



**Jersey Financial  
Services Commission**

# **Consultation on proposals to enhance disclosure and governance requirements for sustainable investments:**

- › Certified Funds Code of Practice
- › Investment Business Code of Practice
- › Fund Services Business Code of Practice and
- › Jersey Private Fund Guide

Consultation No. 4 2020

Issued: June 2020

## Consultation Paper

The Jersey Financial Services Commission (**JFSC**) invites comments on this consultation paper by the 30 September 2020. If you require any assistance, clarification or wish to discuss any aspect of the proposal prior to formulating a response, contact the JFSC.

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Alternatively, Lisa Springate at Jersey Finance Limited (**JFL**) is coordinating an Industry response that will incorporate any matters raised by local businesses. Comments should be submitted to JFL by the 30 September 2020.

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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 by the respondent).**

**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

Defined terms are indicated throughout this document as follows:

Abbreviation	Full Name
Commission Law	Financial Services Commission (Jersey) Law 1998, as amended
CP	Consultation Paper
ESG	Environmental, Social, and Governance
ES Investments	Environmental, sustainable or social investments
FSJL	Financial Services (Jersey) Law 1998
IB	Investment Business
IB Code	Investment Business Code of Practice
CIF Code	Certified Funds Code of Practice
CIF Law	Collective Investment Funds (Jersey) Law 1988
FSB Code	Fund Services Business Code of Practice
JPF Guide	Jersey Private Fund Guide
IOSCO	International Organisation of Securities Commissions
JFSC	Jersey Financial Services Commission
registered person	a person who is registered by the JFSC under Article 9 of the FSJL to carry on Investment Business as defined in Article 2 (2) of the FSJL

# Contents

<b>1</b>	<b>Executive Summary .....</b>	<b>5</b>
1.1	Overview .....	5
1.2	What is proposed and why? .....	5
1.3	Who would be affected? .....	5
1.4	Costs & Benefits .....	6
<b>2</b>	<b>Consultation .....</b>	<b>7</b>
2.1	Basis for consultation .....	7
2.2	Responding to the consultation .....	7
2.3	Next steps.....	7
<b>3</b>	<b>The JFSC.....</b>	<b>8</b>
3.1	Overview .....	8
3.2	The JFSC's functions .....	8
3.3	Guiding principles.....	8
<b>4</b>	<b>Proposals .....</b>	<b>9</b>
<b>5</b>	<b>Questions .....</b>	<b>10</b>

Based on some early feedback received, the JFSC would like to clarify that the scope of these changes to Jersey CIF Law funds, JPFs, FSBs and IBs will apply only when a fund is specifically marketing or holding itself out to have environmental, sustainable, or socially responsible investments.

# 1 Executive Summary

## 1.1 Overview

- 1.1.1 There have been a number of changes to ESG regulation at both international and EU level and the JFSC is committed to maintaining international standards where applicable and proportionate for Jersey.
- 1.1.2 Greenwashing is a phenomenon of growing concern in the financial sector, which sees funds and firms marketing products and investments to appear more sustainable and ethical than they really are.
- 1.1.3 This consultation paper (**CP**) seeks feedback on proposals to enhance various codes of practice and the Jersey Private Fund Guide.

## 1.2 What is proposed and why?

### What

- 1.2.1 If a fund has environmental, sustainable or social investments (ES Investments), it must have, policies and procedures in place that disclose, verify and document the credentials of the ES Investments, and the appropriate corporate governance and organisational structure to support them.
- 1.2.2 If a firm provides investment business advice related to environmental, sustainable or social investments of a fund, it must have policies and procedures in place that verify and document the credentials of the ES Investments of the fund

### Why

- 1.2.1 The key area of concern that the JFSC wishes to address is the risk of investments being mislabelled as ES Investments, a phenomenon sometimes called greenwashing.
- 1.2.2 Ambitious ESG regulations are being introduced internationally and in particular in the EU from ESMA, which include appropriate ESG disclosure. The significant and wide-ranging EU reforms are to come into force in 2021; the proposal here represents the appropriate response for Jersey.
- 1.2.3 Government is committed to enhance the profile of ES Investments in Jersey and have asked the JFSC to provide confidence that such commitments made by funds in Jersey are supportable and not simply greenwashing.

## 1.3 Who would be affected?

- 1.3.1 The proposals in this CP have the potential to affect:
  - › Private funds with ESG products/investments  
(this includes all private funds which are required to operate in compliance with the Jersey Private Fund Guide )
  - › CIF Funds with ESG products/investments  
(this includes all certified funds and recognized funds under the CIF Law)

- › Unregulated and Non-Dom funds (and their connected local service providers) with ESG products/investments  
(this includes all unregulated funds under the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008 and unclassified funds under the CIF Law)
- › Persons registered to carry on Investment Business under the FSJL that provide investment advice on funds with ESG products/investments

## 1.4 Costs & Benefits

- 1.4.1 The JFSC recognises the potential costs to industry when amending codes of practice and guidance, and has considered this in the scope and approach of the proposals. The proposals in this paper will, in aggregate, improve the clarity of the ESG requirements, enhance consumer protection and contribute towards the Island meeting international regulatory standards.

## 2 Consultation

### 2.1 Basis for consultation

- 2.1.1 The JFSC has issued this CP in accordance with Article 8(3) of the Financial Services Commission (Jersey) Law 1998, as amended (**Commission Law**) under which the JFSC “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 CP. Where comments are made by an industry body or association, that body or association should also provide a summary of the type of individuals and/or institutions that it represents.
- 2.2.2 A response form has been published alongside this consultation, available at <https://www.jerseyfsc.org/media/3606/cp-response-form-sustainable-investments-june2020.docx>
- 2.2.3 Respondents are requested to use this form when providing feedback, either directly or via JFL.
- 2.2.4 Comments should be received by the JFSC no later than 30<sup>th</sup> September 2020.

### 2.3 Next steps

- 2.3.1 Following this consultation, the JFSC will publish feedback in Q4 2020.

## 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 The JFSC's functions

- 3.2.1 Article 5 of 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 of Jersey, any Minister of 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 of Jersey 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 Article 7 of the Commission Law sets out the JFSC's guiding principles which require the JFSC 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 Proposals

CIF Code, FSB Code & JPF Guide	
Requirements	<p>If a fund has environmental, sustainable, or socially responsible investments (<u>ES Investments</u>), it must:</p> <ul style="list-style-type: none"> <li>› produce a public statement (such as in its prospectus) of its ES Investments</li> <li>› implement and undertake an investment management process consistent with the ES Investments, this includes <ul style="list-style-type: none"> <li>› appropriately verifying and documenting the ESG credentials of the investment in the due diligence process, by way of recognised taxonomy</li> <li>› reviewing annually, to ensure the continued ESG credentials of the investment</li> </ul> </li> <li>› have the appropriate corporate governance and organisational structure to implement and monitor the investment management process in respect of the ES Investments, this includes access to resources with the appropriate skills and experience; with appropriate reporting lines.</li> </ul>
Where	A new paragraph/section respectively within the Corporate Governance section of the respective Code of Practice and in the Eligibility criteria section of the JPF Guide with the title “Environmental, Sustainable and Socially Responsible Investing”.

IB Code	
Requirements	<p>If a registered person provides investment advice to its clients in relation to environmental, sustainable or socially responsible investments (ES Investments), it must ensure that the funds or providers of those fund investments:</p> <ul style="list-style-type: none"> <li>› produce a public statement (such as in its prospectus) of its ES Investments</li> <li>› implement and undertake an investment management process consistent with the ES Investments, this includes <ul style="list-style-type: none"> <li>› appropriately verifying and documenting the ESG credentials of the investment in the due diligence process, by way of recognised taxonomy</li> <li>› reviewing annually, to ensure the continued ESG credentials of the investment</li> </ul> </li> <li>› have the appropriate corporate governance and organisational structure to implement and monitor the investment management process in respect of the ES Investments, this includes access to resources with the appropriate skills and experience; with appropriate reporting lines.</li> </ul>
Where	A new paragraph/section within the Corporate Governance section of the IB Code, with the title “Sustainable and Socially Responsible Investing”.

## 5 Questions

### Question 1

Do you have any general observations on, or concerns relating to the proposal to address the risk of investments being mislabelled as ES Investments, a phenomenon sometimes called greenwashing?

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

### Question 2

Do you have any general observations on, or concerns relating to the proposed changes to the CIF Code, FSB Code or JPF Guide?

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

### Question 3

Do you have any general observations on, or concerns relating to the proposed changes to the IB Code?

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

### Question 4

Do you have any observations on, or concerns relating to the terminology 'environmental, sustainable or socially responsible investments'? Would 'non-financial criteria' or something else, be a better umbrella term?

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

### Question 5

The JFSC acknowledges that other forms of ES investments exist such as via special purpose vehicles, which are not considered in these proposals. Do you consider that these proposals should also apply to such vehicles?