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Guernsey Financial
Services Commission

PROPOSED REVISIONS TO THE REGULATORY REGIME ON THE IMPLEMENTATION OF GUERNSEY FINANCIAL ADVICE STANDARDS

**A CONSULTATION PAPER ISSUED BY
THE GUERNSEY FINANCIAL
SERVICES COMMISSION
16 JULY 2014**

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The Guernsey Financial Services Commission invites comments on this consultation paper, preferably by email and using the form provided in appendix 9, by no later than Friday 29 August 2014.

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Glossary of Terms

AIR	Authorised Insurance Representative
AIR Code	Code of Conduct for Authorised Insurance Representatives
C&E	Commerce and Employment Department
CPD	Continuing Professional Development
(the) Commission	The Guernsey Financial Services Commission
FA Code	Code of Conduct for Financial Advisers to be issued under section 18 of the IMIIL
FCA	Financial Conduct Authority (formerly Financial Services Authority)
FCA level 4	Relevant qualifications at level 4 on the Qualifications and Credits Framework published by Ofqual in the UK
Financial Adviser	Natural person authorised to give advice on retail investments products to retail clients
GIC	Guernsey Insurance Certificate
GFAS	Guernsey Financial Advice Standards
IMIIL	The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended
IMIIL COBR	The Licensees (Conduct of Business) Rules, 2009 issued under the IMIIL
Licensee	Any business which holds or is deemed to hold a licence under The Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended or The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended
New Staff	Staff that have not previously worked for an investment licensee or a licensed insurance intermediary that are employed after the implementation of GFAS and do not hold a relevant level 4 qualification.
POI Law	The Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended.
Relevant level 4 qualification	A qualification deemed acceptable by the Commission as complying with FCA level 4
Retail client	As set out in rule 7 of the Licensees Rules and New IMIIL COBR
Retail Investment Product	Falling under Schedule 1 of POI Law and of IMIIL, excluding contracts of insurance on human life, permanent health and credit life assurance that are payable annually. This definition is for the purpose of this consultation paper only
RDR	Retail Distribution Review conducted by the UK Financial Services Authority

Schedule to the Licensees Rules 2014	Schedule to the Licensees Rules setting out the matters that POI licensees must ensure that their Financial Adviser(s) undertake
SPS	Statement of Professional Standing
The Intermediary Rules	The Insurance Intermediaries (Conduct of Business) Rules to be issued under section 18 of the IMIL
The Licensees Rules	The Licensees (Conduct of Business) Rules, 2009
The Licensees Rules 2014	The Licensees (Conduct of Business) Rules, 2014 to be issued under sections 12,14, 15 and 16 of the POI Law
The Managers Rules	The Insurance Managers (Conduct of Business) Rules, 2014 to be issued under section 18 of the IMIL

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1: Executive Summary

1.1 Overview

This paper contains further details of the steps considered necessary by the Commission to implement Guernsey Financial Advice Standards (“GFAS”) following the response from industry and the public to the consultation paper issued by the Commerce and Employment Department (“C&E”).

C&E had identified that their proposals for GFAS would contain the following key areas:

- 1.1.1 Educational requirements: Licensed financial services businesses which offer financial advice to retail clients should be compliant with Financial Services Authority (“FSA”) (now the Financial Conduct Authority (“FCA”)) level 4 requirements.
- 1.1.2 Remuneration for providers: Both commissions (but requiring full disclosure) and fees will be allowed.
- 1.1.3 Definition of financial advice and capital requirements: It is proposed that some categorisation of advice should be introduced and the actual categories should be a matter for the Commission to determine in conjunction with industry.

C&E has proposed that GFAS will take effect from 1 January 2015.

To date the Commission has issued the following GFAS papers:

A consultation paper on the proposed implementation of GFAS in September 2013. In that paper, the Commission set out its proposals and intentions in respect of educational requirements for both existing and new staff members of investment and insurance intermediary licensees advising retail clients, the requirement for CPD, the written disclosure of remuneration and clarification of key definitions.

A feedback paper following the above consultation, published on 14 May 2014, which provided commentary on the responses received, set out the Commission’s conclusions in the light of those responses and the steps to be taken to progress the implementation of GFAS. The feedback paper was published together with the proposed table of acceptable qualifications, to be held by a Financial Adviser and introduced through the implementation of GFAS, and a guidance note on training and supervision schemes for Financial Advisers.

1.2 What is proposed?

This paper sets out the Commission’s proposals for:

- 1.2.1 the repeal of the Licensees (Conduct of Business) Rules, 2009 (“the Licensees Rules”) issued under Part III of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended (“the POI Law”) to be replaced by the Licensees (Conduct of Business) Rules, 2014 (“the Licensees Rules 2014”) which will, along with other changes as discussed in this document, include the insertion of a schedule setting out matters for the licensee to ensure that its Financial Advisers adhere to (the “Schedule to the Licensees Rules”);
- 1.2.2 the repeal of the Conduct of Business Rules (“the IMIIL COBR”) issued under section 18 of The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended (“the IMIIL”);

- 1.2.3 the repeal of the Code of Conduct for Authorised Insurance Representatives (“the AIR Code”) issued under section 18 of the IMIIL;
- 1.2.4 the issue of the Insurance Intermediaries (Conduct of Business) Rules (“the Intermediary Rules”) under section 18 of the IMIIL;
- 1.2.5 the issue of the Insurance Managers (Conduct of Business) Rules (“the Managers Rules”) under section 18 of the IMIIL;
- 1.2.6 the issue of the Code of Conduct for Financial Advisers (the “FA Code”) under section 18 of the IMIIL;
- 1.2.7 the issue of a new Code of Conduct for Authorised Insurance Representatives (“the New AIR Code”) under section 18 of the IMIIL such that this code will apply to all AIRs who are not Financial Advisers. This code will apply to AIRs for general insurance business and long term pure protection;
- 1.2.8 the wording of a condition to be imposed under section 5 of the POI Law on the licence of all POI licensees which are licenced for the activity of advising and who do not advise retail clients, that would create a formal restriction relating to advising retail clients;
- 1.2.9 the wording of the condition to be imposed under section 5 of the POI Law on the licence of all POI licensees which are licenced for the activity of advising to the effect that staff advising retail clients on controlled investments must be authorised by the POI licensee as a Financial Adviser.

1.3 Rationale for change

As explained in the consultation paper issued in September 2013, C&E has identified that the introduction of GFAS would protect and enhance Guernsey’s reputation as a leading International Financial Centre, provide better value service from more professional advisers and a more transparent fee structure - all of which should benefit consumers.

The implementation of GFAS is intended to increase professional standards, make adviser charging more transparent and reduce potential conflicts of interest. This will contribute to the protection of the public against financial loss due to potential dishonesty, incompetence or malpractice by persons carrying on finance business.

As set out in the feedback paper issued in May 2014, in order to implement GFAS, the Commission is proposing to take the opportunity, to streamline regulatory requirements where possible so that licensees are subject to common requirements.

1.4 Who would be affected?

All businesses licensed under the POI Law that are subject to the Licensees Rules and in particular those whose controlled investment business includes *advising* retail clients and those employed by these licensees to advise retail clients, in respect of controlled investments.

Insurance intermediaries licensed under the IMIIL, and their AIRs, advising on long term business as set out in Schedule 1 to the IMIIL, excluding permanent health, credit life assurance and any contracts on human life that are payable annually.

Insurance intermediaries licensed under the IMIIL, and their AIRs, in respect of the disclosure of the basis of, or the amount of, charges for services provided, in all cases of long term business including to non-retail clients.

Insurance intermediaries licensed under the IMIIL, and their AIRs, advising on general insurance business.

Insurance managers licensed under the IMIIL to the extent that the existing IMIIL COBR, which applies both to insurance managers and insurance intermediaries, is being repealed and replaced with rules which replicate the rules currently applying to insurance managers in the IMIIL COBR into the Managers Rules.

Insurance managers licensed under the IMIIL who have AIRs that advise retail clients on retail investment products.

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2: Consultation

2.1 Basis for the consultation

The Commission has issued this consultation paper in accordance with:

S13(1) of the POI Law which requires that “*Before making any rules under this Part of this Law [the Commission] shall, unless it considers that the delay involved would be prejudicial to the interests of investors, publish proposals for the rules in such manner as [the Commission] considers best calculated to bring them to the attention of persons likely to be affected by the rules [and the public in general], and shall [consider] any representations made to [the Commission] concerning those proposals.*” and

S18AB(1) of the IMIL under which the Commission, which requires that “*Before making any Conduct of Business Rules the Commission shall, unless it considers that the delay involved would be prejudicial to the interests of clients or policyholders or potential clients or policyholders, publish proposals for the Rules in such manner as the Commission considers best calculated to bring them to the attention of persons likely to be affected by them and the public in general, and shall consider any representations made to the Commission concerning those proposals.*”

2.2 Responding to the consultation

The Commission invites comments from interested parties on the questions and proposals included in this consultation paper. Each section, associated questions and paragraphs in relation to the proposed changes are numbered so wherever possible respondents should quote the question number and reference within this paper to which their comments relate.

To assist respondents the Commission has issued, in appendix 9 to this paper, a form setting out each question in this paper. This form can be downloaded from the Commission’s website and its use by respondents will assist the Commission in analysing representations received.

The Commission would ask that where comments are made by a financial services business it identifies the type of licence it holds and where comments are made by an industry body or association, that body or association should also provide a summary of the type and size of its membership and/or institutions that it represents.

It would help the Commission if respondents could be as specific as possible in their comments, indicating any matters that they consider a priority, and where costs are referred to, to quantify those costs.

If anyone wishes to discuss a specific scenario they are invited to set this out in an addendum for consideration.

2.3 Guide to the consultation paper

The Commission acknowledges that not all sections of this consultation paper will be relevant to all readers. To assist in considering the contents of this paper, the following table sets out the sections and appendices which are of primary importance to a licensee depending on the category of licence that is held by that licensee.

Licence held	Key sections of consultation paper	Key appendices
Investment – but not for the activity of advising	1-4, 5, 10	1, 9&10
Investment – including the activity of advising	1-4, 5, 11	1, 2, 7, 8, 9&10
Insurance intermediary – with long term business excluding contracts of insurance on human life, permanent health and credit life assurance that are payable annually	1-4, 6, 8	3, 5, 7, 8, 9&10
Insurance intermediary – with no long term business	1-4, 9	3, 6, 9&10
Insurance manager – with AIRs that advise on long term business excluding contracts of insurance on human life, permanent health and credit life assurance that are payable annually	1-4, 7, 8	4, 8, 9&10
Insurance manager – with no AIRs that advise on long term business excluding contracts of insurance on human life, permanent health and credit life assurance that are payable annually	1-4, 7	4, 9&10

2.4 Next steps

Please respond to this consultation paper, preferably by email to conduct@gfsc.gg by no later than 5.00pm on Friday 29 August 2014.

The Commission will take all responses into account and finalise the Licensees Rules 2014, the Intermediary Rules, the Managers Rules, the FA Code, the New AIR Code, and the wording of the two conditions, one of which will be imposed on the licence of each POI licensee that is licensed for the activity of advising.

Each of the above will come into effect on 1 January 2015.

3: The Commission

The Guernsey Financial Services Commission is the regulatory body for the finance sector in the Bailiwick of Guernsey. The Commission's primary objective is to regulate and supervise financial services in Guernsey, with integrity and efficiency, and in so doing, help to uphold the international reputation of Guernsey as a finance centre.

The Commission's general functions are prescribed in The Financial Services Commission (Bailiwick of Guernsey) Law, 1987, as amended as follows:

- To take such steps as the Commission considers appropriate or expedient for the effective supervision of finance business in the Bailiwick.
- To provide the States of Guernsey, the States of Alderney or the Chief Pleas of Sark with reports, advice and assistance with any matter connected with finance business.
- To prepare and submit to the States of Guernsey, the States of Alderney or the Chief Pleas of Sark reports, recommendations and schemes for the statutory regulation of finance business and generally for the revision of legislation appertaining to companies and other forms of business undertakings.
- The countering of financial crime and the financing of terrorism.
- To take such steps as the Commission considers necessary or expedient for
 - maintaining confidence in the Bailiwick's financial services sector, and
 - the safety, soundness and integrity of that part of the Bailiwick's financial services sector for which it has supervisory responsibility.
- All such other functions as the States of Guernsey may assign.

4: Background

4.1 Considerations driving the proposals

The FSA introduced the Retail Distribution Review (“RDR”) which was implemented in the UK from 1 January 2013 as a response in the UK to long-standing problems in the intermediary sector, especially around mis-selling.

C&E issued a consultation paper in 2012 which summarised the changes proposed in the RDR and invited comments on whether the changes proposed in the RDR should be considered for Guernsey. Following consideration of the responses to the consultation paper, C&E agreed that GFAS should become effective in 2015 and requested the Commission to take appropriate steps to implement GFAS accordingly.

4.2 Considerations underlying the proposals

Licensees advising retail clients on retail investment products may currently be subject to the POI Law and/or the IMIIL together with the Licensees Rules and/or the IMIIL COBR and AIR Code. This results in licensees that have both a POI licence and an IMIIL licence, being subject to two laws and two sets of conduct of business rules with the advisers of those licensed under IMIIL being subject to a code of conduct. The Commission is conscious that this is onerous for licensees as, depending on the product on which advice is given, the regulatory requirements facing the licensee differ.

As the vast majority of licensees that are affected by the implementation of GFAS fall into the category of being licensed under both laws, the Commission is proposing to streamline the regulatory requirements under both laws where possible.

4.2.1 Conduct of business rules

To introduce the requirements under GFAS, the Commission proposes to make changes to the requirements of the Licensees Rules as set out in section 5 of this paper. Also included are certain other proposed changes where the IMIIL COBR sets out requirements not currently in the Licensees Rules, such as in relation to the transfer of a book of business and others where the Licensees Rules require updating. As a number of changes are required, the Commission considers it most practical to repeal the Licensees Rules and replace these with the Licensees Rules 2014 with an effective date of 1 January 2015. The Commission having considered that to introduce these changes to the Licensees Rules by amendment would create confusion in the future on the effective date of prior requirements.

The Licensees Rules and IMIIL COBR are made under each of the POI Law and the IMIIL respectively and, as the Licensees Rules apply to POI licensees other than in respect of those that undertake the activity of advising, the most efficient method of achieving uniform requirements is to replicate the requirements of the Licensees Rules 2014, where relevant, into rules to be made under the IMIIL that will apply to insurance intermediaries. It is also noted that the Licensees Rules are more comprehensive than the IMIIL COBR and this underlies the Commission’s proposals regarding the changes being made.

Furthermore the existing IMIIL COBR set out requirements for both insurance intermediaries and insurance managers whose businesses are quite distinct. Indeed insurance managers that have no AIRs are currently subject to much reduced requirements within the IMIIL COBR in comparison to insurance intermediaries and those insurance managers with AIRs. Only those insurance managers with AIRs advising on retail investment products will be affected by GFAS. There are few insurance managers that fall into this latter category.

To address these anomalies, the Commission is proposing to repeal the existing IMIIL COBR with an effective date of 1 January 2015 with the simultaneous introduction of the Intermediary Rules and the Managers Rules. This is set out in sections 6 and 7 of this paper.

4.2.2 Code of conduct

The existing AIR Code is issued under the IMIIL and applies to AIRs in respect of both general and long term business. No equivalent code of conduct exists under the POI Law.

To address the anomaly in which those giving advice on controlled investments are not subject to a code of conduct whereas they would be if the advice was being given in respect of insurance intermediary business, the Commission is proposing to introduce a common set of requirements for all Financial Advisers who give advice on retail investment products.

The Commission proposes to incorporate the matters which Financial Advisers advising in relation to controlled investments are required to comply with under a schedule to the Licensees Rules 2014. This is because, unlike the IMIIL, the POI Law does not provide for the issue of a code in relation to persons acting as Financial Advisers.

For those advisers who provide advice on long term insurance, the Commission is proposing to introduce a new code (the FA Code) which is an update to the existing AIR Code, and includes the requirements of GFAS, in a more user-friendly manner. A new code (the New AIR Code), again an update to the existing AIR Code, is proposed to be introduced for AIRs who do not advise on retail investment products as the requirements in this respect differ to the requirements where advice is given on retail investment products.

The Commission therefore proposes to repeal the AIR Code with an effective date of 1 January 2015 and simultaneously introduce the FA Code and the New AIR Code. This is set out in sections 8 and 9 of this paper.

4.2.3 Condition on the licence of POI licensees

The IMIIL sets out that no individual shall, by way of business or in the course of employment, advise clients or arrange contracts of insurance unless that individual is an AIR whose actions and conduct is the responsibility of a licensed insurance intermediary, licensed insurer or licensed insurance manager. As a result of this an AIR must be appointed by the licensee for whom he works to give advice or arrange contracts. There is no similar requirement under the POI Law.

With the requirement of GFAS being placed upon those who advise retail clients on retail investment products to obtain a given standard of qualification, the Commission considers that it is also appropriate to introduce a requirement on POI licensees to authorise those who will give such advice. The Commission considered whether this requirement should be introduced through the POI Law itself, in a similar manner to the IMIIL. However, amendments to a primary law require considerably more time before they can be enacted which would mean that changes to the POI Law could not be completed and introduced within the timescale for the implementation of GFAS.

The Commission is therefore proposing to introduce a condition on the licence of those POI licensees, who are licensed for the activity of advising, requiring them to formally authorise those who provide advice to retail clients on retail investment products, in this case controlled investments, as Financial Advisers. Furthermore, the Commission also proposes to include in the Licensees Rules 2014 a notification requirement in respect of Financial Adviser authorisations and any subsequent changes to these authorisations.

To ensure that advice on retail investment products that are controlled investments is only given by the Financial Advisers of POI licensees, the Commission is also proposing to introduce a condition on the licence for those POI licensees who do not advise retail clients creating a formal restriction to this effect. POI licensees, licensed for the activity of advising, who do not have retail clients will therefore be unable to advise retail clients.

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5: Introduction of the Licensees Rules 2014

As set out in section 4.2.1 of this paper, the Commission proposes to repeal the Licensees Rules and replace them with the Licensees Rules 2014 with an effective date of 1 January 2015. The proposed Licensees Rules 2014 closely mirror the Licensees Rules and include a schedule incorporating the matters which Financial Advisers advising in relation to controlled investments are required to comply with (the “Licensees Rules 2014 Schedule”). The Commission also proposes to make some minor corrective amendments to some of the provisions set out therein.

5.1 Changes to the Licensees Rules

The proposed changes to the Licensees Rules, reflected in the Licensees Rules 2014 are as set out in appendix 1. This contains both the detail of the proposed changes and a blacklined version of the Licensees Rules showing the effect of these changes.

The requirements of the Licensees Rules 2014 which differ to the existing Licensees Rules are in respect of the interpretation, corporate governance, compliance arrangements, conduct of business, record keeping, complaints and notifications. The background to each of these proposed changes is explained in appendix 1.

5.2 Schedules to the Licensees Rules

5.2.1 Schedule 1 - Guidance on Corporate Governance in the Finance Sector in Guernsey

The Commission proposes to delete Schedule 1 to the Licensees Rules, Guidance on Corporate Governance in the Finance Sector in Guernsey, as this has been superseded by the Finance Sector Code of Corporate Governance. The Commission does not intend to replicate this latter document within the Licensees Rules 2014.

5.2.2 Schedule 2 – Compliance Return

The Commission proposes to number Schedule 2 in the Licensees Rules as Schedule 1 in the Licensees Rules 2014, replacing the references to this schedule in 1.2, 3.4.1 and 4.2.6 accordingly.

5.2.3 Insertion of a new Schedule 2 to the Licensees Rules 2014

The Commission proposes to introduce a new Schedule 2 to the Licensees Rules 2014 which sets out the responsibilities of the financial adviser, on behalf of the licensee, when advising retail clients on retail investment products. The proposed schedule has been based on the requirements of the AIR Code and the increased disclosure requirements within GFAS which have been incorporated into the FA Code.

The Commission would have preferred to have introduced a common code of conduct for all Financial Advisers advising on retail products however this is not possible within the current legislative framework and the timescale for the implementation of GFAS. This is because the POI Law does not give the Commission the ability to make codes applicable to POI licensees.

The proposed Schedule to the Licensees Rules 2014 and the proposed FA Code incorporate the same matters which Financial Advisers advising on controlled investments or long term insurance business, excluding contracts of insurance on human life, permanent health and credit life assurance that are payable annually, are required to comply with. This provides the Financial Adviser with

common responsibilities to the client regardless of the product upon which advice is provided creating a more constructive and transparent framework in which to operate.

The proposed Schedule to the Licensees Rules 2014 is set out in Appendix 2 to this consultation paper.

Questions for respondents:

- 1 Do you consider that the proposed additional definitions and changes to the existing definitions in the Licensees Rules are clear and unambiguous? If not, please explain your reasons and suggest alternative text which is consistent with this consultation paper.**
- 2 Do you consider that the proposed changes to the wording in the Licensees Rules as set out in appendix 1 are clear and unambiguous? If not, please explain your reasons and suggest alternative text which is consistent with this consultation paper.**
- 3 Do you foresee any significant problems with the introduction of the proposed Licensees Rules 2014? If yes, please identify the issue(s).**
- 4 Do you consider that the proposed Schedule to the Licensees Rules 2014 is clear and unambiguous? If not, please explain your reasons and suggest alternative text which is consistent with this consultation paper.**
- 5 Do you foresee any significant problems with the introduction of the proposed Schedule to the Licensees Rules 2014? If yes, please identify the issue(s).**

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6: Introduction of the Intermediary Rules

As explained in section 4.2 of this paper, the Commission is proposing to repeal the existing IMIIL COBR on 1 January 2015 with the simultaneous introduction of the Intermediary Rules and the Managers Rules.

The draft of the proposed Intermediary Rules has been based on the proposed Licensees Rules 2014 as set out in appendix 1 of this paper. These rules are proposed to replace the Licensees Rules as explained in section 5 of this paper. Wherever possible, rule numbering and titles in the Intermediary Rules mirror those in the Licensees Rules 2014 and, to the extent reasonably possible, the requirement of the rule is consistent across both sets of rules. Where the nature of the business differs between the sectors, the requirement of the Licensees Rules 2014 has been translated into terms appropriate for insurance intermediaries. The Commission also proposes to make some minor corrective amendments to some of the provisions set out therein.

The Commission has also taken the opportunity to introduce an interpretation into the Intermediary Rules and include rules relating to notifications to consistently reflect notification requirements within the Licensees Rules 2014.

Appendix 3 contains the wording of the proposed Intermediary Rules.

Questions for respondents:

- 6 **Do you consider that the requirements of the Intermediary Rules are clear and unambiguous? If not, please identify the rule number and explain your reasons. Please also suggest alternative text which is consistent with this consultation paper.**
- 7 **Do you foresee any significant problems with the introduction of the Intermediary Rules? If yes, please identify the issue(s).**

7: Introduction of the Managers Rules

As explained in section 4.2 of this paper, the Commission is proposing to repeal the existing IMIIL COBR on 1 January 2015 with the simultaneous introduction of the Intermediary Rules and the Managers Rules.

The draft of the proposed Managers Rules has been based on the existing IMIIL COBR and reflects, in the main, the current requirements of the IMIIL COBR. Minor changes have been made to the main body of these rules to make clear that these rules are specific to insurance managers and to correct minor errors.

The Principles of Conduct of Finance Business have been inserted to emphasise their continuing relevance and their inclusion is consistent with the Licensees Rules 2014 and the Intermediary Rules.

However insurance managers who advise retail clients in respect of retail investment products will be subject to the requirements of the Intermediary Rules for this segment of their business. Although insurance managers in this situation may be subject to two sets of conduct of business rules, the Commission believes that this circumstance will be rare.

Appendix 4 contains the wording of the proposed Managers Rules.

Questions for respondents:

- 8 Do you consider that the requirements of the Managers Rules are clear and unambiguous? If not, please identify the rule number and explain your reasons. Please also suggest alternative text which is consistent with this consultation paper.**
- 9 Do you foresee any significant problems with the introduction of the Managers Rules? If yes, please identify the issue(s).**

8: Introduction of the FA Code

As explained in section 4.2 of this paper, the Commission is proposing to repeal the AIR Code on 1 January 2015 and simultaneously introduce the FA Code and the New AIR Code.

The proposed FA Code has been based on the requirements of the AIR Code in a more user-friendly manner and incorporates increased disclosure as set out in GFAS.

Appendix 5 contains the wording of the proposed FA Code.

Questions for respondents:

- 10 Do you consider that the requirements of the FA Code are clear and unambiguous? If not, please identify the reference number and explain your reasons. Please also suggest alternative text which is consistent with this consultation paper.**
- 11 Do you foresee any significant problems with the introduction of the FA Code? If yes, please identify the issue(s).**

9: Introduction of the New AIR Code

As explained in section 4.2 of this paper, the Commission is proposing to repeal the AIR Code on 1 January 2015 and simultaneously introduce the FA Code and the New AIR Code.

The proposed New AIR Code has been based on the requirements of the AIR Code and omits those requirements that are no longer of relevance or which are applicable through the FA Code. The New AIR Code will apply to general insurance and long term business that has been excluded from the requirements of GFAS i.e. contracts of insurance on human life, permanent health and credit life assurance that are payable annually.

Appendix 6 contains the wording of the proposed New AIR Code.

Questions for respondents:

- 12 Do you consider that the requirements of the New AIR Code are clear and unambiguous? If not, please identify the reference number and explain your reasons. Please also suggest alternative text which is consistent with this consultation paper.**
- 13 Do you foresee any significant problems with the introduction of the New AIR Code? If yes, please identify the issue(s).**

10: Condition to be placed on the licence of POI licensees, licenced for the activity of advising, who do not advise retail clients, creating a formal restriction to this effect

As explained in section 4.2 of this paper, the Commission is proposing to restrict those POI licensees who do not provide advice to retail clients on retail investment products (controlled investments) from providing advice to retail clients.

The proposed wording for this condition is as follows:

“The Licensee shall not provide advice on controlled investments to retail clients.”

Questions for respondents:

- 14 Do you foresee any significant problems with the introduction of a requirement that POI licensees who do not advise retail clients shall not do so by way of a condition on their licence? If yes, please explain your reasons.**
- 15 Do you consider that the wording of the proposed condition is clear and unambiguous? If not, please explain your reasons and suggest alternative text which is consistent with this consultation paper.**

11: Condition to be placed on the licence of POI licensees, licenced for the activity of advising, that those advising retail clients on controlled investments must be authorised as a Financial Adviser

As explained in section 4.2 of this paper, the Commission is proposing to require POI licensees to authorise those employees who provide advice to retail clients on controlled investments as Financial Advisers by way of a licence condition.

The proposed wording for this condition is as follows:

“The Licensee shall authorise as a Financial Adviser, any individual who, in the course of his or her employment, provides advice to a retail client on controlled investments and such advice shall only be provided by authorised Financial Advisers.”

Questions for respondents:

- 16 Do you foresee any significant problems with the introduction of a requirement for POI licensees to formally authorise as a Financial Adviser an employee who provides advice to retail clients on retail investment products? If yes, please explain your reasons.**
- 17 Do you consider that the wording of the proposed condition is clear and unambiguous? If not, please explain your reasons and suggest alternative text which is consistent with this consultation paper.**

12: Qualification table and guidance note on training and supervision schemes for Financial Advisers

As mentioned in the executive summary, the Commission has published the proposed table of Acceptable Qualifications that will be introduced through the implementation of GFAS. This table establishes those qualifications that are of an acceptable standard to be held by a Financial Adviser.

Employees to whom this table will apply are those who are to be authorised as a Financial Adviser, by either a POI or IMIL licensee, to give advice to retail clients. Existing advisers, who become authorised as Financial Advisers on the introduction of the GFAS on 1 January 2015 will be required to obtain a qualification on the proposed table of Acceptable Qualifications and/or complete sufficient gap fill as identified by their appropriate professional body by 31 December 2015. Licensees will be required, through the Licensees Rules 2014 or Intermediary Rules as appropriate, to ensure that each of its financial advisers holds such qualification to at least the minimum standard as published by the Commission from time to time or satisfy such requirements as the Commission may determine.

After 1 January 2015 a new employee who is to give advice to retail clients on retail investment products must either already hold a qualification on the proposed table of Acceptable Qualifications or have obtained the regulatory module of a qualification before that employee can be authorised as a Financial Adviser. Those in this latter category will have a 30 month period to complete a qualification on the proposed table of Acceptable Qualifications following authorisation as a Financial Adviser.

These requirements are set out in rule 3.6 of the Licensees Rules 2014 and rule 3.5 of the Intermediary Rules together with the Guidance Note published by the Commission on Training and Supervision Schemes for Financial Advisers. This guidance note will assist licensees to design and implement a supervision scheme for their Financial Advisers.

In addition, the Commission will be issuing a Guidance Note on Training and Competency Schemes for Financial Advisers. The Commission acknowledges that the Guidance Note that has been issued on Training and Supervision Schemes for Financial Advisers includes elements relating to training which will be revised in conjunction with the Guidance Note on Training and Competency Schemes. Both guidance notes will be published on the Commission's website later this quarter.

The proposed changes to the Licensees Rules and the Intermediary Rules will require a licensee to refer to these guidance notes in the conduct of their business.

These documents are included in appendix 7 and 8 respectively.

Questions for respondents:

- 18 Do you foresee any significant problems with the proposed table of Acceptable Qualifications? If yes, please explain your reasons.
- 19 Do you consider that the wording of the minimum supervision requirements in the Guidance Note on Training and Supervision Schemes for Financial Advisers is clear, unambiguous and sufficient? If not, please explain your reasons and suggest alternative text which is consistent with this consultation paper.

Appendix 1

The proposed Licensees Rules 2014

This appendix sets out the detail of the proposed changes to be made to the current wording in the Licensees Rules. The references in the detail set out below are to the number of the existing rule in the Licensees Rules, unless otherwise stated.

To put the proposed changes into context a blacklined version of the proposed Licensees Rules 2014 can be accessed through this link; [Licensee's Conduct of Business Rules, 2014](#)

Rule 1.1 - Introduction

Through the proposed introduction of the Licensees Rules 2014, rule 1.1.1 will read as follows:

“1.1.1 These rules may be cited as the Licensees (Conduct of Business) Rules 2014 and shall come into operation on 1 January 2015.”

Rule 1.2 - Interpretation

The Licensees Rules 2014, unless the context otherwise requires, will contain expressions as defined in the POI Law which have the same meaning as they have in the POI Law together with other expressions with meanings assigned to them in rule 1.2.1 of the Licensees Rules 2014.

Several of the expressions proposed for inclusion within 1.2.1 of the Licensees Rules 2014 are as a direct result of the inclusion of the proposed Schedule to the Licensees Rules 2014 in which these terms are used. Their inclusion in the interpretation is to add clarity to the meaning of these expressions within the Schedule to the Licensees Rules 2014; the proposed contents of which is set out in appendix 2.

The Commission is proposing to introduce the following expressions within 1.2.1 of the Licensees Rules 2014:

Advertisement

“advertisement” means every form of advertising, whether in a publication or by the display of notices or by means of circulars or other documents or by an exhibition of photographs or cinematograph films or by way of sound broadcasting or television or any other electronic media, and advertising shall be construed accordingly;

The meaning of the word “advertisement” in section 44 of the POI Law does not include the phrase “or any other electronic media”. The Commission notes that the meaning of “advertisement” within Schedule 3 of the IMIIL explicitly refers to “any other electronic means” which, but for the time to amend the POI law, would have been reflected in the changes being proposed. That said the Commission considers that, for the avoidance of doubt, electronic means should be included within the interpretation within the Licensees Rules 2014.

Attitude to investment risk

“attitude to investment risk” means the investment risk a client is prepared to accept to achieve their financial goals;

This term is used in the proposed Schedule to the Licensees Rules 2014.

Authorised insurance representative

“authorised insurance representative” means an individual authorised in accordance with section 16 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002;

This term is used in the proposed Schedule to the Licensees Rules 2014.

Block of business

“block of business” means business that increases or reduces the fee income of the licensee by 15% or more, such figure being calculated using the last audited accounts of the licensee and that includes any retail clients;

This relates to an existing requirement of the IMIIL COBR whereby the licensee is required to obtain the prior written consent of the Commission in respect of the transfer of a block of business. The Commission is proposing to introduce this requirement where the transfer includes retail clients. This is set out in the proposed changes to rule 5.2.

Capacity for loss

“capacity for loss” means the financial loss a client could tolerate without a detrimental effect to their standard of living at the date of investment or inception of the policy;

This term is used in the proposed Schedule to the Licensees Rules 2014.

Complaint

“Complaint” means any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of a person about the provision of, or failure to provide a financial service which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience;

As this term is not currently defined, the above meaning is proposed to provide clarity to licensees on what should be considered as a complaint

Financial Adviser

“financial adviser” means a person authorised by a *licensee* to give advice to *retail clients* on *controlled investment business*;

Long term insurance product

“long term insurance product” means any policy or product falling under schedule 1 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, excluding permanent health, credit life assurance and any contracts on human life that are renewable annually;

This term is used in the proposed Schedule to the Licensees Rules 2014.

Other relevant legislation or standards

“other relevant legislation or standards” means any legislation or enactment enacted to enable the Commission to supervise the carrying on of *controlled investment business*. Other standards include codes or standards (however described) of professional bodies that *financial advisers* may belong to, for example, the Chartered Institute for Securities and Investment;

This term is used in the proposed Schedule to the Licensees Rules 2014.

Shortfall provisions

“shortfall provisions” means that where a policyholder exercises his right to cancel a contract he may not get a full refund of the money he has paid if the value of the investment falls before the cancellation notice is received by the provider.

This term is used in the proposed Schedule to the Licensees Rules 2014.

Statement of professional standing

“statement of professional standing” means a certificate issued by a body listed in the guidance note on training and competency schemes issued by the Commission;

The Commission is also proposing to change the current expressions in the Licensees Rules in the following:

“board”

The Licensees Rules 2014 will consistently have the first letter capitalised to read “Board”, including in the interpretation in 1.2.1. Although this change is immaterial, the Commission does not wish to make a change without notice.

“the Licensees Rules”

This will be changed to reflect the new rules and read

“the Licensees Rules” means the Licensees (Conduct of Business) Rules 2014”

“Relevant Person”

Insert after “(b) a *director*, partner or equivalent, or *manager* of any *agent* of the licensee;” the following:

“(c) a *financial adviser*;”

whilst re-referencing the existing (c) and (d) to read (d) and (e) respectively.

This change is to reflect the importance of the *financial advisers* of a licensee.

“Significant Complaint”

Delete the following from the existing meaning of this expression “and a complaint shall not be treated as significant if it relates to a minor mechanical or clerical error”. This expression is now proposed to read:

““significant complaint” means a *complaint* alleging a breach of *the Law*, mala fides, malpractice or impropriety, or repetition or recurrence of a matter previously complained of (whether significant or otherwise);”

This wording is no longer relevant as complaint is proposed to be defined in the interpretation.

Rule 2 - Corporate Governance and Senior Management Responsibility in respect of Controlled Investment Business

2.1 Corporate Governance

The Commission is proposing to change the requirements of rule 2.1.2 to remove reference to the document entitled Guidance on Corporate Governance in the Finance Sector in Guernsey as this has been superseded by the Finance Sector Code of Corporate Governance. This rule is now proposed to read:

“In meeting the requirements of *the Licensees Rules*, the *Board* of the *licensee* must evaluate and record the assessment of its compliance with “The Finance Sector Code of Corporate Governance” or any successor codes. The *Board* should also refer to Rule 3.”

Board responsibility for financial advisers

The Commission is proposing to insert, after rule 2.1.6, the following:

“2.1.7 It is responsibility of the Board of a *licensee* to ensure that the activities of a *financial adviser* are reviewed and managed by a suitably qualified and experienced individual.

2.1.8 In meeting the requirements of rule 2.1.7, the *licensee* shall refer to the Guidance Note on Financial Adviser Supervision Schemes issued by *the Commission* as amended or replaced from time to time.”

This insertion reflects the obligation for the board of a licensee to take responsibility for the actions and conduct of a financial adviser.

Rule 3 – Compliance Arrangements

3.3 Compliance Monitoring Programme

The Commission is proposing to change the requirements of rule 3.3.1 (e) to remove reference to the document Guidance on Corporate Governance in the Finance Sector in Guernsey as this has been superseded by the Finance Sector Code of Corporate Governance. This is now proposed to read:

“In meeting the requirements of *the Licensees Rules*, *the Law* and any other rules made under *the Law*, the *Board* of a *licensee* must evaluate and record the evaluation of its compliance with the Finance Sector Code of Corporate Governance or any successor codes.”

3.6 Employee Training

Training and competency

The Commission is proposing to change the requirements of rule 3.6 to insert, after “3.6.1 The *Board* of the *licensee* is responsible for *employee* training.”, the following:

“3.6.2 Every *licensee* shall create and implement a training and competency scheme for all *employees* appropriate to the nature and scale of the *licensee*’s business.

3.6.3 In meeting the requirements of rule 3.6.2, the *licensee* shall refer to the Guidance Note on Training and Competency Schemes issued by *the Commission*.”

whilst re-referencing the existing 3.6.2 and 3.6.3 to read 3.6.4 and 3.6.5 respectively.

Minimum qualifications for Financial Advisers

The Commission is proposing to insert, after rule 3.6.3, re-referenced to “3.6.5 The *licensee* shall maintain a training log to record the training directors and employees of a *licensee* receive.” the following:

“3.6.6 The *licensee* and its *Board* shall ensure that each of its *financial advisers* hold such qualifications to at least the minimum standard as published by *the Commission* from time to time or satisfy such requirements as *the Commission* may determine.

For the avoidance of doubt, *the Commission* may specify time periods in which such qualifications must be obtained and the *licensee* and its *Board* must ensure that its *financial advisers* obtain the qualifications within the relevant time periods.

In the event that the qualifications are not obtained within the relevant period by any *financial adviser* of the *licensee*, the *licensee* and its *Board* must take such steps as are necessary to revoke the authorisation of the *financial adviser* and stop that individual from providing advice to retail clients until such time as the necessary qualifications are obtained. At that time, the *licensee* and its *Board* may wish to authorise that individual as a *financial adviser*.

3.6.7 In meeting the requirements of rule 3.6.6, the *licensee* shall refer to the Guidance Note on Financial Adviser Supervision Schemes issued by *the Commission*.

3.6.8 A *financial adviser* shall carry out and record a minimum of thirty five hours of continuing professional development per annum, of which a minimum of twenty one hours shall be structured continuing professional development.

3.6.9 In meeting the requirements of rule 3.6.8, the *licensee* shall refer to the Guidance Note on Training and Competency Schemes issued by *the Commission*.

3.6.10 A *licensee* shall obtain a *statement of professional standing* from each *financial adviser* within three months of the end of a *financial adviser's* continuing professional development period. Where a *statement of professional standing* is not provided to the *licensee* by a *financial adviser*, that *financial adviser's* authorisation as a *financial adviser* shall be revoked until such time as a *statement of professional standing* has been obtained.”

These proposed insertions introduce the requirements of GFAS.

Rule 5 – Conduct of Business

5.1 Fitness and propriety

The Commission is proposing to insert, after the guidance note in rule 5.1.1 the following:

“5.1.2 A *licensee* must have adequate and effective systems of control in place to ensure that its *financial advisers* comply with the requirements of schedule 2.”

This insertion reinforces the requirement for the licensee to take responsibility for the actions and conduct of financial advisers as set out in a recognised standard of professional conduct to which the financial adviser is expected to comply.

5.2 Client relations – 5.2.1 Client agreements

The Commission is proposing to change the requirements of rule 5.2.1.(b) to replace the word “should” with the word “must”. This is now proposed to read:

“(b) If the *licensee* is to provide *investment services* on an execution-only basis, the basis and terms on which the services are provided must be set out in adequate detail and signed by both the *licensee* and the *client*;

5.2 Client relations – 5.2.2 Suitability

The Commission is proposing to change the requirements of rule 5.2.2.(c)(iii) to replace the words “disclosed by that client” with the word “obtained by the *licensee*”. This is now proposed to read:

“(iii) unless the recommendation or transaction is suitable for him having regard to the facts obtained by the *licensee*, the terms of any agreement with that client, and other relevant facts about the client of which the *licensee* is, or reasonably should be, aware.”

This proposed change places the emphasis on the *licensee* to ensure that sufficient facts are obtained from the client in respect of the proposed recommendation or transaction for this to be considered suitable.

5.2 Client relations – 5.2.3 Disclosure

The Commission is proposing to change the requirements of 5.2.3.(a) by deleting the following: “the regulatory history of the *licensee* (including any disciplinary history) and the basis or amount of its charges for the provision of those services”.

This is now proposed to read:

“(a) Before a *licensee* provides *investment services* to a *client*, it must disclose to him in writing the professional experience of the *licensee*.”

The Commission considers it appropriate to relax the disclosure requirement of regulatory history by a licensee because, where circumstances require it, this is generally achieved through a public statement by the Commission and published on its website. Less significant matters of regulatory history are matters for the Commission and the Licensee alone.

Disclosure of the basis or amount of its charges for the provision of services is proposed to be introduced under a separate heading as set out in the following paragraph.

5.2 Client relations – 5.2.4 Fees, Charges and Commission (new sub-heading)

The Commission is proposing to insert, after the rule in 5.2.3 Disclosure, the following:

“5.2.4 Fees, Charges and Commission

(a) Before entering into an agreement to provide *investment services* to a *client*, a *licensee*

shall disclose to the client in writing all fees and charges for providing those services.

- (b) A *licensee* shall disclose any and all remuneration to be received in connection with a transaction prior to the execution of the transaction. If the amounts are not known, then the basis of calculation shall be provided.

whilst re-referencing the existing 5.2.4. to read 5.2.5 both in the numbering of that rule and within the rule itself.

5.2 Client relations – 5.2.6 Business Transfer (new sub-heading)

The Commission is proposing to insert, after the rules in 5.2.5 Periodic Information (new numbering), the following:

“5.2.6 Business Transfer

- (a) A *licensee* shall obtain the prior written consent of *the Commission* in respect of any transfer of a *block of business* to or from the *licensee*, where such transfer has occurred at the *licensee's* instigation or with their agreement.”

This proposal reflects the existing requirements within the IMIIL COBR with the view to streamlining requirements within the conduct of business rules and is proposed to be introduced where the transfer includes retail clients.

5.4 Promotion

The Commission proposes to retitle this rule as “5.4 Promotion and Advertising” as this rule contains requirements in respect of both these terms.

5.4.1 Issue of materials

The Commission is proposing to change the requirements of 5.4.1 to read

“5.4.1 The *licensee*, if responsible for promotion and *advertising*, must ensure that any materials issued:-

- (a) are clear, fair and not misleading;
- (b) do not contain any statement, promise or forecast which is untrue;
- (c) are not designed in such a way as to distort or conceal any relevant subject material;
- (d) are clearly recognisable as an *advertisement*;
- (e) are not likely to be misunderstood;
- (f) where appropriate state that the investment value is not guaranteed or that the value may fluctuate;
- (g) do not employ phrases such as “tax-free” or “tax-paid” without making clear which taxes

are being referred to, and

- (h) do not contain information about past performance unless it contains a warning that past performance is not necessarily a guide to future performance.

whilst re-referencing the existing 5.4.1.(b) to read 5.4.3 with a sub-heading of “Overseas Promotion and Advertising” and as set out below.

This proposal reflects the existing requirements within the IMIIL COBR with the view to streamlining requirements within the conduct of business rules.

5.4.2 Regulatory status

The Commission is proposing to insert, after the rules in 5.4.1., a sub-heading “Regulatory Status”, and the following:

“5.4.2 The regulatory status of the *licensee* is to be included on all communications.”

This proposal reflects the existing requirements within the IMIIL COBR with the view to streamlining requirements within the conduct of business rules.

5.4.3 Overseas Promotion and Advertising

“(a) A *licensee* shall take all reasonable steps with a view to ensuring that any form of promotion or *advertising* in a country or territory outside of the Bailiwick of Guernsey is in accordance with the laws and regulations in force in that country or territory.”

Rule 6 – Record Keeping

The Commission is proposing to insert, after the rules in 6.1.6., the following:

“6.1.7 Where a *financial adviser* recommends the early redemption, lapsing or partial or full withdrawal of *controlled investment business*, details of such occurrences shall be maintained, together with an explanation of the reasons for such occurrences, or evidence that such an explanation has been sought, even if not received.”

This proposal reflects the existing requirements within the IMIIL COBR with the view to streamlining requirements within the conduct of business rules.

Rule 8 – Complaints

8.1 Complaints Procedure

The Commission is proposing to insert, after the words “effective consideration and” in 8.1.1., the words “fair and”. This is now proposed to read:

“Every *licensee* must have in operation, and ensure compliance with, a written procedure for the effective consideration and fair and proper handling of any *complaints* relating to the *licensee’s controlled investment business*, howsoever received.”

This proposed wording reflects the requirements of principles 1 and 2 of The Principles of Conduct of Finance Business by requiring licensees' complaints procedures to be fair.

8.2 Notifications

The Commission is proposing to delete the word “*significant*” in 8.2.1. This is now proposed to read:

“If a *complaint* remains unsettled for longer than three months from the date of the licensee becoming aware of the complaint, the *licensee* shall inform *the Commission* within fourteen days and shall also advise the complainant that he may inform *the Commission* directly of his *complaint*.”

The Commission considers that, complaints which remain unsettled, may also be an indicator of regulatory matters of concern that should be brought to its attention. This requirement is consistent with the IMIL COBR.

The Commission is also proposing to insert, after the rule in 8.2.1., the following:

“8.2.2 The *licensee* shall inform *the Commission* within fourteen days upon it becoming aware of a *significant complaint* and shall also advise the complainant that he may inform *the Commission* directly of his *complaint*.”

8.2.3 The *licensee* shall inform *the Commission* within fourteen days upon it becoming aware of a series of *complaints* regarding any *one employee*, whether a current *employee* or not.”

whilst re-referencing the existing 8.2.2 to read 8.2.4.

The Commission considers that it should receive prompt notification of significant complaints as this may indicate a breakdown in a Licensee's compliance with the minimum criteria for licensing. The notification will be used by the Commission, as an indicator, in its risk based approach to supervision. This is reflected in the change to 8.2.1 and the addition of 8.2.2.

The second proposed addition will provide the Commission with details of complaints which may have a systemic nature and therefore may indicate a breakdown in a Licensee's compliance with the minimum criteria for licensing. As set out in 4.2 above, the Commission is taking the opportunity to update the conduct of business rules, consistent with its risk-based approach, in the process of implementing GFAS.

Rule 10 – Contract Notes

10.2 Contents and other requirements

The Commission is proposing to change the requirements of rule 10.2.1.(j) to replace the word “commission” with the word “remuneration”. This is now proposed to read:

“(j) whether any remuneration is or will be payable in connection with the transaction by or on behalf of (or to) the *licensee* or an *associate* and, if so, to (or from) whom; and”

This wording reflects the disclosure requirements of GFAS.

Rule 12 – Immediate Notifications

The Commission is proposing to retitle this rule to read “Notifications”.

Amongst other matters, the Commission is proposing to change the requirements of rule 12 by deleting the word “forthwith” within this rule, replacing this with either “within seven days” or “within fourteen days” as considered appropriate. This is to facilitate the introduction of online submission. As this affects the wording of a number of the requirements within this rule, these changes are not detailed in this part of this appendix. However the blacklined version of the Licensees Rules shows each of these changes.

The proposed changes to the notification requirements of rule 12 which do not relate to replacing “forthwith” are as follows:

12.3 Key Employees

The Commission is proposing to insert, after the rule in 12.3.1.(a)(iii), and likewise after the rule in 12.3.1.(b)(iii), the following:

“(iv) a *financial adviser*”.

This creates a notification requirement in respect of those who are authorised by the licensee as a financial adviser.

12.4 Information regarding key employees

The Commission is proposing to insert, after the rule in 12.4.1.(d), the following:

“(e) Any breach of schedule 2 by a *financial adviser*.”

This creates a notification requirement on the licensee, who is responsible for the actions and conduct of the financial adviser, to be aware of instances where the financial adviser fails to comply with the conduct requirements set out in the proposed Schedule to the Licensees Rules 2014 and notify the Commission accordingly.

Furthermore, the Commission proposes to introduce the following requirement through the insertion, after the proposed 12.4.1(e), of the following:

“12.4.2 A notice under Rule 12.4.1 shall include a statement of the circumstances and all known matters related to the reason for the notification.”

12.10 Written notice

The Commission is proposing to insert the words “or holding company” after the word “subsidiary” in rule 12.10.1.(d) of the Licensees Rules. This is now proposed to read

“(d) the liabilities of a *subsidiary* or *holding company* of the *licensee* exceed its assets.”

This insertion addresses the situation where the financial position of a *holding company* may impact on the licensee.

Appendix 2
The proposed Schedule to the Licensees Rules

[Schedule 2 of the Licensee's Conduct of Business Rules 2014](#)

Appendix 3
The proposed Intermediary Rules

[The Insurance Intermediaries Conduct of Business Rules 2014](#)

Appendix 4
The proposed Managers Rules

[The Insurance Managers Conduct of Business Rules 2014](#)

Appendix 5
The proposed FA Code

[The Code of Conduct for Financial Advisers](#)

Appendix 6
The proposed New AIR Code

[The Code of Conduct for Authorised Insurance Representatives](#)

Appendix 7
The proposed table of acceptable Qualifications

[Proposed Table of Acceptable Qualifications](#)

Appendix 8

Guidance Note on Training and Supervision Schemes for Financial Advisers

This Guidance Note is written to assist licensees in designing and implementing a training and supervision scheme (“the Scheme”) for their Financial Advisers (“FAs”). The term FA encompasses advisers of POI licensees advising retail clients on controlled investments products, general securities and general derivatives and AIRs providing advice on long term insurance products excluding pure protection products, permanent health, credit life assurance and any contracts on human life that are renewable annually.

The information below is based on the current proposals within the Guernsey Financial Advice Standards (“GFAS”) and may be subject to further refinement prior to implementation of GFAS on 1 January 2015.

Licensees are required to authorise their FAs and are ultimately responsible for their actions. The licensee should therefore be able to demonstrate that the individuals are competent in their roles. GFAS requires all FAs providing advice to retail clients to be qualified to a suitable level as determined by the Commission.

All licensees should have a Scheme in place which monitors their FAs for compliance with the Principles of Conduct of Finance Business and relevant laws, codes, rules and regulations. In addition the Scheme should assess training needs and competence whilst minimising risks to clients and policyholders. One of the Commission’s objectives is to improve standards within the financial advice sector and to assist in achieving this it is essential that licensees ensure their staff are properly trained and competent and records evidencing that adequate supervision is taking place are maintained.

Schemes should be used from the very start of the recruitment process. A new FA’s level of competence should be assessed prior to recruitment so that the licensee can identify areas for development. It is suggested that each scheme differentiates, as a minimum between:

1. Unqualified
2. Part Qualified
3. Fully Qualified (holding a qualification as listed on the GFAS Acceptable Qualification Table)

The level of supervision required should reflect the level of competence of the FA. In other words, the Commission would expect a new, unqualified entrant to be closely supervised whilst those who are deemed competent through qualifications and experience will require less frequent monitoring. For those who are not yet fully qualified the Scheme should plan a progress path which the FA can follow.

Minimum Supervision Requirements

Below are examples of areas of supervision which should be considered by licensees for each level of competence. The list is not prescriptive or exhaustive but gives guidance as to the minimum level of supervision expected by the Commission.

1. Unqualified

The employee should have a designated, fully qualified supervisor or mentor responsible for their development.

The employee may not provide verbal or written advice to any retail client. They may assist with obtaining information and drafting documentation.

2. Part Qualified

An employee may be appointed as an FA and provide advice to a retail client upon successful completion of the regulatory module of the level 4 qualification they have chosen to pursue providing the Licensee is satisfied with the FA’s progress and competence.

The FA should initially be supervised in all client meetings and substantive telephone calls monitored. Supervision may be incrementally reduced, depending on the licensee's assessment of the FA's competence, as the FA progresses with qualifications and gains experience as deemed appropriate by the licensee.

All documentation and advice, including correspondence by email, should be reviewed by a fully qualified FA prior to the part qualified FA presenting the recommendation to the client.

The FA has 30 months (subject to certain exceptions) from the date of appointment as an FA to obtain an acceptable qualification. If the FA is unable to meet this deadline, their appointment as an FA must be revoked and they must cease to provide advice to retail clients. They may be re-appointed once the qualification has been successfully completed and the licensee is satisfied with their overall level of competence.

3. In All Cases (including fully qualified)

When a new FA is employed, the licensee should make an assessment of their knowledge and competence before the FA is permitted to advise clients.

The FA should have a structured and documented training program tailored to their qualification needs, experience and competence.

There should be an ongoing and documented assessment of an FA's competency, which may include observed client meetings, one to one meetings and ad-hoc file reviews.

The Licensee will be required to obtain an annual Statement of Professional Standing from the relevant professional body for each FA.

The Licensee should collect sufficient management information to enable them to effectively monitor the activities of their FAs.

Supervision and peer review must be performed by a fully qualified and experienced individual.

It is expected that all Schemes will be designed so that they are easy to use, well documented and transparent to the Licensee, the FA and the Commission.

For the period 1 January 2015 to 31 December 2015, supervision and peer review may be carried out by an existing long term AIR or POI Adviser. From the 1 January 2016, this role MUST be performed by an FA holding a qualification listed on the GFAS Acceptable Qualification Table.

May 2014

Appendix 9

Response to the consultation paper proposed revisions to the regulatory regime on the implementation of Guernsey Financial Advice Standards

Consultation response form

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Appendix 10

List of representative bodies who have been sent this consultation paper

- Bailiwick Insurance Intermediaries Association (BIIA)
- BPP Jersey
- CFA Society of the UK
- Chief Pleas of the Government of Sark
- Guernsey Compliance Officers Association (GACO)
- Guernsey Finance Limited
- Guernsey International Business Association (GIBA)
- Guernsey Investment Fund Association (GIFA)
- Guernsey Investment Managers & Stockbrokers Association (GIMSA)
- GTA University Centre
- Insurance Institute of Guernsey (IIG)
- States of Alderney
- States of Guernsey, Commerce & Employment Department
- The Chartered Institute for Securities and Investment (CISI);
- The Chartered Institute for Securities and Investment (CISI), Guernsey Branch;
- The Chartered Institute of Bankers in Scotland (CIOBS);
- The Chartered Insurance Institute (CII);
- The Institute of Chartered Accountants in England and Wales (ICAEW);
- The Institute of Financial Planning (IFP);
- The Institute of Financial Services (IFS); and
- The Pensions Management Institute.

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