, a person who has been appointed as liquidator or administrator of the persons' affairs;” there shall be substituted the words “a person who has been appointed a liquidator of a person (whether or not appointed under a bankruptcy) or an administrator of a bankrupt person's affairs;”;
- (b) for Article 9(1) there shall be substituted the following paragraphs –
 - “(1) No person or body to whom this Article applies shall be liable in damages for anything done or omitted in the discharge or purported discharge of any functions under this Law or any enactment made, or purportedly made, under this Law unless it is shown that the act or omission was in bad faith.
 - (1A) Paragraph (1) does not apply so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000.”;
- (c) in Article 30 –
 - (i) in paragraph (9) –
 - (A) at the end of paragraph (b) for the full-stop there shall be substituted a comma,
 - (B) after paragraph (b) there shall be added the words “whichever is the later,”,
 - (ii) in paragraph (14), in the definitions “agent” and “officer” the words “, in any provision,” shall be deleted.
- (d) Article 34(12) shall be deleted.

8 Citation and commencement

This Law may be cited as the Financial Regulation (Miscellaneous Provisions No. 5) (Jersey) Law 201- and shall come into force one month after it is registered.

Appendix D: Financial Regulation (Miscellaneous Provisions) (Amendment of Laws) (Jersey) Regulations 201-



Jersey

FINANCIAL REGULATION (MISCELLANEOUS PROVISIONS) (AMENDMENT OF LAWS) (JERSEY) REGULATIONS 201-

Report

Consultation draft

Explanatory Note

These Regulations amend the Collective Investment Funds (Jersey) Law 1988, the Banking Business (Jersey) Law 1991, the Financial Services (Jersey) Law 1998, the Insurance Business (Jersey) Law 1996 and the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 to permit the disclosure of certain information to third parties, which would otherwise be prohibited under each of those Laws.

All of these Laws contain provisions that have the effect of –

- (a) prohibiting a person, who under or for the purposes of the particular Law has received information relating to the business or other affairs of any person, from disclosing the information without the consent of the person to whom it relates;
- (b) prohibiting a person who obtains any such information directly or indirectly from a person who has received it under or for the purposes of the particular Law from disclosing it without the permission of the person to whom it relates or the person from whom it was received;
- (c) permitting disclosure of certain information so received or obtained, provided that the person to whom it is disclosed complies with or will comply with any conditions to which the disclosure may be subjected.

Regulations 1 to 5 of these Regulations amend these Laws to provide that disclosure may be made –

- (a) by the Jersey Financial Services Commission (“Commission”) to a pension supervisor for the purpose of enabling or assisting a pension supervisor to exercise any of its supervisory functions if the Commission is satisfied that the pension supervisor to whom the disclosure is made complies with, or will comply with, any conditions that the person disclosing the information may, in its discretion, subject such disclosure;

- (b) to any person or body (whether in Jersey or elsewhere) responsible for setting standards of conduct for any profession and having powers to discipline persons who fail to meet those standards for the purpose of enabling or assisting that person or body to exercise any of its supervisory functions; and
- (c) by the Commission to the Society of Lloyd's (being organs constituted by or under the Lloyd's Act 1982 of the United Kingdom) for the purpose of enabling or assisting that Society to exercise any of its supervisory function if the Commission is satisfied that the Society of Lloyd's complies with, or will comply with, any conditions that the Commission may, in its discretion, subject such disclosure.

Regulation 6 gives the title of these Regulations and provides for them to come into force 7 days after they are made.



FINANCIAL REGULATION (MISCELLANEOUS PROVISIONS) (AMENDMENT OF LAWS) (JERSEY) REGULATIONS 201-

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Articles 1(2) and 30A of the Collective Investment Funds (Jersey) Law 1988, Articles 5, 45A and 51 of the Banking Business (Jersey) Law 1991, Articles 4, 38(3) and 42 of the Financial Services (Jersey) Law 1998, Articles 2, 32A and 41 of the Insurance Business (Jersey) Law 1996, Articles 1(2), 36(9) and 44 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, have made the following Regulations –

1 **Collective Investment Funds (Jersey) Law 1988 amended**

In the Collective Investment Funds (Jersey) Law 1988 –

- (a) in Article 1(1), after the definition “partnership” there shall be inserted the following definition –
 - “ ‘pension supervisor’ means any entity (whether in Jersey or elsewhere) responsible in whole or in part for the supervision of pension funds, plans, schemes or arrangements;”;
- (b) after Article 28(3) there shall be added the following paragraphs –
 - “(4) Article 26 does not preclude the disclosure of information by the Commission to a pension supervisor for the purpose of enabling or assisting a pension supervisor to exercise any of its supervisory functions.
 - (5) Disclosure under paragraph (4) may only be made if the Commission is satisfied that the pension supervisor to whom the disclosure is made complies with, or will comply with, any conditions that the person disclosing the information may, in its discretion, subject such disclosure.”;
- (c) in Article 29 –
 - (i) in paragraph (6) for the words after clause (iii) there shall be substituted the words “to any person or body (whether in Jersey or elsewhere) responsible for setting standards of conduct for any profession and having powers to discipline persons who fail to meet those standards for the purpose of enabling or assisting that person or body to exercise any of its supervisory functions.”;
 - (ii) after paragraph (7) there shall be inserted the following paragraphs –
 - “(7A) Subject to paragraph (7B), Article 26 does not preclude the disclosure of information by the Commission to the Society of Lloyd’s (being organs constituted by or under

the Lloyd's Act 1982 of the United Kingdom) for the purpose of enabling or assisting that Society to exercise any of its supervisory functions.

- (7B) Disclosure under paragraph (7A) may only be made if the Commission is satisfied that the Society of Lloyd's complies with, or will comply with, any conditions that the Commission may, in its discretion, subject such disclosure.”.

2 Banking Business (Jersey) Law 1991 amended

In the Banking Business (Jersey) Law 1991 –

- (a) in Article 1, after the definition “money laundering reporting officer” there shall be inserted the following definition –
 - “ ‘pension supervisor’ means any entity (whether in Jersey or elsewhere) responsible in whole or in part for the supervision of pension funds, plans, schemes or arrangements;”;
- (b) after Article 43(1) there shall be inserted the following paragraph –
 - “(1A) Article 42 does not preclude the disclosure of information by the Commission to the Society of Lloyd's (being organs constituted by or under the Lloyd's Act 1982 of the United Kingdom) for the purpose of enabling or assisting that Society to exercise any of its supervisory functions.”;
- (c) after Article 44(2), there shall be inserted the following paragraph –
 - “(2A) Article 42 does not preclude the disclosure of information by the Commission to a pension supervisor for the purpose of enabling or assisting a pension supervisor to exercise any of its supervisory functions.”;
- (d) in Article 45(6), for the words after clause (iii) there shall be substituted the words “to any person or body (whether in Jersey or elsewhere) responsible for setting standards of conduct for any profession and having powers to discipline persons who fail to meet those standards for the purpose of enabling or assisting that person or body to exercise any of its supervisory functions.”;
- (e) in Article 45(7), for the words “Articles 43(1)(a) or (3), 44(1)(b), (c) or (d) or (2) or 47(1)(f)” there shall be substituted the words “Article 43(1)(a), (1A) or (3), 44(1)(b), (c) or (d) or (2), 44(2A) or 47(1)(f)”.

3 Financial Services (Jersey) Law 1998 amended

In the Financial Services (Jersey) Law 1998 –

- (a) in Article 1(1), after the definition “partnership” there shall be inserted the following definition –
 - “ ‘pension supervisor’ means any entity (whether in Jersey or elsewhere) responsible in whole or in part for the supervision of pension funds, plans, schemes or arrangements;”;
- (b) in Article 38 –
 - (i) in paragraph (1)(l) for the words after clause (ii)(C) there shall be substituted the words “to any person or body (whether in Jersey or elsewhere) responsible for setting standards of conduct for any profession and having powers to discipline persons who fail to meet those standards for the purpose of enabling or assisting that person or body to exercise any of its supervisory functions.”;
 - (ii) after paragraph (1)(m) there shall be inserted the following paragraphs –

- “(n) by the Commission to a pension supervisor for the purpose of enabling or assisting a pension supervisor to exercise any of its supervisory functions;
 - (o) by the Commission to the Society of Lloyd’s (being organs constituted by or under the Lloyd’s Act 1982 of the United Kingdom) for the purpose of enabling or assisting that Society to exercise any of its supervisory functions.”;
- (iii) in paragraph (2), for the words “(k), (l) or (m)” there shall be substituted the words “(k), (l), (m), (n) or (o)”.

4 Insurance Business (Jersey) Law 1996 amended

In the Insurance Business (Jersey) Law 1996 –

- (a) in Article 1(1), after the definition “money laundering reporting officer” there shall be inserted the following definition –
 - “ ‘pension supervisor’ means any entity (whether in Jersey or elsewhere) responsible in whole or in part for the supervision of pension funds, plans, schemes or arrangements;”;
- (b) after Article 31(3), there shall be inserted the following paragraph –
 - “(3A) Article 29 does not preclude the disclosure of information by the Commission to a pension supervisor for the purpose of enabling or assisting a pension supervisor to exercise any of its supervisory functions.”;
- (c) in Article 32 –
 - (i) after paragraph (4) there shall be inserted the following paragraph –
 - “(4A) Subject to paragraph (5), Article 29 does not preclude the disclosure of information by the Commission to the Society of Lloyd’s (being organs constituted by or under the Lloyd’s Act 1982 of the United Kingdom) for the purpose of enabling or assisting that Society to exercise any of its supervisory functions.”;
 - (ii) in paragraph (5), for the words “paragraph (6) or (7) or Article 30(1)(a), 31(1)(b), (c) or (d) or (2) or (3),” there shall be substituted the words “paragraph (4A), (6) or (7) or Articles 30(1)(a), 31(1)(b), (c) or (d), 31(2), 31(3), 31(3A)”;
 - (iii) in paragraph (7) for the words after clause (iii) there shall be substituted the words “to any person or body (whether in Jersey or elsewhere) responsible for setting standards of conduct for any profession and having powers to discipline persons who fail to meet those standards for the purpose of enabling or assisting that person or body to exercise any of its supervisory functions.”.

5 Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 amended

In the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 –

- (a) in Article 1(1), after the definition “overseas supervisory function” there shall be inserted the following definition –
 - “ ‘pension supervisor’ means any entity (whether in Jersey or elsewhere) responsible in whole or in part for the supervision of pension funds, plans, schemes or arrangements;”;
- (b) in Article 36(1)(f), after clause (ii)(C) there shall be substituted the words “to any person or body (whether in Jersey or elsewhere) responsible for setting standards of conduct for any profession and having powers to discipline persons who fail to meet those standards

for the purpose of enabling or assisting that person or body to exercise any of its supervisory functions.”;

- (c) in Article 36(5), for the words “or (j)” there shall be substituted the words “(j), (2B) or (2C)”;
- (d) after Article 36(2A), there shall be inserted the following paragraphs –
 - “(2B) Article 35 does not preclude the disclosure of information by the Commission to the Society of Lloyd’s (being organs constituted by or under the Lloyd’s Act 1982 of the United Kingdom) for the purpose of enabling or assisting that Society to exercise any of its supervisory functions.
 - (2C) Article 35 does not preclude the disclosure of information by the Commission to a pension supervisor for the purpose of enabling or assisting a pension supervisor to exercise any of its supervisory functions.”;

6 Citation and commencement

These Regulations may be cited as the Financial Regulation (Miscellaneous Provisions) (Amendment of Laws) (Jersey) Regulations 201- and shall come into force 7 days after they are made.

Appendix E: Collective Investment Funds (Recognized Funds) (Permit Conditions for Functionaries) (Amendment No. 4) (Jersey) Order 201-



Jersey

COLLECTIVE INVESTMENT FUNDS (RECOGNIZED FUNDS) (PERMIT CONDITIONS FOR FUNCTIONARIES) (AMENDMENT NO. 4) (JERSEY) ORDER 201-

Explanatory Note

Consultation draft

This Order amends the Collective Investment Funds (Recognized Funds) (Permit Conditions for Functionaries) (Jersey) Order 1988 so as to require “relevant holders” (defined in Article 1(1) of that Order) to ensure, in relation to each complaint relating to the conduct of its business as a functionary of a recognized fund made to it by any person, that the complainant is reminded that it is open to the complainant to report the matter to the Office of the Financial Services Ombudsman (established by Article 2 of the Financial Services Ombudsman (Jersey) Law 2014) , and that if the complainant is dissatisfied with the outcome of the relevant holder’s investigation of the complaint, the complainant may ask that Office to investigate the complaint.



COLLECTIVE INVESTMENT FUNDS (RECOGNIZED FUNDS) (PERMIT CONDITIONS FOR FUNCTIONARIES) (AMENDMENT NO. 4) (JERSEY) ORDER 201-

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE CHIEF MINISTER, in pursuance of Articles 7(4) and 20 of the Collective Investment Funds (Jersey) Law 1988, and on the recommendation of the Jersey Financial Services Commission, orders as follows –

1 Article 18 amended

In Article 18(1)(c) of the Collective Investment Funds (Recognized Funds) (Permit Conditions for Functionaries) (Jersey) Order 1988, for the words “the Commission” in both places where they appear there shall be substituted the words “the Office of the Financial Services Ombudsman”.

2 Citation and Commencement

This Order may be cited as the Collective Investment Funds (Recognized Funds) (Permit Conditions for Functionaries) (Amendment No. 4) (Jersey) Order 201- and shall come into force the day after it is made.