



Feedback and further consultation on proposals regarding amended legislation for Arranging in relation to Investment Business

Feedback and further consultation:

- **Arranging**

Update on previous engagement and consultations:

- **Exchange business**
- **Derivatives definitions**
- **Banning investment products**

Consultation No. 9 2022

Issued: September 2022

Consultation

The Jersey Financial Services Commission (JFSC) invites comments on this consultation paper by 21 October 2022. 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.

The JFSC contact is:

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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 21 October 2022.

The JFL contact is:

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It is our policy to summarise or 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 us 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:

Commission Law	Financial Services Commission (Jersey) Law 1998
FSJL	Financial Services (Jersey) Law 1998
the Regulations	Financial Services (Amendment of Law) (No. 6) (Jersey) Regulations
the Order	Financial Services (Amendment of Schedules to Law) (No. 3) (Jersey) Order
Arranging Amendments	Financial Services (Amendment of Law) (No. 6) (Jersey) Regulations, and the, Financial Services (Amendment of Schedules to Law) (No. 3) (Jersey) Order
JFA	Jersey Funds Association
JFSC	Jersey Financial Services Commission
Registered person	Means a person registered by the JFSC under Article 9 of the FSJL to carry on investment business as defined under Article 2(2) of the FSJL.

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Arranging: Feedback and Further Consultation

Overview

The purpose of the proposed legislation is to enhance our regime to provide regulatory protection to retail investors for investment activity brought about by an arranger, consistent with the protection provided in other equivalent jurisdictions, and pragmatic to the Jersey market.

The amendments proposed are to the Financial Services (Jersey) Law 1998 (FSJL), amended by the Financial Services (Amendment of Law) (No. 6) (Jersey) Regulations (the Regulations) and the Financial Services (Amendment of Schedules to Law) (No. 3) (Jersey) Order (the Order), together referred to as the Arranging Amendments.

Who would be affected?

The Arranging Amendments proposed in this further consultation paper have the potential to affect registered and unregistered persons who engage in the activity of arranging.

Previous engagement and consultation

In Q3 2021 we provided Industry with an update on our progress and how work was being undertaken with law drafting and our technical expert working groups. Further information on the status and prioritisation of all the legislative enhancements planned for investment business in 2022 is provided at the end of this paper.

Response to working group collaboration

Working with the Jersey Funds Association (JFA) working group, it was clear that enhancements were required to ensure the scope reflected the policy intention without any unintended consequences.

These enhancements can be summarised as follows:

- › enhanced law drafting to align with the UK
- › scope setting, by way of exemptions:
 - retail investors only in scope (there are a number of components that provide for this)
 - arranger must be remunerated
 - any deal brought about, could not have happened without the involvement of the arranger
 - does not include introducing only activity
 - not within scope if investment advice is provided by an Investment Business registered person in relation to an arranged deal.

This has been achieved by amendment to the FSJL:

- › by way of Regulations with
 - arranging inserted as a financial service business as part of Investment Business (2)(a)(ii) incorporated as a subset of deals in investments
- › consequential amendments:

- Article 2 of the Financial Services (Investment Business (Restricted Investment Business – Exemption)) (Jersey) Order 2001
 - Article 2(1)(a) of the Financial Services (Investment Business (Special Purpose Investment Business – Exemption)) (Jersey) Order 2001.
- › by way of Order with
- Schedule 2 (exemptions) inserted:
 - 5A Arranging: professional investment clients
 - 5B Arranging: sophisticated and high net worth investors
 - 5C Arranging: other exemptions
 - Schedule 5 (transitional provisions) amended.

The law drafting is available for review here:

[Financial Services \(amendment of law\) \(No.6\) \(Jersey\) Regulations 202](#)

[Financial Services \(amendment of schedules to law\) \(No. 3\) \(Jersey\) Order 202](#)

Over the past 18 months, the JFSC has worked with the JFA and their Legal & Technical Sub-Committee on the proposal, with constructive feedback being provided over a number of progressive drafts. This collaboration has culminated in the final draft, as set out in this Consultation Paper, being agreed between the JFSC and the JFA's Legal & Technical Sub-Committee.

Consultation

Basis for consultation

We have issued this consultation paper in accordance with Article 8(3) of the Commission Law, as amended, 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”.

Responding to the consultation

We invite comments in writing from interested parties on the proposals included in this consultation paper. 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.

Comments should be received by us no later than 21 October 2022. The timeframe elected for, is reflective of the prior consultation, technical expert working group review, and the precise nature of the changes proposed.

Next steps

Following this consultation, we will carefully consider the feedback, and provide feedback to industry regarding any amendments required to the Arranging Amendments.

Consultation question

Please review the law drafting proposals in line with the summarised commentary above in the 'Response to working group collaboration'.

Question 1

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

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

Arranging Law drafting proposal

[Financial Services \(amendment of law\) \(No.6\) \(Jersey\) Regulations 202](#)

[Financial Services \(amendment of schedules to law\) \(No. 3\) \(Jersey\) Order 202](#)

Exchange business, Derivatives definitions & Banning investment products

Update on previous engagement and consultation

The legislative enhancements planned for investment business in 2022 include a number of elements, which in earlier consultations had all been previously presented and consulted upon en masse. At the start of 2022, with agreement with Government, these were separated and prioritised; a key driver being to ensure the work on the Investment Business Client Assets Order would come into effect earlier this year. The remaining elements include the following: Arranging, Derivative definitions, Exchange business, and Banning products. Arranging, Derivative definitions, and Exchange business are all being amended together under the same Regulations and Order, and as such remain grouped together. In the prior consultations, legislative concerns were only raised with respect to the proposals for Arranging; but the implementation of changes to Derivative definitions, and Exchange business is to be progressed with the changes to Arranging. The earlier consultation element of this paper covers Arranging in isolation as it is the only component subject to amendment. The table below is therefore just a summary of the status for the other elements, and as there are no new proposals in these matters there is no consultation sought.

Derivative definitions	Status and Update <ul style="list-style-type: none"> › Consulted and all feedback either supportive or no concerns raised › Will progress alongside Arranging until effective.
	Summary <p>There are 3 parts to the amendment:</p> <ul style="list-style-type: none"> › Update the definition of investments to include all financial derivatives. › Update the definition of 'Futures', when for commercial purposes. › Update the definition of 'Contracts for differences, etc' to align with the 'Financial derivatives' and 'Contracts for differences, etc' changes.
Exchange	Status and Update

business	<ul style="list-style-type: none"> › Consulted and all feedback in relation to the drafting and making Exchange Business a type of Financial Service Business under the FSJL, either supportive or no concerns raised. › Will progress alongside Arranging until adopted. › Comments were raised as to how this regime would be regulated. This would be considered as part of a new regime if and when Exchange Business as a type of Financial Service Business under the FSJL is made effective.
	<p>Summary</p> <p>Legislative preparation for the oversight of exchange business in the FSJL.</p>
Banning products	<p>Status and Update</p> <p>Law drafting is with the Government for prioritisation.</p>
	<p>Summary</p> <p>Powers to ban the sale of certain products to retail clients.</p>
Investment Business Client Assets Order	<p>Status and Update</p> <p>Came into force on the 17th May 2022, transitional provisions to the 17th August 2022.</p>
	<p>Summary</p> <p>Enhancements to achieve full compliance with certain IOSCO recommendations. Full details available here.</p>

Prior Updates and Engagement:

Update for Industry on follow-up consultation on investment business regime — Jersey Financial Services Commission (jerseyfsc.org)	Q3 21
Feedback and further consultation on Investment Business regime — Jersey Financial Services Commission (jerseyfsc.org)	Q4 20