



Guernsey Financial
Services Commission

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

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

FEEDBACK ON

CONSULTATION PAPER

This paper reports on the responses received by the Commission on the Consultation Paper entitled “*Proposed Revisions to the Regulatory Regime on the Implementation of Guernsey Financial Advice Standards*” issued by the Commission on 16 July 2014.

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Glossary of Terms

The glossary of terms provides a definition of terms in this report.

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 issued under section 18 of the IMIL
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 (“FA”)	Natural person authorised to give advice on retail investment products, as defined below, to retail clients
GIC	Guernsey Insurance Certificate
GFAS	Guernsey Financial Advice Standards
IMIL	The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended
IMIL COBR	The Licensees (Conduct of Business) Rules, 2009 issued under the IMIL
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 Licensees Rules 2014 and Intermediaries Rules
Retail Investment Product	Falling under Schedule 1 of POI Law and of IMIL, excluding contracts of insurance on human life, permanent health and credit life assurance that are payable annually. This definition was used for the purpose of the second consultation paper and this feedback paper only. Retail Distribution Review conducted by the UK Financial Services

RDR	Authority
Schedule to the Licensees Rules 2014	Schedule 2 to the Licensees Rules 2014 setting out the matters that POI licensees must ensure that their Financial Adviser(s) undertake
SPS	Statement of Professional Standing
The Intermediaries Rules	The Insurance Intermediaries (Conduct of Business) Rules issued under section 18 of the IMIIL
The Licensees Rules	The Licensees (Conduct of Business) Rules, 2009 (now rescinded)
The Licensees Rules 2014	The Licensees (Conduct of Business) Rules, 2014 issued under sections 12,14, 15 and 16 of the POI Law
The Managers Rules	The Insurance Managers (Conduct of Business) Rules, 2014 issued under section 18 of the IMIIL

1: Executive Summary

1.1 Background

The Commission published a second consultation paper on the Proposed Revisions to the Regulatory Regime on the Implementation of Guernsey Financial Advice Standards (“GFAS”) on 16 July 2014. The consultation paper set out the Commission’s revised proposals in the light of representations received to its earlier consultation paper on its proposals to implement the key areas identified by the Commerce and Employment Department (“C&E”) relating to the giving of investment advice. The second consultation paper also contained drafts of the proposed conduct of business rules and codes proposed to be effective from 1 January 2015 together with the draft wording for a licence condition to be imposed on investment licensees licensed for the activity of advising.

This paper provides feedback on the responses received in respect of the second consultation paper and sets out the conclusions drawn by the Commission as a result of the representations it received.

1.2 Summary of responses to the second GFAS Consultation Paper

The Commission received 25 responses to the consultation paper.

The following table identifies the number of questions answered by these respondents.

<u>Number of questions answered</u>	<u>Number of respondents</u>
1	7
2	5
3	4
4	6
5	1
6	1
13	<u>1</u>
Total number of respondents	<u>25</u>

The Commission is grateful to all respondents for taking the time to consider the consultation paper and respond and in particular for the help received in taking these proposals forward. It is clear that much thought has gone into the representations that have been made. Several responses included a number of representations for a particular question.

The respondents are listed in Appendix A.

1.3 Summary of representations received to the proposals in the second GFAS Consultation Paper

Only one significant representation arose from the second consultation paper which was in relation to the Commission’s proposal to impose one of two conditions on the licence of each POI licensee. The wording and effect of this condition differed depending on whether the licensee advised retail clients. Licensee and industry body representations raised concern that the existence of such a licence condition could negatively impact on the licensee’s marketing ability as this condition was seen as an endorsement on the firm’s licence.

The Commission has considered these representations and decided that the same effect as intended through the licence condition could be achieved through additional rules in the “Licensees Rules 2014”. The Commission has canvassed the views of relevant industry bodies who are supportive of this alternative approach. Appropriate revisions to the proposed rules have therefore been made.

Other representations have been considered and, where appropriate, revisions made.

Representations were also received on matters that were outside the scope of the consultation including comments and suggestions relating to the wording of existing rules and codes which would be unaltered by the introduction of the new rules and codes. A number of those suggestions will now be included within separate work streams which the Commission is progressing including the Revision of Laws project, the consultation on revising the retirement annuity trust scheme rules and work on MIFID II.

The Commission’s response to the representations it received is set out in section 2.

2: Summary of Responses

2.1 Structure of section 2

The following sections set out the Commission's proposed revisions to the regulatory regime on the implementation of GFAS, the questions which were posed in the consultation paper, a summary of the representations received and the Commission's responses to those representations.

Each sub-section relates to the rules, codes or condition that was proposed for change and includes a summary of those proposed changes and the questions posed. Representations received are shown in italics followed by the Commission's response in plain text.

2.2 Response to questions raised relating to the introduction of the Licensees Rules 2014

2.2.1 The Commission proposed to repeal the Licensees Rules and replace them with the Licensees Rules 2014 with an effective date of 1 January 2015. The proposed wording of the Licensees Rules 2014 was set out in appendix 1 of the consultation paper.

2.1.2 The Commission proposed to delete Schedule 1 to the Licensees Rules, Guidance on Corporate Governance in the Finance Sector in Guernsey without replication within the Licensees Rules 2014. As a consequence Schedule 2 in the Licensees Rules would become Schedule 1 in the Licensees Rules 2014 and references to this schedule replaced accordingly.

2.1.3 The Commission proposed to introduce a new Schedule 2 to the Licensees Rules 2014 incorporating the matters with which Financial Advisers advising in relation to controlled investments are required to comply. The proposed wording of this schedule was set out in appendix 2 of the consultation paper.

Question 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.

3 responses to this question were received.

The representations made by these respondents were that consideration should be given to:

(a) the definition of "complaint" and if oral complaints could give rise to misinterpretation or inaccurate recording of the nature of a complaint. The respondent suggested this issue could be avoided by a requirement for complaints to be made in writing (including email);

Licensee complaints handling procedures should enable the employees of the licensee to record the nature of an oral complaint and may include requesting the complainant to confirm the details of their complaint in writing to clarify interpretation and accuracy in the details of the oral complaint.

(b) the definition of "financial adviser" as this does not cover the inclusion of discretionary portfolio management;

The definition of "financial adviser" is not intended to include discretionary portfolio management as this was not included in the scope set by C&E.

(c) *the definition of “financial adviser” (“FA”) and whether by giving licensees the power to ‘authorise’ FAs this could lead to confusion amongst the general public who might view such authorisation as a ‘stamp of approval’ by the Commission.*

The licensee is responsible for the advice and actions of its FAs.

(d) *the definition of “financial adviser” and whether the Commission will require a robust agreement between Licensee and FA for the advice given by the FA.*

This is a matter for the licensee who is responsible for the advice and actions of its FAs.

(e) *the definition of “advertisement” and if this is intended to include non-promotional material such as stationery, valuations, responses to queries, complaints or general correspondence etc.;*

Non-promotional material such as stationery, valuations, responses to queries, complaints or general correspondence etc are not intended to fall within this definition.

(f) *the definition of “attitude to investment risk” should be expanded so as to encapsulate a client’s willingness and ability to take risks and link to “capacity for loss”;*

The Commission agrees with this suggestion and has revised the proposed definition to read

“attitude to investment risk” means the investment risk a *client* is prepared to accept to achieve their financial goals taking into consideration the *client’s capacity for loss*;

(g) *the definition of “statement of professional standing” as it is unclear whether the statement of professional standing (“SPS”) is required for either AIRs or FAs or both;*

The definition is sufficient. Rule 3.6.10 of the proposed Licensees Rules 2014 and rule 3.5.10 of the proposed Intermediaries Rules as attached to the consultation paper relates the requirement for an SPS to FAs only.

Please note that the two guidance notes proposed to be issued in relation to Training & Competency Schemes and Financial Adviser Supervision Schemes have been combined into one document. This has resulted in the above rule numbers becoming rule 3.6.9 and rule 3.5.9 respectively.

(h) *the inclusion of a definition for “partners” or “partner” to capture partnerships and LLPs.*

“Partnership” is defined in the POI Law and therefore no further definition is required.

Question 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.

9 responses to this question were received, 2 of which did not raise any issues.

The representations made by the other respondents were that:

(a) *with reference to rule 3.6.6 of the Licensees Rules 2014 this rule fails to also state that the employee should be assessed as competent before being appointed as a FA;*

The Commission has amended 3.6.6 to include the assessment of the competency of the FA by the licensee with this assessment varying depending on whether the adviser has previously been a FA or is a not yet qualified and competent.

- (b) *there is an element of ambiguity around the definition of Financial Adviser status requiring clarity as to when a licensee can authorise a FA in that the guidance note on Training and Supervision Schemes for Financial Advisers states that a licensee can only authorise a FA when deemed competent to advise. The respondent recommended that the guidance note clarifies when an FA is deemed competent i.e. assessed by a competent supervisor during the sales process until deemed competent as a result of observations and assessments. By comparison with the UK an adviser will be registered with the FCA as level 4 qualified prior to being deemed competent;*

See (a) above. In addition the Commission has combined its guidance notes on Training & Competency Schemes and on Financial Adviser Supervision Schemes into one document taking into consideration the representations it has received.

- (c) *with reference to rule 8.2.3 of the Licensees Rules 2014 and the notification requirements relating to a series of complaints that it would be appropriate to include some details with regard to the number of complaints and a timescale within which these were received;*

The Commission had considered this option but in view of the diversity of licensees and their clients did not believe that this was a feasible option. A series of complaints could be caused by one specific issue or a number of separate issues and the licensee's own procedures should enable the determination of whether complaints relate to a systemic issue.

- (d) *with reference to rule 5.2.4 (b) of the Licensees Rules 2014 licensees must disclose to clients the amount or calculation basis of remuneration to be received in connection with a transaction, prior to the transaction taking place. There is no distinction between categories of client. When an execution-only client issues instructions to invest in a product, such as a mutual fund, the licensee will not necessarily know, in every case, whether or not they will receive remuneration from a fund manager. The respondent sought confirmation that this rule would not apply for execution only clients and that only known charges are obliged to be communicated to execution-only clients on a pre-trade basis, as it would not be practical to administer and best execution might be jeopardised;*

Rule 5.2.4 has been amended to reflect this representation such that it does not apply to licensees carrying out execution-only business where such fees, charges and remuneration have been disclosed in their agreement with the client.

- (e) *with reference to rule 1.2 of the Licensees Rules 2014 (Interpretation) the statement "unless the context otherwise requires" is ambiguous as expressions in the Licensee Rules should have the same meaning as they have in the POI Law. This phrase was suggested for deletion;*

This phrase is consistent with other rules issued by the Commission and does not represent a change to the existing requirements in the Licensees Rules. However this representation will be referred to the Revision of Laws project.

- (f) *with reference to rule 5.2.1 of the Licensees Rules 2014 the term "Written agreements" should be amended to provide for web-based service delivery and electronic signature/acceptance of terms or, failing this, clarification that derogations may be available for specific licensees;*

The essence of this rule is unchanged by the implementation of GFAS and is outside the scope of this consultation. Web-based service delivery should meet the requirements of this rule. This

representation will be referred for consideration under separate work streams on the Revision of Laws project and in relation to MIFID II.

- (g) *with reference to rule 5.4.1 of the Licensees Rules 2014 all financial projections and/or historic analysis of investment performance should clearly reflect performance after the deduction of all fees and charges, including those levied by underlying managers where applicable. Where it is impossible to predict such fees, e.g. performance fee, the method of calculation should be provided and an estimate of quantum used;*

The Commission considers that this is implicitly covered through 5.4.1(a) – (c) of the Licensees Rules 2014.

- (h) *with reference to rule 7.4 of the Licensees Rules 2014 there is greater risk for licensees associated with wrongly classifying clients. As such, it would be helpful to have clarity on the definition of professional/retail client within the conduct of business rules themselves and not in an unrelated guidance note (the QIF guidance note). Such definition should also include specific monetary values in assessing a client on either income or wealth with self-certification by the client being sufficient;*

This rule is unaltered through the implementation of GFAS and is outside the scope of this consultation. This representation will be referred for consideration under separate work streams on the Revision of Laws project and in relation to MIFID II.

- (i) *with reference to rule 8.1.2 of the Licensees Rules 2014 to add as new rule 8.1.3 such that once a licensee has responded to a complaint, if no further correspondence is received from the client within 2 months, the complaint can be deemed to be closed;*

This is already covered by rule 8.2.4 of the Licensees Rules 2014 which states that for the purposes of rule 8.2.1 where a *licensee* has given a substantive response in relation to a *complaint* unless and until the *licensee* has received an indication from the complainant that the response is unsatisfactory, the *licensee* shall be entitled to treat the *complaint* as settled and resolved after the expiry of four weeks from the date of its response.

- (j) *with reference to rule 2.1.7 of the Licensees Rules 2014 [as set out in the consultation paper] insert “the” after “It is”;*

Agreed – this error has been corrected. This rule is now numbered as rule 2.2.4 of the Licensees Rules 2014 as explained in sub-section 2.7 below.

- (k) *with reference to rule 3.6.2 of the Licensees Rules 2014 it is unclear whether it is the Commission’s intention to capture all staff or restrict to those that advise clients, supervise advisers or govern a licensee since the Guidance Notes uses language attributable to advisory staff;*

The guidance note on Training & Competency Schemes is applicable to all employees of a licensee and has specific sections relating to FAs and AIRs.

- (l) *with reference to rule 3.6.8 of the Licensees Rules 2014 that this rule should be expanded to include the words “relevant and appropriate” so as to ensure that a FA undertakes CPD which is appropriate for their role. The respondent expressed their opinion that 35 hours should be a guide and not mandatory as it represents a week of someone’s professional time and may be being regularly assessed as competent to do the job they do;*

Rule 3.6.8 of the proposed Licensees Rules 2014 as set out in the second consultation paper has been amended to include “relevant and appropriate”. 35 hours of CPD is a mandatory requirement for

members of a professional body and it is not considered by the Commission as an unreasonable requirement.

Please note that the two guidance notes relating to Training & Competency Schemes and Financial Adviser Supervision Schemes have been combined into one document. This has resulted in the above rule number becoming rule 3.6.7.

(m) with reference to rule 3.6.8 of the Licensees Rules 2014 whether this paragraph also set out the consequences of revocation of authorisation i.e. not permitted to advise [retail] clients? The respondent also asked how the Commission will police this issue so as to ensure that those not in possession of an SPS are suspended from giving advice;

Rule 3.6.10 of the Licensees Rules 2014 has been amended to refer to the timing of the issue of the SPS by the FA's professional body and the adviser no longer being authorised to provide advice to retail clients.

Licensee records should demonstrate that they have received an SPS from its FAs in the required timescale and taken appropriate action if not. The Commission would expect the licensee's compliance officer to ensure that the appropriate measures were in place and report to the board of the licensee accordingly. This guidance has been included in the guidance note on Training & Competency Schemes.

Please note that the two guidance notes proposed relating to Training & Competency Schemes and Financial Adviser Supervision Schemes have been combined into one document. This has resulted in the above rule number becoming rule 3.6.9.

(n) with reference to rule 5.2.4(a) of the Licensees Rules 2014 that it is unclear whether this disclosure is acceptable in monetary or percentage terms;

Rule 5.2.4 of the Licensees Rules 2014 has been amended to include (c) "Remuneration shall be disclosed in a manner appropriate to the category of client to which this relates".

(o) with reference to rule 5.4.1(h) of the Licensees Rules 2014 that, when using past performance data, most advisers in the UK use the following phrase: "past performance is not a guide to future performance and may not be repeated". The respondent suggested that this rule could be expanded so as to incorporate this clarity;

Rule 5.4.1(h) of the Licensees Rules 2014 has been amended to read "do not contain information about past performance unless it contains a warning that past performance is not necessarily a guide to future performance and may not be repeated".

(p) with reference to rule 5.4.3 of the Licensees Rules 2014 whether this rule should be amended to reference any EU passporting requirements;

No, passporting is not applicable.

(q) with reference to rule 8.2 and rule 12 of the Licensees Rules 2014 that it is unclear how this rule will be affected by the introduction of online submissions. The respondent also suggested that the word "shall" be replaced with "must" so as to reflect the obligation of the licensee as the general understanding is that the word "must" may be used to refer to a minimum standard which at law might be regarded as the expected good and reasonable standard.

The timings of notifications are prescribed by the primary laws or set down by regulations or in rules, all of which will be considered by the Commission as online submission is introduced.

“Shall”, “should” and “must” are used throughout the Licensees Rules 2014. Use as suggested has been referred to the Revision of Laws project.

Question 3

Do you foresee any significant problems with the introduction of the proposed Licensees Rules 2014? If yes, please identify the issue(s).

10 responses to this question were received.

The representations made by these respondents were that:

- a) *with reference to rule 3.6.6 of the Licensees Rules 2014 many locally based advisers are approaching retirement age and have indicated that their intention is not to study towards the required level 4 qualification. The impact of this will result in:*
- i) a substantially limited pool of FAs;*
 - ii) retail clients experiencing difficulty in obtaining financial advice and potentially not proceeding to invest (ie investing in pensions), which will have a financial impact on the Bailiwick;*
 - iii) insufficient FAs available to encourage/supervise new advisers into the industry;*
 - iv) a significant loss of knowledge and expertise once the current advisers are forced to leave the industry which may cause considerable concern to clients who will no longer be able to seek advice from an adviser who they have relied upon for 20 or more years.*

The respondent expressed their belief that further consideration should be given to allow current advisers, who only advise local clients, sufficient time to allow the smooth and efficient handover of clients to the newly qualified advisers who will need to enter the market. The respondent also believed that the existing AIRs to reach a minimum level 4 qualification for current AIRs should be delayed until 31 December 2019 to allow the whole industry to smoothly transfer to the GFAS regime.

The above response was separately received from 2 AIRs, the firm for which they work and the compliance consultants acting for that firm;

The above concerns are noted however the timescale for existing advisers to attain a minimum acceptable level 4 qualification was set out in the consultation paper issued by the Commission on 23 September 2013 and representations sought at that time. The above representation was not received at that time. In its feedback paper the Commission confirmed the intention to retain the 31 December 2015 deadline for existing advisers as the UK professional bodies who responded to the consultation paper confirmed that level 4 can be achieved within the implementation period in the GFAS proposals.

That being said, the table of acceptable qualifications includes the Certificate in Private Client Investment Advice and Management (attained through a CISI competency interview and presentation only) which may be an option that existing advisers may wish to consider as an alternative to a formal study route.

- b) *in addition to the comment in a), one of the above respondents referred to their response to the previous GFAS consultation paper in that a newly appointed FA will have 30 months to pass the relevant qualification. However an existing AIR will have considerably less time than this, as the*

regulatory requirements are only in draft form and that AIR will have to be qualified by 31 December 2015.

Please refer to the Commission's comment in a) above.

- c) increasing the qualification requirements for advisers is a good thing that will improve their knowledge levels and the standard of service that clients will receive. The suggestion was made that where advisers do not wish to become level 4 qualified they could assist the (fewer) advisers with their administration and paperwork acting as paraplanners and administrators. The rhetorical question was asked on whether the advisers who do not wish to study are really considering the best interests of the market and their clients;*

Noted.

- d) in relation to the possibility of a saturated pure protection market there should be some qualification requirements. Even though there is no investment content, they are important (and in some cases, expensive) policies that need to be correct and not mis-advised.*

The existing qualification requirements for advising on pure protection products are to be reviewed by the Commission as CertPFS will not be examinable after August 2015.

- e) with reference to rule 3.6.7 of the Licensees Rules 2014 [as set out in the consultation paper] clarification is required on whether an AIR previously grandfathered and without FPC3 will still be acceptable to be classified to AIR, post January 2015 and 2016;*

The Commission has not been requested by C&E to introduce a more stringent requirement for AIRs. However the qualification requirements for advising on pure protection products are to be reviewed by the Commission as CertPFS will not be examinable after August 2015.

- f) with reference to rule 3.6.7 of the Licensees Rules 2014 [as set out in the consultation paper] clarification is required on whether an FA can supervise a fellow FA or will a further supervisory qualification be required. Furthermore if this is required will a licensee have to have two level 4 qualified FA's with the additional supervisory requirement to sign each other off (who supervises the supervisor?);*

The Commission does not propose to introduce a supervisory qualification. However the licensee must ensure and demonstrate that the supervision process it has in place is good and reasonable.

- g) the text of the QIF definitions for experienced investors and knowledgeable employees is incorporated into the Licensees Rules 2014 (so that a second document does not have to be located and the relevant sections isolated). This would help every reader to understand the categories of client and to appreciate more readily how the criteria involved in determining a client's category relate to each other in importance and effect;*

The Commission will consider this suggestion under the Revision of Laws Project and its response to MIFID II.

- h) clarification is required on the requirement for suitably qualified persons to manage non-retail (i.e. institutional/professional investor) investment portfolios;*

The Commission has not been requested by C&E to introduce qualification requirement for this scenario. However licensees are required to ensure employee competency under rule 3.5 of the Licensees Rules 2014.

- i) *with reference to rule 5.2.6 of the Licensees Rules 2014 clarification is required on which licensee's financial statements are being considered in relation to the value of 15%;*

The definition of "block of business" in the Licensees Rules 2014 and the Intermediaries Rules 2014 has been re-worded to clarify this matter.

- j) *although there will be a bedding in period, the biggest challenge facing the Commission will be the policing of the new rules to ensure universal adoption;*

The Commission would not disagree with this comment.

- k) *with reference to rule 3.6.9 of the Licensees Rules 2014 [as set out in the consultation paper] clarification is required on the supervisory requirements for fully qualified FAs as it would appear that a 3 layer process is being proposed by the Commission consisting of peer review and supervision which exceeds the approach adopted by the FCA;*

Peer review and supervision is considered in the Guidance Note on Training & Competency Schemes. Peer review alone would not be considered as sufficient to ensure that a FA is regarded as competent. The Commission would expect an overall assessment by whoever is appointed by the board to ensure the effectiveness of the training and competency scheme that has been implemented by the licensee.

- l) *with reference to rule 3.6.10 of the Licensees Rules 2014 [as set out in the consultation paper] it is not possible currently not possible to request a SPS through the professional bodies, as a FCA reference number is required. It is understood that the Commission's Conduct Unit are liaising with the relevant professional bodies to create a Guernsey SPS;*

The issuance of a Guernsey SPS is in hand with the FCA-accredited professional bodies and, following ongoing dialogue with those professional bodies, is considered in the Guidance Note on Training & Competency Schemes.

- m) *with reference to rule 5.3.10(a) of the Licensees Rules 2014 whether there is likely to be further parts added to this rule when the rules are finalised;*

This is an existing rule in the Licensees Rules. No changes are being made to these requirements through the implementation of GFAS.

- n) *with reference to rule 5.4.1 of the Licensees Rules 2014 that clear guidance from the Commission on the interpretation of "clear", "fair" and "misleading" would be welcomed to assist licensees with complying with expectations;*

It would not be practical to provide this level of detail as an interpretation of these terms will differ depending on circumstance.

- o) *as the changes to the Licensees Rules impact on all POI Licensees and not just on those initially targeted by GFAS if the Commission does not receive responses to the consultation paper from POI licensees that it should consider flagging the proposed changes to POI Licensees directly in order to provide them with an extended time period to respond to the consultation;*

In its news release published by the Commission in May 2014 which accompanied the feedback on the first consultation paper it had issued, attention was drawn to matters of particular significance which included that the Conduct of Business Rules will be revised to streamline requirements with

the Licensees (Conduct of Business) Rules, 2009. The Commission also advised all relevant industry bodies prior to the release of the second consultation paper and has received responses from certain of those bodies and from POI licensees. The Commission does not consider that the above steps are necessary.

Question 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.

7 responses to this question were received.

The representations made by these respondents were that:

- a) *the focus of section 3 of Schedule 2 to the Licensees Rules 2014 does not accommodate investment advice provided ad hoc through an advisory non-managed type of customer relationship, such as that provided through a stockbroking desk where it is not felt appropriate to provide “written advice” for a stock transaction which arises following advice on excess capital i.e. surplus to the provision of prudent financial planning. The representation asked for consideration to be given to a more commercial and common sense approach to distinguish between holistic advice / product advice and stockbroking;*

The Commission agrees with this suggestion and has inserted section 3.3 in this schedule in relation to the provision of written advice post inception.

- b) *with reference to 1.1.2 of the consultation paper and the requirements of C&E, further clarity is required regarding remuneration for providers: Both commissions and fees will be allowed. This could be made clearer if it stated that a firm can adopt either charging structure if made clear to the client in its terms of business;*

Rule 5.2.4 (a) of the Licensees Rules 2014 requires the licensee to disclose to the client in writing all fees and charges for providing services together with the basis of their calculation. This requirement is replicated in rule 5.2.4 (a) of the Intermediaries Rules.

- c) *if this is the Commission’s intention, the schedule should be clear that the term “financial advisor” also extends to an individual who is responsible for managing (i.e. decision making) with regard to the composition of discretionary investment portfolios on a client’s behalf;*

The term FA is not intended to extend to managing discretionary investment portfolios on a client’s behalf.

- d) *with reference to section 1.5 (e) of Schedule 2 to the Licensees Rules 2014 “...not to sell specific products” this should be amended to allow for the call has been initiated by the client, for example by way of a web based enquiry made by the Client.*

Agreed. The wording has been amended to include the word “unsolicited”.

- e) *with reference to section 3.1 (f) of Schedule 2 to the Licensees Rules 2014, all illustrations, projections and forecasts should be net of all fees and charges.*

The Commission does not propose to be prescriptive in 3.1 (f) however sections 3.2 (i) and (j) refer to disclosure of remuneration and charges to ensure that if illustrations, projections and forecasts are shown gross reductions would be identified.

- f) *with reference to section 3.2 of Schedule 2 to the Licensees Rules 2014, clarification of whether written advice would include an automatically generated advice sent by email;*

Automatically generated advice sent by email would have to meet the requirements of section 3.2 to be acceptable.

- g) *with reference to section 1.1 include the requirement that being in possession of a valid SPS becomes a condition precedent of an FA's authorisation;*

The licensee is responsible for the authorisation of its FAs. However, for clarification, rules 3.5.3(e) and 3.4.3(e) have been inserted to create the condition precedent in the Licensees Rules 2014 and Intermediaries Rules.

- h) *the Licensees Rules do not explicitly exclude "suitability" as a protection that elective eligible counterparties and elective professional clients forgo as part of this categorisation although these rules specifically state that a number of protections (such as best execution, timely execution, client order priority, etc.) are relinquished for elective eligible counterparties, and only periodic information for professional clients.*

The Commission does not propose to alter these protections at this stage however this representation has identified an issue with the wording of section 2.1 (b) of Schedule 2 to the Licensees Rules 2014 [as set out in the consultation paper] as this schedule only applies to those advising retail clients. As a result amendments have been made to this section and to rule 7.2.1 of the Licensees Rules 2014 and Intermediaries Rules.

Question 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).

3 responses to this question were received.

The representations made by these respondents were to:

- (a) *not extend the qualification deadline for existing advisers even though some advisers may struggle with attaining level 4;*

The Commission agrees with the comment.

- (b) *provide clarification regarding the implied distinctions between a FA and a discretionary portfolio manager;*

C&E's educational requirements proposals for GFAS related to financial advice being offered by licensed financial services businesses and as such is being implemented as a requirement for FAs. This has not been extended to discretionary portfolio managers but will be highlighted for future consideration.

2.3 Response to questions raised relating to the introduction of the Intermediaries Rules

2.3.1 The Commission's proposal was to repeal the existing IMIL COBR on 1 January 2015 with the simultaneous introduction of the Intermediaries Rules and the Managers Rules. The proposed wording of the Intermediaries Rules was set out in appendix 3 of the consultation paper.

Question 6

Do you consider that the requirements of the Intermediaries 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.

4 responses to this question were received, 2 of which did not raise any issues.

The representations made by these respondents were that:

(a) it is unclear what the required level of qualification will be for advising on pure protection business but that the current level of qualification (broadly similar to Level 3 plus Guernsey Insurance Certificate) is retained. A second respondent, with reference to 3.5.6 of the Intermediaries Rules commented that those who did not wish to take a level 4 qualification would saturate the pure protection market. The respondent asked that the educational requirements be clearly established so intermediaries could formulate their business plans;

The qualification requirement for pure protection business has remained unchanged through GFAS implementation. This is clarified in the guidance note on Training & Competency Schemes.

(b) it is unclear if suitability reports will be required for pure protection advice but that they should still be required;

AIRs providing pure protection advice will from 1 January 2015 be subject to the new AIR Code, section 7 of which has requirements specifically relating to long term pure protection products, including certain disclosure in writing.

(c) the requirements of GFAS combined with the intimated tightening of RAT scheme charges, will result in a squeeze on regular premium pension schemes such that level 4 qualified advisers will not wish to spend time on a client looking to invest a few hundred pounds monthly into their pension. Furthermore that consideration should be given to contracted out in-house schemes to enable their continuance;

These concerns will be referred as a response to the consultation on revising the retirement annuity trust scheme rules.

(d) with reference to rule 3.1.1 of the Intermediaries Rules it is unclear what "effective responsibility" means, especially when the guidance note on page 17 refer only to the "responsibility of the board";

Noted. This is the existing wording from the Licensees Rules and is not proposed to be changed at this juncture.

(e) with reference to rule 3.4.2 of the Intermediaries Rules should this also be expanded to incorporate the licensee's responsibility for authorisation;

Agreed. For clarification, 3.4.3(e) has been inserted to create the condition precedent for financial advisers in the Intermediaries Rules with a similar requirement inserted in rule 3.5.3(e) of the Licensee Rules 2014.

- (f) *with reference to rule 3.5 of the Intermediaries Rules where employees are supervising the activity of others should that supervisor have to undergo separate specialised training to ensure competence to supervise;*

This is considered in the guidance note on Training & Competency Schemes published by the Commission.

- (g) *with reference to rule 3.5.7 of the Intermediaries Rules clarification was sought on the Commission's supervisory requirements for AIRs;*

This is considered in the guidance note on Training & Competency Schemes published by the Commission.

- (h) *with reference to rule 3.5.8 (CPD requirements) and 3.5.10 (SPS requirements) of the Intermediaries Rules clarification was sought on the requirements for AIRs;*

3.5.8 and 3.5.10 of the Intermediaries Rules [as set out in the consultation paper] apply to FAs and not AIRs. These rules are now 3.5.7 and 3.5.9 respectively due to the guidance notes on Training & Competency Schemes and Financial Adviser Supervision Schemes being combined into one document with the former title. However, this point is considered in the guidance note on Training & Competency Schemes published by the Commission.

- (i) *with reference to rule 11 of the Intermediaries Rules this is titled Immediate Notifications whereas the equivalent section in the Licensees Rules 2014 is entitled Notifications;*

The word "immediate" has been deleted in the Intermediaries Rules.

- (j) *with reference to rule 11 of the Intermediaries Rules clarification of the notification requirements under the POI Law and the IMIIL for MLRO, Compliance Officer and Manager.*

The Intermediaries Rules are being aligned with the Licensees Rules 2014 to the extent that this is permitted under the IMIIL and the POI Law. Prior approval is an existing requirement for managers under IMIIL but not the POI Law however notification of the date of appointment is a requirement under the Licensees Rules 2014 and the Intermediaries Rules. The term manager includes the compliance officer as per rule 3.2 of the Licensees Rules 2014 and the Intermediaries Rules.

Question 7

Do you foresee any significant problems with the introduction of the Intermediaries Rules? If yes, please identify the issue(s).

3 responses to this question were received, 1 of which referred to the representations made in respect of question 6 and are included above.

The representations made by the other respondents were that

- a) *they did not believe that the Commission had set out its requirements in respect of the required level of qualifications for advising on pure protection products and if the minimum standard would allow AIRs to continue after the implementation of GFAS;*

The qualification requirements in respect of pure protection products has not altered as a result of the implementation of GFAS and is as set out on the Commission's website. It is mandatory for all AIRs who advise on long term insurance business (which includes pure protection products) to attain the relevant minimum insurance qualifications as follows:

- The Chartered Insurance Institute - Certificate in Financial Planning (or an acceptable equivalent)
- The Guernsey Insurance Certificate

The Commission is aware that the Certificate in Financial Planning will be withdrawn by the Chartered Insurance Institute in August 2015 and will reconsider the qualification requirements for long term AIRs in due course.

- b) *clarification of differing requirements between the Licensees Rules 2014 and the Intermediaries Rules in that the former, in rule 5.2.4, requires that fees and charges are disclosed before entering into an agreement and further that all remuneration is also disclosed prior to the execution of the transaction, however, there are no such requirements under the Intermediaries Rules.*

Rule 5.2.4 of the Licensees Rules 2014 Fees, Charges and Commission relates to the provision of investment services to a client by the licensee. There is no equivalent rule within the Intermediaries Rules because the responsibility for disclosure in respect of remuneration in respect of advice given to a retail client falls on the FA and is included in 3.2(j) of Schedule 2 to the Licensees Rules 2014 and 5.2(j) of the FA Code.

2.4 Response to questions raised relating to the introduction of the Managers Rules

2.4.1 The Commission's proposal was to repeal the existing IMIIL COBR on 1 January 2015 with the simultaneous introduction of the Intermediaries Rules and the Managers Rules. The proposed wording of the Managers Rules was set out in appendix 4 of the consultation paper.

Question 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.

1 response to this question was received.

The representation made by this respondent was that consideration should be given to underpinning the Managers Rules with something akin to the FCA's Statements of Principle as the rules do not codify the ethical or moral behaviours expected of an insurance manager.

This is not a course that the Commission proposes to follow at this time although this suggestion may be given consideration in the future.

Question 9

Do you foresee any significant problems with the introduction of the Managers Rules? If yes, please identify the issue(s).

No responses to this question were received.

2.5 Response to questions raised relating to the introduction of the FA Code

2.5.1 The Commission's proposal was to repeal the AIR Code on 1 January 2015 and simultaneously introduce the FA Code and the New AIR Code. The proposed wording of the FA Code was set out in appendix 5 of the consultation paper.

Question 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.

2 responses to this question were received, 1 of which repeated the representations made to question 4 and have been included above.

The representations made by the other respondent were that consideration should be given to:

- a) *underpinning the FA Code with something akin to the FCA's Statements of Principle as the rules do not codify the ethical or moral behaviours expected of an insurance manager;*

This is not a course that the Commission proposes to follow at this time although this suggestion may be given consideration in the future.

- b) *amending General Principles paragraph 3.1 so that being in possession of a valid SPS becomes a condition precedent of an FA's authorisation.*

This is a licensee responsibility. Licensees must ensure that a FA holds an acceptable qualification which is confirmed by the adviser's professional body through the issue of a valid SPS. Licensees must also ensure that the FA is competent to provide the required advice.

Question 11

Do you foresee any significant problems with the introduction of the FA Code? If yes, please identify the issue(s).

1 response to this question was received.

The representation made by this respondent was that consideration should be given to:

- a) *rolling out the FA Code through a series of GFSC led seminars and workshops to gain greater understanding and buy in.*

The Commission will take this suggestion forward.

- b) *issuing guidance notes to sit alongside the FA Code which could be of greater assistance to all (client, licensee, regulator, court).*

This is not a course that the Commission proposes to follow at this time although this suggestion may be given consideration in the future.

2.6 Response to questions raised relating to the introduction of the New AIR Code

2.6.1 The Commission's proposal was to repeal the AIR Code on 1 January 2015 and simultaneously introduce the FA Code and the New AIR Code. The proposed wording of the New AIR Code was set out in appendix 6 of the consultation paper.

Question 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.

2 responses to this question were received, 1 of which repeated the representations made to question 8, 10a) and 11 which have been included above.

The other representation was that clarification is given on whether the AIR Code will apply only to AIRs giving advice on insurance products and that merely promoting insurance or referring customers onwards to colleagues are not activities requiring AIR status.

The AIR code applies to those appointed as an AIR by the licensee responsible for the actions and conduct of that adviser. Promoting insurance and referring customers does not constitute the giving of advice.

Question 13

Do you foresee any significant problems with the introduction of the New AIR Code? If yes, please identify the issue(s).

No responses to this question were received.

2.7 Response to questions raised relating to the introduction of a 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

2.7.1 The Commission's proposal was 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 was as follows:

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

Question 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.

4 responses to this question were received.

- a) *3 respondents commented that the provision of a condition to apply to enable or disallow the provision of advice to retail clients is not helpful to firms in terms of marketing. Firms in requests for proposals often need to cite conditions or number of conditions to licences and a condition is, in perception terms, a pejorative term. Suggestions were made to introduce different classes or categories of advice;*

The Commission has reflected on the concerns raised by industry and has decided not to proceed with a licence condition. Instead the Commission has amended the proposed Licensees Rules 2014 to introduce this restriction.

- b) *clarification was sought on whether a condition would be applied if services provided are clearly communicated in advance of either advisory or execution only services;*

The Commission's response is as per a) above

Rule 2.2 has been inserted in the Licensees Rules 2014 to introduce the requirements previously intended to be introduced by way of licence condition.

Question 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.

4 responses to this question were received.

The representations made by these respondents were that consideration should be given to:

- (a) *an alternative wording was suggested for the condition which included "The Licensee will document the criteria under which the Financial Adviser is authorised and shall maintain a register of all such authorised personnel.";*

This is a matter for the licensee who should be able to evidence the basis upon which the financial adviser has been deemed competent.

- (b) *one respondent queried the Commission's intention regarding publishing a list, in a similar manner to the JFSC, of registered persons, in their capacity as Senior Management and/or Investment Employee;*

This is not a course that the Commission proposes to follow at this time although this suggestion may be given consideration in the future.

- (c) *re-wording the condition in a permissive manner rather than being prohibitive;*

The Commission has decided not to proceed with a licence condition.

- (d) *clarification on whether businesses with a restricted POI licence, that are not providing advice on controlled investments to retail clients, could undertake direct investment business with retail clients in addition to any execution only business*

A licensee may only carry out the activities for which they are licensed.

2.8 Response to questions raised relating to the introduction of a 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

2.8.1 The Commission's proposal was 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 was 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.”

Question 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.

4 responses to this question were received, of which 1 did not raise any issues.

The representations made by the other respondents were that consideration should be given to:

(a) clarification of whether the term “Financial Adviser” must be used in the role title;

The Commission does not intend that the term “Financial Adviser” must be used in the role title however it must be clear that the FA has been authorised as a FA by the licensee.

(b) clarification of whether the use of the generic term “Financial Adviser” should be restricted to individuals working for firms holding both POI and IMII licences who are authorised to give advice on both types of products and therefore not permitted to be used by individuals who only hold a single licence;

The term FA may be used by FAs authorised by a single-licensed licensee. However there is a requirement in 1.6(b) and (c) of Schedule 2 to the Licensees Rules 2014 and 3.6(b) and (c) of the FA Code to disclose in writing the classes of products upon which the FA is authorised to provide advice, his qualifications and his professional experience and range, scope and any limitations in the product providers and/or products upon which he is able to provide advice.

(c) whether a licence condition carries with it some form of official endorsement by the Commission;

The Commission has decided not to proceed with a licence condition.

(d) expanding the wording of the licence condition so as to include as part of the authorisation process that the licensee must obtain a valid SPS from its FAs.

This is a requirement on the licensee under rules 3.5.3(e) and 3.6.9 of the Licensees Rules 2014 and rules 3.4.3(e) and 3.5.9 of the Intermediaries Rules.

Question 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.

2 responses to this question were received, of which 1 did not raise any issues.

The representation made by the other respondent was that a specific wording is introduced to make clear that the authorisation of a FA has been made by the licensee and not issued directly by the Commission.

The Commission is no longer proposing to introduce a licence condition. This requirement will be introduced through the Licensees Rules 2014. That being said the Commission does not propose to be prescriptive on any wording to be used by a FA or licensee in relation to the FA's authorisation. However this wording should not give the impression that the (individual) FA has been authorised by the Commission.

2.9 Response to questions raised relating to the qualification table and guidance note on training and supervision schemes for Financial Advisers

2.9.1 On 14 May 2014 the Commission published the proposed table of Acceptable Qualifications to be introduced through the implementation of GFAS which established those qualifications that are of an acceptable standard to be held by a Financial Adviser.

2.9.2 Employees to whom this table will apply are those who are to be authorised as a Financial Adviser, by either a POI or IMIIL 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.

2.9.4 Licensees will be required, through the Licensees Rules 2014 or Intermediaries 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.

2.9.4 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.

2.9.5 These requirements are set out in rule 3.6 of the Licensees Rules 2014 and rule 3.5 of the Intermediaries Rules together with the Guidance Note published by the Commission on 14 May 2014 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.

2.9.6 In addition, the Commission's intention was to issue a Guidance Note on Training and Competency Schemes for Financial Advisers and revise the Guidance Note that has been issued on Training and

Supervision Schemes for Financial Advisers and publish both guidance notes on its website later in quarter 3.

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

Question 18

Do you foresee any significant problems with the proposed table of Acceptable Qualifications? If yes, please explain your reasons.

2 responses to this question was received, 1 of which did not raise any issues.

The representation made by the other respondent was that, as written, rule 3.6 of the Licensees Rules 2014, includes the requirement to refer to the qualifications and guidance notes published by the Commission which at present only covers financial advice. Concern was raised that the wording of the proposed rule provides a mechanism for the implementation of further minimum standards in other areas of licensed business without the opportunity for the relevant firms to be involved in consultation prior to such implementation.

The Commission acknowledges that this rule creates an effective mechanism to introduce minimum qualifications and replicates existing requirements for insurance intermediaries and managers. This is required in order to maintain up to date qualification requirements. The Commission would consult with industry if qualifications for other activities are deemed necessary in the future. In addition, the qualification requirements for advising on pure protection products are to be reviewed by the Commission as CertPFS will not be examinable after August 2015.

Question 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.

7 responses to this question were received, of which 2 did not raise any issues.

The representations made by the other respondents were:

(a) to enquire if the Commission has spoken with the UK accredited professional bodies regarding the issue of a Guernsey SPS and clarification of whether the term "Financial Adviser" must be used in the role title;

The issue of a Guernsey SPS is in hand between the Commission and the UK professional bodies.

It is not necessary for the term Financial Adviser to be used in the role title although the adviser must make clear to his client that he has been authorised by the licensee by whom he is employed to give advice to retail clients 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) as appropriate.

(b) for the Commission to provide a clear definition of the role of a competent supervisor and the tasks to be performed under such a role. The guidance note does not fully address that effective supervision should be the backbone of any advisory training and supervision scheme and the

qualification criteria for a competent supervisor. Requirements and guidance note should ensure a consistency of approach across the Bailiwick as the efficiency and robustness of any Training & Supervision scheme could fail if poor or inconsistent supervisory standards are applied. Furthermore that in addition to being a FA, a competent supervisor should be measured and assessed for management and supervision skills;

The guidance note is being expanded to reflect the underlying sentiment of this representation however the role of a competent supervisor and the tasks performed under such a role should be determined by the licensee and documented accordingly.

- (c) that all entrants providing advice should have a minimum of level 4 (or at least the minimum RO or AF qualification) including those advisors carrying out non-investment related business to enable a holistic approach and negate the risk of insufficiently qualified advisors advising on non-investment related products;*

The existing qualification requirements for advising on pure protection products are to be reviewed by the Commission as CertPFS will not be examinable after August 2015.

- (d) that the qualification should be pertinent and relevant to the function carried out. In addition to the current requirements advisers should obtain, as a minimum, relevant mortgage qualifications (CF6) for mortgage advisers, relevant pure protection qualifications (RO5) for AIRs advising on protection products and RO4 and AF3 for pension and pension transfers advice;*

The board of the licensee is responsible for ensuring that its employees are competent in the role to which they are appointed and where a qualification requirement exists, that the employee is suitably qualified. Also refer to (c) above.

- (e) for clarification of the timeline for existing advisors to obtain a certificate of professional standing from the relevant exam body;*

FAs are to provide a valid SPS to their employer within 3 months of the expiry of their existing SPS. Transitional arrangements are in place for 2015/2016 however no SPS will be required prior to 31 December 2015. This has been clarified in the revised guidance note on Training & Competency Schemes.

- (f) for clarification on the qualification requirements for an adviser purely advising on protection business;*

The qualification requirements for pure protection advisers are unchanged through the implementation of GFAS. This has been clarified in the revised guidance note on Training & Competency Schemes.

- (g) whether it will be necessary to hold the GIC in addition to the regulatory module before being appointed as a FA;*

The GIC is a requirement for those advising on long-term insurance business only. The Commission does not currently intend to extend the scope and syllabus of this certificate to those advising on controlled investment business and therefore considers it equitable to not introduce the GIC as a prerequisite for any new employee being authorised as a FA. This is clarified in the revised guidance note on Training & Competency Schemes.

- (h) for clarification on whether new trainees should embark on a level 4 qualification plus rather than a level 3 qualification;*

This is a matter for the licensee to consider with the new trainee although it would be logical to start a level 4 qualification in terms of development and career progression.

- (i) *that it is important to ensure that there is sufficient linkage between routine assessment of competence, CPD and the wider activities of T&C with competency outputs being measurable against pre-defined KPIs with regular assessment of competence through finding and then filling the gaps.*

Please refer to the revised guidance note on Training & Competency Schemes published by the Commission.

- (j) *whether T&C should be formally allocated to a senior member of the licensee?*

This is a matter for each licensee. However please refer to the revised guidance note on Training & Competency Schemes for guidance.

- (k) *that supervisors should take a holistic view of competence and not concentrate simply on peer review or tick box checking and suggesting that the Commission could offer 'supervisor training' since supervisors will be responsible for the quality of AIRs/FAs performance.*

Although the Commission may consider facilitating supervisor training in the future, this could also be delivered or organised by industry or professional bodies. Please refer to the revised guidance note on Training & Competency Schemes.

General Comment

8 respondents took the opportunity to provide comment of which 1 did not raise any issues.

The representations made by the other respondents were that:

- a) *It is critical to consider when drafting any new rules and standards their alignment with the framework in other offshore jurisdictions as this would be a real and practical benefit to the industry, particularly where a firm operates in a multi-jurisdictional basis.*

Agreed. The Commission has considered the requirements in the UK, Isle of Man and Jersey in its proposed changes which implement the decisions made by C&E.

- b) *the notifications requirements in the Licensees Rules 2014 and Intermediaries Rules should be streamlined to either seven or fourteen days to avoid any confusion;*

Agreed. Notification periods in the rules have been standardised to 14 days with the exception of notifications for AIRs (including FAs) appointed under the IMIIL which is prescribed as 10 days under that law.

- c) *further consideration is given to non-Section 155 type pension schemes and what qualifications advisors need to hold before advising residents or non-residents with frozen UK type schemes.*

Minimum qualification requirements are dependent on the product being recommended. This representation will be taken into consideration as part of the Commission's separate consultation on revising the retirement annuity trust scheme rules.

- d) *clarification is needed on who monitors the Supervisor;*

Licensees should ensure that those supervising employees have the necessary coaching and assessment skills and the appropriate technical knowledge and expertise to act as a competent supervisor. Please refer to the revised guidance note on Training & Competency Schemes published by the Commission.

- e) *the Commission website access should provide details of the company, the services it can provide, the directors of the company and their advisers and their qualifications.*

Company details on the Commission's website currently include regulated activities. There is some merit in identifying the names of directors and AIRs/FAs but qualifications would be impractical to maintain and do not reflect competency. The Commission does not propose to take this forward at the present but may give the matter further consideration in the future.

- f) *The definition of advising is circular and sought clarification that advising or giving advice does not include the provision of statements and/or explanations of fact and also excluding generic guidance/recommendations (e.g. "please read carefully", "please make sure this applies to you" or "we recommend you seek independent financial and/or tax advice");*

The Commission does not consider that any of the above fall into the activity of advising or the giving of advice for the purposes of the Licensees Rules 2014, Intermediaries Rules, Managers Rules, FA Code or AIR Code. The definition of advising will be taken into consideration as part of the Commission's separate consultation on the Revision of Laws project.

- g) *the Commission had not yet listed the professional bodies that would be issuing SPS;*

The guidance on Training & Competency Schemes lists the professional bodies who have agreed in principle to issue SPS as required by the definition of "statement of professional standing" in rule 1.2 of the Licensees Rules 2014 and of the Intermediaries Rules.

- h) *web-based information as a source of disclosures in place of written communications could be applied more widely throughout the Licensees Rules 2014 and Intermediaries Rules;*

Web-based disclosure is acceptable provided it meets the relevant regulatory requirements for written communications.

- i) *the opportunity is taken to introduce the legal standard of "good and reasonable" rather than use of the word "best" e.g. "best endeavours";*

Noted, however there is minimal use of this word in the rules and codes. This will be considered by the Commission at a future date.

- j) *the Commission should look to raise standards by bringing the FA Code and AIR Code up to date in terms of concept and materiality by reference to up to date codes and practice notes in issue in the UK;*

This matter may be given consideration in the future.

- k) *GFAS does not have the same outcome as MIFID in an equivalence exercise. The approach of the EU in this area has been to apply rules to all those providing investor services to retail clients where investor services is considered to include investment advice and investment management whereas*

GFAS applies rules from a starting point of those advising retail clients on controlled investments. It will be difficult to argue that the two approaches are consistent.

The Commission acknowledges that the timings for MIFID and implementing GFAS are out of sync but the implementation of the latter is in accordance with the deadlines that have been set. Further changes may be required through consideration of MIFID II at a later stage.

- l) *there is an inconsistent consideration of the role of a FA referring to a) the consultation paper in which a financial advisor as one who advises on retail investment products, though these are not defined, b) the new schedule to the Licensee Rules 2014 which states a FA is one who advises retail customers on controlled investments and c) the FA Code which states that a FA is an authorised insurance representative who advises retail clients on long term insurance products, subject to exceptions. Concern was raised that the lack of distinction may well undermine a consumer protection objective.*

The Commission acknowledges that this has not been straightforward with differing definitions of FA which results from the need to apply the same requirements across two laws – one of which does not permit the Commission to make codes – and for differing activities. The Commission would have preferred to introduce one common set of rules and codes across both sectors but this has not been practical given the timeframe. The definition of FA and retail investment product used in the glossary of consultation paper was for the purpose of aggregating the definitions across the two laws in that paper.

The Commission will consider making enhancements regarding these and other definitions under the revision of laws project.

Regarding the consumer protection objective underlying the GFAS proposals, the Commission will be publicising the implementation of GFAS through its website and the media so that consumers have reference to the information they should expect to receive regarding the services licensees and advisers (FAs or AIRs) are able to provide.

3: Next Steps

3.1 Implementation of GFAS

The Commission, having considered the representations received in response to the GFAS consultation paper, has made the changes to its proposals and intentions that it considers appropriate as a result of these representations and approved rules and codes that will become effective on 1 January 2015. These rules and codes have been published on the Commission's website and are available from the following links:

[The Licensees \(Conduct of Business\) Rules 2014](#)

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

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

No amendments to this document have been necessary as a result of any representations received, however part of rule 6.1(b) has been deleted from the draft in the consultation paper as this duplicated rule 1.3 together with a few amendments for minor drafting errors identified during final proof-reading.

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

This will apply to FAs of insurance intermediaries.

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

This will apply to AIRs advising on general insurance and products relating to permanent health, credit life insurance and any contracts on human life that are payable annually. No amendments to this document have been necessary as a result of any representations received, however section 3.2.8 [as set out in the consultation paper] has been deleted as this duplicated a requirement in the Intermediaries Rules.

The existing sets of conduct of business rules for investment licensees and insurance intermediaries and insurance managers together with the code of conduct for authorised insurance representatives have been repealed with effect from 1 January 2015.

The Commission has also published the following, which can be accessed from the following links:

[Table of acceptable level 4 qualifications](#)

This lists two additional qualifications to those in the table issued in May 2014 and as was attached to the second consultation paper as appendix 7.

[A guidance note on Training and Competency schemes](#)

This applies to all employees of licensees with an investment and/or insurance intermediary licence and includes specific requirements regarding AIRs and FAs.

3.2 The new rules and codes become effective on 1 January 2015

Appendix 1

The Commission received responses to the GFAS consultation paper from the following persons

An authorised insurance representative (x2)
Barclays Private Clients International Limited, Guernsey Branch
Brooks Macdonald Asset Management (International) Limited
Cherry Godfrey Insurance Services Limited
Compliance consultancy firm
Compliance consultancy firm on behalf of its clients
Criteria Wealth Management Limited
Gentoo Fund Services Limited
Gower Financial Services Limited
Guernsey International Business Association
HSBC Bank plc Guernsey Branch
IAM Advisory
Institute of Financial Planning
Investec Asset Management Guernsey Limited / Investec Africa Frontier Private Equity Fund GP Limited / Investec Africa Private Equity Fund 2 GP Limited
Legis Compliance Services Limited
POI licensee
POI and banking licensee
POI and IMIIL licensee (x4)
Ravenscroft Limited
RAW Capital Partners Limited
RWA Group