

**Summary of comments in response to CAROL 6 - A further consultation on the Financial Services Rule Book covering Conduct of Business, Risk Management and Internal Control, and Administration.**

Rule	Industry comment	FSC's Response
<b>General comments</b>		
	CI 18(e) of the FS Bill refers to “customers” whilst the Rule Book refers to “clients”. Why?	This is just a matter of usage, they are interchangeable: shops and banks tend to refer to customers, other professional persons tend to refer to clients. It will be stated in definitions section that one = other for consistency.
	We feel that it would have been pertinent to consider the standards employed within Cayman Islands and the BVI in relation to funds business given that these two jurisdictions maintain a dominant market share in hedge fund domicile and administration.	The Commission has strived to take into consideration all relevant standards.
	Given that the target markets are now institutional and professional investors, we consider that the proposals are top heavy and not necessarily tailored to the new business that the Island seeks to attract. We are concerned that unless changes are made to these proposed regulations, much of the work that has been done to build the framework of an institutionally focused fund and fund manager offering will be undone.	Target markets include but are not limited to institutional and professional investors. Also rules are capable of waiver or modification so change is possible depending on licenceholder circumstances.
<i>RoadMap COB Code 8.5 Accounting Records</i>	The wording regarding this change is incorrect as it does not relate to 9.23 as stated.	Apologies-this new wording was removed and put into the relevant sections in the Clients' Money and Clients' Investments Parts after internal consultation.
<i>RoadMap Page 19</i>	The RoadMap refers to rule 9.54 and 9.55 as if it applies to fiduciary services. Please clarify that it does not.	This only applies to Class 2 regulated activities as stated in the Rule Book.
<i>RoadMap Compliance</i>	The RoadMap says that Compliance procedures are to be in writing but 9.25, 9.26 or 9.27 do not say this.	Rule 9.17 states that a compliance officer is responsible for ensuring that the licenceholder has robust and <u>documented</u> arrangements appropriate to the nature and size of the business for compliance with those requirements. It has been agreed to reorganise these rules to make this clearer.
<b>Conduct of Business</b>		
<i>General</i>	<p>It seems that the Investment handbook is being extended to cover any product you regulate.</p> <p>It is unclear if chapter 3 applies to CIS service providers as they also have their own chapter.</p> <p>There is no provision for issue of contract notes &amp; what should be contained in it in Chapter 4.</p> <p>There are several instances where definitions are needed, as certain words whose meaning may be clear in the context of banking or insurance do not carry the same clarity in the context of CSP services: the reference to “retail client” in clause 7.5 for example is difficult to interpret in relation to CSP business where our clients are usually companies even though they may be beneficially owned by individuals.</p>	<p>The conduct of business rules, although only previously contained in the Investment Business handbook, should apply equally to all services.</p> <p>This only applies to investment businesses, CIS service providers have been separated out and have their own chapter.</p> <p>This has been noted and the relevant rule has been added.</p> <p>Guidance will be issued against specific rules.</p>

<p><i>7.3 (b) Responsible behaviour in dealings by officers</i></p>	<p>IOM will conduct business with clients in hundreds of jurisdictions on a risk based approach. It is impractical to require every licenceholder to have procedures that can ensure they comply with applicable laws in all countries. We recommend that licenceholders be obligated to have a cross border policy in place that allows a risk based approach to continue.</p> <p>whilst there is a caveat in para 7.1 that application is "...so far as applicable...", I suggest there should be specific reference within paragraph 7.3 to clarify that this paragraph relates only to circumstances where the licenceholder is acting as an agent of the client, and that the wording, in particular sub paragraphs (c) and (d), do not apply where the licenceholder is acting as principal.</p>	<p>This rule only applies to another country or territory in which it is conducting or sourcing its business and the rule has been amended to reflect this.</p> <p>This will be clarified in guidance.</p>
<p><i>7.4 Responsible behaviour (1)(b)</i></p>	<p>The FSC should either expand on 'civil and considerate' or delete it</p>	<p>This has been removed as suggested.</p>
<p><i>7.4 Responsible behaviour (2)(a) and (b)</i></p>	<p>We seek clarification whether agreement of the person referred to in this paragraph must either be explicitly obtained or whether it might be assumed by the actions of the person. For example, if the relevant person has provided to the licenceholder, without solicitation, a telephone number that turns out to be an unlisted number, would the provision of that number by the prospective client be taken as de facto agreement to the use of that number by the licenceholder.</p>	<p>This subparagraph has now been removed.</p>
<p><i>7.4 Responsible behaviour (4)(a)</i></p>	<p>change to "...or after 7.00pm..."</p>	<p>No change has been made to this rule.</p>
<p><i>7.5 Introductions to Overseas Branches</i></p>	<p>Our immediate parent company is based in Jersey and we treat the Jersey business and the Isle of Man business effectively as one business. If this section remains in place, we would find it very impractical in introduce such a formality. In addition, we have always understood that Isle of Man, Jersey and Guernsey endeavour to ensure that there is no regulator arbitrage between the three jurisdictions and work together to ensure a commonality of banking and investment business regulations. We would propose that Jersey, Guernsey and the UK are exempted from this particular section.</p> <p>(b) Definition or clarification required for 'system of regulation'.</p> <p>The reference to "business" should be qualified as being business which would be regulated were it in the Isle of Man and similarly the reference to "system of regulation" should be defined as financial service regulation. We cannot be expected to know the information required in relation to any other type of business or regulation. Is it intended that this applies to all licensees? For example a licensee undertaking TSP activity in the retail sector may refer a client to a tax specialist outside the Isle of Man – it seems overly onerous to us that this section would deem to apply in such a situation.</p> <p>Who is a "retail client"?</p>	<p>It is not appropriate to exempt any jurisdiction as there is not the same regulatory treatment in each (i.e. UK regulate mortgages IOM does not), and IOM, Jersey and Guernsey regulate CSP/TSP but the UK does not. However the rule has been amended to remove <u>written</u> requirement and we purely expect disclosure which could therefore be verbal.</p> <p>Rule has been changed to read financial services regulation.</p> <p>The rule is not intended to apply to this situation. It has been amended so that it only applies to financial services businesses.</p> <p>This will be defined in the definition part as an individual, not corporate client.</p>

	<p>It is unclear which country is being referred to in (b). Should it be the country or territory where the client, the licenceholder or the business is located?</p> <p>Is there a definition of the term "introduces"?</p>	<p>The country in which the overseas business is located.</p> <p>No – the ordinary dictionary definition will apply.</p>
<i>7.6 (2) Supervision</i>	<p>Where there has been a requirement to maintain records for staff advising/selling regulated products this now covers all employees. Definition sought for 'Types of activity'.</p> <p>States that a licenceholder must maintain a log which must include the "experience and qualifications of its employees... showing types of activity which they are competent to undertake". We would ask for further guidance/ clarification on what we would be expected to maintain in this area.</p> <p>The information required to be recorded with regard to qualifications and competence of employees should be restated to matters relating to their employment.</p>	<p>Rule 7.6 has been removed as duplication with rule 9.4 was identified.</p>
<i>7.7 Action likely to bring the Island into disrepute</i>	<p>The Courts will no doubt have to interpret what may be "likely to bring the Island into disrepute or damage its standing as a financial centre" in particular circumstances.</p>	<p>Agreed.</p>
<i>7.8 Integrity and fair dealing</i>	<p>This is an unnecessary repeat of 7.3.</p> <p>Endorsement by any professional body is too broad a statement and requires clearer definition i.e. does this mean Chartered Accountants, Law Society or local ALB etc. The reference to "any professional body" is very broad and therefore needs to be clarified.</p> <p>What constitutes "high standards of integrity and fair dealing" is again a term that will have to be interpreted by the Courts in any particular circumstances.</p>	<p>This rule has been merged with rule 7.3</p> <p>This has been clarified to include a professional body of which the licenceholder is a member.</p> <p>Agreed although the Commission may assess compliance with this rule on the conduct of its regulatory activity.</p>
<i>7.9 Informed decisions</i>	<p>The reference to informed decisions needs to be restricted to particular types of decisions – e.g. matters relating to services offered by the licenceholder.</p> <p>(a) As it stands this rule appears rather broad. We suggest that the words "concerning their business with the licenceholder" be added to the end of the sentence before the word "and".</p>	<p>Wording has been clarified.</p> <p>Agreed, rule has been amended as suggested.</p>
<i>7.10 Independence</i>	<p>Our terms and conditions allow us to accept trail commissions from third party professionals who introduce business to us (although it is rare in practice for us to do so). If we accept such commissions then it would clearly result in an advantage to us. We do however still consider ourselves to be independent of such professional firms and would wish to continue to hold ourselves out as being so. Can the wording of this clause be amended in some way to make an exception for commissions – perhaps as long as they are disclosed and not sufficiently material to have significant influence on our business?</p>	<p>There has been no change to this rule. Where licenceholders accept commission, this should be disclosed and unless commission is accepted from a panel of sufficient size, it would not be possible to hold themselves out as being independent.</p>
<i>7.11 Gifts and other benefits</i>	<p>Would this rule require licenceholders to maintain a gift register? If so please could additional guidance be given of what would constitute a gift or other benefit? How wide would the scope for this reach?</p>	<p>Licenceholders will be required to set their own limits and procedures for compliance with this rule which should be covered in their internal policy.</p>

7.12 <i>remuneration linked to service provided</i>	In relation to banking activity, this paragraph is inconsistent with the cross-subsidisation prevalent in some current banking practices, for example free ATM activity being subsidised by income earned on current accounts etc. Suggest FSC should include suitable proviso.	This requirement is not intended to prevent a service being free or the licenceholder from making a profit. The rule has been amended to give greater emphasis to the disclosure of charges.
7.13 <i>Conflict of Interest</i>	While we recognise the positioning intended by paragraph, we feel it is broadly drawn and will have significant impact upon organisations acting as principal. Transactions undertaken by such organisations by custom and nature automatically generate a conflict of interest naturally. We feel that this paragraph is inconsistent with the debtor/creditor relationship which exists between, for example, banker and customer, and particularly in relation to activities such as undertaken foreign exchange transactions.  Further clarification required – we believe that in its current form the statement is too vague.	This is a general rule with the specifics being covered at rules 9.28 and 9.29. It does not apply to the situation mentioned and it will be clarified in guidance that this is acceptable and only needs declaring if a client would be disadvantaged.
7.14 <i>Advertisements</i>	(a) There are occasions when we may wish to state in an advert that we can provide a list of various services without going into a description of each – is it the intention of the Commission to prevent this? The current requirement requires that a fair and accurate <b>indication</b> of the services provided is given.  (c) suggest remove the word “good”	It is agreed that a description is too much to expect for a service. The rule has been amended as suggested.  Agreed.
7.15 <i>Reference to licensing</i>	Is it absolutely necessary that the “rubric” be revised? On the basis that it needs to be so then I presume that there will be an extended period for licenceholders to amend existing stocks of stationery.  Does a licenceholder have the option with regard to the rubric used – e.g. could a fund administrator select the option “licensed .....to provide investment services”? Is there a general rubric for those companies that provide a number of services rather than a specific one?  Can the term "statements" be clarified e.g. does it relate to bank statements, deposit confirmations, foreign exchange confirmations and similar items?	As the terminology of regulated activities is changing across the board the rubric will need to be amended. However, for existing licenceholders, it is unlikely to become a requirement until January 2009 which will allow plenty of time for existing stocks to be used up and amendments made. If there is a specific problem after 01.01.09 licenceholders can apply for a waiver.  The rubric that relates to the wording on your licence should be used and should list all services provided.  Statements will be defined to include bank statements, deposit confirmations and foreign exchange confirmations
7.15 (4) <i>Reference to licensing</i>	Does this rule apply to client valuation statements, client transaction statements and client contract notes?	Yes, a definition of statement and guidance will be added to clarify this.
7.16 <i>Display of license</i>	Can the “principal place of business” be defined please? We have 3 separate offices in the Isle of Man and our functions are split amongst them What type of function dictates which is the principal place?	The objective of this rule is to help visitors (e.g. customers and potential customers) to be aware of the licensed status of the licenceholder. If a licenceholder is in doubt, for example because it has different principal offices for different regulated activities, then it can display photocopies of their licence in all offices.
7.22 <i>Valuation and remuneration</i>	Is the activity of managing investments on behalf of a client defined elsewhere? It is important that this rule applies only to those activities to which it is intended and there is a risk it could inadvertently have wider	It is defined in Class 2 to the Regulated Activities Order 2008.

	impact.	
<i>7.24 (b) Fairness in allocation</i>	Substitute the word “everyone” with “every other applicant”.	Agreed
<i>7.25 (b) Distributions of transactions</i>	While this paragraph relates to investment business, care should be taken to exclude foreign exchange or market making activities where the provider is acting as principal as it will prevent them from operating.	This comment has been noted and it is proposed to add guidance to clarify that this requirement doesn’t apply to forex or market making.
<i>7.27 (1)(b) Execution</i>	We believe there is a material risk that the requirement that a licenceholder should use any discretion as to timing “in an appropriate way”, will be subjected to scrutiny with the benefit of hindsight. It is inevitable that such scrutiny will only occur should the timing of any investment decision turn out to be incorrect. Guidance may be required to clarify in what circumstances investment timing decisions would be considered “appropriate” or indeed inappropriate. It should also be specified that anti-money laundering concerns take precedence over transaction timing.	Guidance will be added about use of discretion in particular specifying that anti-money laundering concerns take precedence over transaction timing.
<i>7.28 Best execution</i>	Presumably, the licenceholder would be entitled to a fee or commission for the transaction of business. If so, the terms to the client would not be the same as for the licenceholder. This rule should therefore perhaps be subject to the licenceholder’s usual (or agreed) fee or commission for such transactions.	Agreed, this will be handled by guidance.
<i>7.29 (a) Fairness with research or analysis</i>	Suggest substitute the word “ahead” with the word “before”.	“Ahead of” is preferred, as it implies that the research is in existence and its publication is reasonably imminent.
<i>7.30 Knowledge of client</i>	Does this apply to bank accounts? Or are they excluded under execution only?	This only applies to Class 2 business, therefore, not bank accounts.
<i>7.34 Disclosure of information</i>	In the context of the delivery of services to global customers, we seek confirmation that it is not necessary to prepare (for example) terms and conditions in the language of a prospective client, and that English language versions of documents are suitable?	This rule has not been changed as it already states “reasonable steps”. If the advisor believes there is a possibility that the client will not understand the language, there could be a question as to whether advice should be given without an interpreter.
<i>7.38 General need for client agreement or terms of business</i>	<b>(2)(b) - client agreements:</b> whilst laudable, the requirement that the terms of an agreement should be clear and not misleading might necessarily be subjective. <b>(2)(c) - client agreements:</b> we feel it is necessary to specify the Isle of Man as the location in which the rights must not be deprived.	Agreed, however, it is important that the requirement be stated.  There have not been any problems to date so it is proposed to leave this rule unchanged.
<i>7.40 Right to educational qualifications of any employee</i>	IOM legislation authorisation is for the licenceholder. This would seem to be a change of focus. Perhaps the employee should be licensed. We appreciate what the Commission is attempting to achieve in requiring educational details and track records of employees to be disclosed upon request of a client, however we point out under our legislation it is the organisation which is licensed by the Commission to distribute investment products not the individual. Allowing individuals’ personal details to be available upon does not seem compatible with the current licensing regime. We do agree however that the licence holder should ensure his staff are suitably qualified and monitored for the roles they fill.  We feel that it is inappropriate to apply this unilaterally across all investment business licenceholders. It is surely more relevant to IFAs and others dealing with the retail public?	The rationale for this rule is IOSCO Principle 21, but it has been narrowed by defining as relevant qualifications to the service etc.  IOSCO does not differentiate. In any case, the client can ask, but if business is institutional it is unlikely client will ask. If client does ask it is obviously important to him and the question should be answered.

	<p>In theory all employees of the licenceholder directly and indirectly could provide services to a client. For example, the definition could include IT staff who ensure that a computer system records transactions and provides statements to clients. We suggest that this section is more specific with reference made to 'client facing staff' and it relates to investment services only as opposed to, for example, banking services.</p> <p>Please advise if this is applicable to CIS or Investment business only</p> <p>(c)(ii) Are there any Data Protection issues with this requirement?</p>	<p>The rule has been amended slightly but guidance may still be required to reinforce that it is just for 'client facing staff'.</p> <p>Only investment business.</p> <p>The rule has been amended to limit the disclosure to <b>relevant</b> educational qualifications and should not be a data protection issue.</p>
<i>7.41 (i) Terms to be included in Client agreement with retail investor</i>	Does this requirement mean that a copy of the conflicts of interest policy is available upon request or is the requirement to provide the detail in the client agreement or provide a copy of the policy with each agreement.	The rule has been amended to clarify that a summary of the policy must be made available on request.
<i>7.47 Contracts to be on-exchange</i>	<p>(1)(b) This is more restrictive than the predecessor rule, now requiring the overseas person to be authorised in the country or territory in which it carries on business. What would be the position if the country or territory concerned did not regulate such activities? Does this mean that the transaction is effectively prohibited?</p> <p>(2) The wording has been changed from a requirement that the licenceholder "take steps to ensure the client's money is treated as client money" to a requirement that the licenceholder "<b>must</b> ensure that the client's money is treated as client money". How can a licenceholder in the Isle of Man enforce this outside the Isle of Man? The licenceholder could do very little other than rely on the other party's say-so that it will treat the client's money as client money.</p>	<p>Whilst this could happen in theory, in practice the regulation of financial services businesses is almost universal. This rule has not been amended but it is intended to explain in guidance that if a circumstance arose it could be considered for a waiver.</p> <p>This is a very valid point. The rule has been amended in line with the comment.</p>
<i>7.48 (2)(b) Liability in respect of margins</i>	Is the reference to "licenceholder" at the end of this rule correct? i.e. should this phrase read "whether or not <b>the licenceholder</b> is responsible" or should it read "whether or not <b>that person</b> is responsible"?	The reference to licenceholder is correct but the cross reference should be to 7.47(2)(b) and has been amended.
<i>7.49 Contract note etc.</i>	Will CIS service providers be subject to certain of the Investment Service provider sections? If not, in relation to funds that do not have a connected Investment Service provider, who will be responsible for complying with this and other similar rules?	No, the CIS service providers will not be subject to the Investment Service provider sections. A separate contract note rule has been added to the CIS service provider section for whoever is doing the advising on the fund to comply with.
<i>7.51 Interests of scheme to be paramount</i>	<p>What is meant by "relevant scheme"? Is this every scheme or just retail schemes?</p> <p>Where work has to be prioritised eg Month end NAVs would this be considered to be unfairly advantaging or disadvantaging a particular scheme?</p>	<p>"Relevant scheme", as defined in that Chapter, means a collective investment scheme for which a licenceholder provides services which are regulated activities falling within Class 3 and it covers every one not just retail.</p> <p>No, this is the risk management of the business.</p>
<i>7.52 Observance of terms of offer document</i>	Are we comfortable that the requirements of this section marry with those in the Commission supported "Sound Practice Guidelines for Administrators of Alternative Funds in the Isle of Man"?	This is an existing requirement which has been considered by Supervision. Guidance will be issued in relation to this rule which would refer to the Guidelines.

	Is the Financial Supervision Act 1988 being repealed?	Yes but not until the CIS Bill is enforced so it has to remain here and then will be altered when the CIS Bill is enacted.
<i>7.53 Valuation of investments which are not marketable</i>	<p>This is an important area however this provision is at odds with AIMA/IOSCO guidelines for valuation policy documents as well as applicable accounting standards notably FRS26/IFRS 39.</p> <p>As this clause is worded, the independent valuation can seemingly be overridden by written internal policy. If so, then what is the point of regulation? There needs to be greater flexibility with an emphasis on compliance with applicable standards and full disclosure to investors of valuation methods. Licenceholders should be able to decide (and contract accordingly) as to whether they will undertake valuation work for clients on non marketable securities. It is a very specialist and complicated area.</p>	The rule has been amended to take account of these comments and ensure that there is no conflict with the guidelines and guidance will refer to AIMA/IOSCO guidelines for valuation policy documents.
<i>7.54 Participants to be treated fairly</i>	<p>I presume that two drivers behind the inclusion of this section would be side pocket arrangements and the FSA's TCF regime? Not clear, in my own mind, how a fund administrator licenceholder can "ensure that..." - it is an appointed agent of the fund/board and it is the board/governing body that ultimately holds sway over decision making in general and also communications issued to "participants".</p> <p>This rule should perhaps be made subject to the particulars of the particular scheme concerned. It is not uncommon for schemes to have different classes of membership carrying different rights. If one class of membership carries rights in preference to the other classes, the licenceholder would be acting properly even if it appeared to be unfair to certain participants in the scheme, assuming of course that all participants were aware of the rights and obligations attaching to their participation at the time of their initial investment.</p> <p>(2) Should this be the responsibility of the licenceholder or the scheme's board?</p>	<p>This is an existing code which applies to all investment businesses (including managers and administrators of CIS) but the current wording is not ideal for the CIS activities. Where managers/administrators deal with subscriptions/redemptions there should be a requirement that all participants are treated fairly. It has been reworded slightly to show that this is the focus of the rule.</p> <p>"Fairly" has to mean "fairly in accordance with the terms of the scheme" and this has been clarified in the rule.</p> <p>It should be the responsibility of the licenceholder doing the communication.</p>
<i>7.55 Material interests</i>	This involves highly subjective judgements and is in our view not necessary in regulation. Rather, common sense business practice would be to incorporate issues in a manager's/administrator's report. This provision would open up IOM licenceholders to claims with adverse commercial and competitive consequences.	This is only for things that would be in the material interests of the scheme. A licenceholder is not expected to find issues only notify what it becomes aware of. The rule has been left as is.
<i>7.58 Notification of amendment of scheme</i>	Is there a definition of the term "material"?	It will depend on individual circumstances.
<i>7.59 Services for CIS established outside the Island</i>	<p>Would an administrator need FSC consent to administer any and every piece of new non IOM domiciled business?</p> <p>If so there are potentially adverse competitive and commercial implications.</p>	This does seem rather onerous. The rule has been amended so that consent is required for the first piece of new non IOM domiciled business but only notification is required for any subsequent pieces.
<i>7.62 Terms of business</i>	Please advise if this is applicable to CIS or Investment business only.	Neither – it only applies Corporate and Trust Service Providers. Guidance will be provided for Trust Service Providers to clarify the change of relationship once the trust has been settled.

<i>7.64 Nominee shareholders</i>	The requirement for a written nominee agreement or trust instrument would not (and should not) affect the common law position relating to actual legal or beneficial ownership. The requirement can only be viewed as a matter of good corporate governance applicable to licenceholders only. Perhaps a clause should be added stating that the provisions of this rule do not affect the legal or beneficial ownership of the interests concerned.	We disagree and feel it is superfluous to say so – it is clear it is only licenceholders, being the persons to whom the rules apply.
<i>7.65 Resignation of licenceholder</i>	There are occasions where we lose contact with the beneficial owners of client companies and are unable to obtain funds or instructions in relation to their companies. Where we have not other option, we may decide to cease providing services to a company with the consequence that the company will eventually be struck off the register. In such circumstances are we expected to maintain the records of the company in perpetuity if no other person is ever appointed to take over the services?	It is agreed that clarity should be provided here. It has been specified that if the company can not be contacted and it is ultimately struck off, then the records must be maintained for 13 years because a company can be restored up to 12 years after strike-off.
<i>Schedule 1</i>	There is an inconsistent use of “customer” for “client”.  Is “investments of any kind” defined elsewhere? For example, is this expression intended to refer (inter alia) to deposit or foreign exchange activity by an employee?	This is just a matter of usage, they are interchangeable. It will be stated in definitions section that one = other for consistency.  Investments are defined in Regulated Activities Order 2008 and do not include deposits or forex. The words “of any kind” have been removed to provide clarity.
<b>Risk Management and Internal Control</b>		
<b>General</b>	There seems to be a general assumption that all licenceholders take the form of an Isle of Man company, for example there are many references to “the Board of a licenceholder”. It may be that the Commission intends that no licenceholder may take any other legal form, or that the “Board” will be widely defined once the definitions section is drafted. However, in the context of certain rules this terminology clearly does not work for individual licenceholders – e.g. for those individuals who are licensed to act as directors of companies or trustee of protectors only.  The rules appear to be drafted with larger size businesses in mind and with the assumption that the licenceholders all have resources available to invest large amounts of time and effort (with resultant financial implications) in establishing, maintaining and reviewing many different policies and registers.	The Commission will only be licensing corporates in future. Guidance will be issued or waiver can sought in relation to the remaining sole traders or partnerships. The definitions section will make it clear that “Board” also includes managers of LLCs etc.  This is just a matter of applying the rule in a way that is appropriate to the scale and complexity of the business.
<i>9.2 (b)(iii) Regulatory requirements</i>	Is there a need to state this separately as it would come under “any other relevant legislation”?	Yes it is necessary to reinforce this point as it is extremely important and to clarify this “any other relevant legislation” is being moved to the bottom of the list.
<i>9.3 (1) Corporate Governance</i>	Why is the Board not responsible for compliance with the “regulatory requirements”?  Does not make sense in the context of an individual licenceholder.	This is a good point, the rule has been amended to use this term instead of “compliance with the rulebook”. The Commission will only be licensing corporates in future so any remaining sole traders will need to apply for a waiver.
<i>9.4 Management controls</i>	The words “by the licenceholder” should be inserted after the word employment in clause 6(b). The effect of clause 6(b) is too wide - we cannot possibly assume responsibility for the full management controls of any person that we contract with. Responsibility needs to	It is not too wide as it relates to ‘individuals’ employed or contracted to the licenceholder to provide regulated activities. It is important that such individuals comply with the licenceholder’s policies, not any other party’s.

	<p>be taking reasonable steps that such persons are fit and proper and where the person employed or contracted is already licensed and regulated themselves we should have no responsibility for their management controls.</p> <p>(f) Should this requirement be imposed on all licenceholders as it may not be relevant/practical for all?</p> <p>(2) and (4) Does not make sense in the context of an individual licenceholder</p>	<p>The requirement is for “appropriate” safeguards so should be relevant/practical for all.</p> <p>Any remaining sole traders will need to apply for a waiver.</p>
<p><i>9.5 Compliance with non-statutory obligation</i></p>	<p>Could further explanation be provided in this respect? It seems unreasonable to bring within regulatory requirements compliance with “non-statutory” obligations.</p> <p>We are having a problem understanding the situation that this section is referring to. Perhaps you could provide an example to clarify this and give examples of the types of relevant authorities or bodies.</p>	<p>Agreed that it could be too onerous for non-mandatory rules, therefore the rule has been amended slightly to read “must take account of any code or set of standards”.</p> <p>Guidance will be added including examples such as British Bankers Association, ACSP etc.</p>
<p><i>9.6 Risk Management</i></p>	<p>Does not make sense in the context of an individual licenceholder.</p> <p>(2)(a) Given that there are IOM licenceholders who are members of major Groups, the latter of which not only having a diverse portfolio of interests but also an extensive geographic footprint I am unclear as to how the requirement of this section could (or would) be practically achieved to any real benefit. It may not be possible for an Isle of Man licenceholder to do anything about the business or risks taken by other group companies in other jurisdictions, in which case a policy covering risks associated with group companies may be worthless</p> <p>“Material risk” must be interpreted subjectively by each licenceholder looking at its particular circumstances. We do not advocate a change to this rule or an attempt to define “material risk”.</p> <p>(2)(c), (5) and (6) We submit that the persons best placed to understand and evaluate the risks to the business of a licenceholder would be the persons running the business itself. Whilst suggestions from the Commission as to what might constitute additional risks to a particular licenceholder would no doubt be welcome, the notion that the Commission can dictate to a licenceholder what the risks of its business are and what measures it should take to cover such perceived risks is exceeding the boundaries of regulation.</p> <p>(3)(a)(i) As Chapter 1 should apply to all licenceholders, the wording is inconsistent.</p> <p>(5) and (6) Is the reference to (2)(b) accurate. I struggled to make any sense of the context.</p> <p>(8) “group company” is defined by reference to the Regulated Activities Order 2008. If the intention is to simplify the legislation, it would be preferable to</p>	<p>Any remaining sole traders will have to apply for a waiver.</p> <p>This rule requires that a licenceholder has a comprehensive risk management policy which takes account of all risks including those posed by another group company which may impact upon the licenceholder. It is extremely important that a licenceholder monitors the risks even if it is not possible to reduce them.</p> <p>Agreed, this is subjective to the licenceholder.</p> <p>Some minor changes have been made to this rule; however the power to say “this is a risk that you are failing to address and you must address it” has been retained as we feel it is essential.</p> <p>The word “bank” has been changed to “licenceholder”.</p> <p>No, the reference should be to 2(c).</p> <p>There will be a definitions section to the Rule Book and it is hoped that the handbook on the</p>

	<p>replicate this definition in the Rule Book itself, to avoid the need to cross refer to other pieces of legislation.</p> <p>(9) We point out that the licenceholder is the only person capable of determining what might constitute such material risks to it, associated with the activities of client companies and trusts. We do not advocate a change to this rule.</p>	<p>website will have links to definitions.</p> <p>This rule has not been amended – see comments above.</p>
<i>9.7 Business plan</i>	<p>Business plans are by their very nature extremely confidential and if in the wrong hands could have severe negative implications for a licenceholder. We are of the view that the Commission and its employees should be bound by strict rules of confidentiality, with significant penalties for breach.</p> <p>(2)(a) This requirement appears unnecessarily onerous.</p>	<p>Upon appointment, officers of the Commission and Commissioners are required to sign the Official Secrets Act 1989 of Parliament. All information received or discussed is confidential and will not be communicated to third parties either while in office or following their resignation.</p> <p>It should not be too onerous as it only relates to material changes.</p>
<i>9.8 Changes to activities, services or products</i>	<p>Could impede the ability of business to react to competitive situations. If an activity is within the scope of the licence then the Commission should just be advised. We have approved over 300 minor changes to product material/activities in the last year and recommend that only material changes be notified in arrears.</p> <p>This rule would appear to overlap to some extent with the provisions of Rule 8.5, which provides for notice to be given “as soon as practicable, if the licenceholder can not give the notice within the 20 day period.” We suggest that this Rule be amended to provide for notice “as soon as practicable”. Why is the Commission interested in the termination of a product or service that may not constitute regulated activity?</p>	<p>The rule already specifies that it is only for material changes. The rule will remain unchanged but guidance will be provided to state that there should be a focus on new services/products and material changes where it may change the risk profile of the licenceholder.</p> <p>It is believed unlikely that a licenceholder would be unable to give the 20 business days notice of a change to its activities, services or products.</p> <p>The Commission would be interested as it may reduce the inherent risk profile of the business.</p>
<i>9.9(b) Business resumption and contingency arrangements</i>	<p>More detail on the requirement to test would be appreciated.</p>	<p>Guidance will be provided.</p>
<i>9.10 Business continuity</i>	<p>There is a new requirement for fiduciaries to provide these details to the Commission. Would it not be better to require licenceholders to have the plans in place and for the Commission to review during regulatory visits? If this information is sent to the Commission by licenceholders, will there not be an expectation that the Commission will review and approve/reject?</p>	<p>The rule has been amended so that licenceholders only have to provide details on request.</p>
<i>9.11 Delegation of function, outsourcing or inward-outsourcing</i>	<p>Where the outsourcing is in-house the need for prior consent is questioned.</p> <p>This is subjective and clarification of what is meant by ‘significant’ should be considered. What is achieved by insisting on consent?</p> <p>Please explain the interaction of 9.11 with Class 4(9)</p>	<p>The rule is to another person therefore in house would not require consent but within group would require consent.</p> <p>No clarification can be provided as it will depend on the licenceholder. Where the delegation is significant, the Commission is of the view that its consent is required, to ensure that the delegation is to an appropriate entity, does not damage the reputation of the Island, and secures an appropriate degree of protection for customers.</p> <p>Rule 9.11 deals with delegation of its function</p>

	<p>(Regulated Activities Order) and Class 4 - 4.6 (Financial Services (Exemptions) Regulations).</p> <p>Sub-paragraph (a) should permit the licenceholder, in the event of a break down of the delegation, to carry out or assume control <u>or delegate to a new delegatee</u>. If the reason for the delegation in the first place is a lack of resources, and that delegation breaks down, it will be vital that the licenceholder is able to delegate to a new delegatee immediately, in which case it will be crucial that the Commission is able to and does provide immediate consent to the appointment of the new delegatee, failing which irreparable harm could be inflicted upon the business concerned.</p>	<p>and the need for a written agreement i.e. what a licenceholder is permitted to do and how. The RAO defines what a regulated activity is – providing “administration services to a company” (4(9)) is a regulated activity. If a business is licensed to undertake Class 4(a) but wants to outsource material parts of that administration it will need to seek the Commission’s consent under rule 9.11.</p> <p>With regard to Class 4 - 4.6 it is intended to reword to clarify an exemption will be available (i.e. no need to have licence) where, “in relation to any regulated activity of Class 4, that activity is carried on solely on behalf of a person who is licensed to undertake Class 4 regulated activities.”</p> <p>It is agreed that this should and would be allowed.</p>
<p><i>9.12 Breaches of rules</i></p>	<p>This rule refers to notifying the Commission as soon as a licenceholder becomes aware of a material breach. Will there be any definition of material?</p> <p>Is the level of materiality regarding pricing errors to be incorporated into a rule?</p> <p>Please can you clarify if this means pricing errors reporting of errors in addition to the quarterly error reporting requirement ?</p> <p>Meaning of Material Breach – again do we base this on the error reporting requirement?</p> <p>We point out that the determination of what constitutes a “material breach of any of the regulatory requirements” will necessarily be the subjective view of each licenceholder</p>	<p>No clarification can be provided as it will depend on the size and business of licenceholder. It will be left for individual licenceholders to determine.</p> <p>It is by virtue of (1).</p> <p>Pricing errors have to be logged, and if they are material should notified to the Commission as soon as the licenceholder becomes aware of them, in addition to the quarterly error reporting requirement.</p> <p>See comment above re material breach. The guidance on errors and is to be reviewed and reissued as guidance.</p> <p>Agreed</p>
<p><i>9.13 Fraud or dishonesty</i></p>	<p>(1)(a) Can this be amended to reflect where it is in the course of employment and as far as the licenceholder is aware?</p> <p>(1)(b) This section requires licenceholders to inform the Commission if it makes a claim or notifies the insurer of a potential claim on any PI policy. This differs from the requirement set out under 9.53 (6)(a) which states that licenceholders should inform the Commission if the claim exceeds £10,000. Is this just</p>	<p>No “in the course of employment” would be too narrow and “as far as the licenceholder is aware” could be some time after “as soon as the licenceholder has reason to believe” and from a risk mitigation perspective could be too late.</p> <p>Rule 9.13(1)(b) has been removed so that the requirement to notify claims is covered by rule 9.53 only.</p>

	<p>an inconsistency that needs to be removed or does this mean that the reporting threshold of £10,000 should not apply to claims or potential claims relating to fraud or dishonesty? If it is not just an inconsistency then it should be stated clearly under 9.53 (6) that the threshold does not apply under these circumstances.</p> <p>(2) Does the conduct of a licenceholder's business include the conduct of its clients?</p> <p>(2) and (3) This rule amounts to the notification of a suspicion of fraud or serious mismanagement. As mentioned before, it is a cornerstone of our democratic and civilised legal system that a person is consider not guilty of a crime until proven guilty in a duly constituted court of law. The requirement should be to notify the Commission of properly proven fraud or mismanagement.</p>	<p>It depends on the type of activity and clients, but it could. Some guidance on this could be given.</p> <p>It is considered that this is important to have due to reputational impact considerations. Additionally, the test in the rule is “reason to believe” which is a higher test than mere suspicion.</p>
<p><i>9.14 Investigation of members conduct by professional body</i></p>	<p>As regards staff, again surely this must be qualified by “in so far as the licenceholder is aware”. What about the principle of innocent until proven guilty?</p> <p>Employment law issues of confidentiality need to be considered.</p> <p>Whilst we accept that the Commission should be notified of the termination of a persons membership of a professional body arising from action taken by that professional body or of any censure imposed by such professional body, we disagree that the Commission should be notified of a mere inquiry into a person’s conduct or institution of disciplinary action against him.</p>	<p>This rule already reads “as soon as [the licenceholder] becomes aware”. It is considered that this is important to have due to reputational impact considerations.</p> <p>Agreed.</p> <p>It is considered that this is important to have due to reputational impact considerations.</p>
<p><i>9.15 Matters to be notified</i></p>	<p>As part of a large group we would not normally be privy to or involved with this type of information.</p> <p>(1) We point out that the determination of what constitutes a “material change affecting a licenceholder’s business, systems, controllers, directors and key persons” must necessarily be the subjective view of each licenceholder.</p> <p>(2)(c) We object to this proposed rule on the same grounds as set out in our comments to rule 9.14. Furthermore, the investigation (particularly in relation to associated companies which may not be in the Island) may have nothing to do with Isle of Man regulated activities.</p> <p>(2)(d) This rule should not apply in the case of disciplinary measures or sanctions which have nothing to do with Isle of Man regulated activities. In particular, associated companies may conduct an entirely different business that does not constitute a regulated activity, or the disciplinary measures or sanctions may be in relation to a section of the licenceholder’s business that does not constitute regulated activities.</p>	<p>If the licenceholder is not aware it is understood that they will not be able to inform the Commission.</p> <p>Agreed, no change intended.</p> <p>As this relates to the licenceholder’s affairs, not the employees, it is proposed that it is acceptable to leave it in. If it has nothing to do with Isle of Man regulated activities it will be disregarded.</p> <p>A number of circumstances have been set out that might lead to the conclusion that a particular situation is not potentially damaging. But some situations are potentially highly damaging and ignorance of the facts is not a solution. This could affect licenceholders’ risk by contagion.</p> <p>Agreed, this change has been made.</p>

	<p>(2)(e) This rule should be limited in its scope by the addition of words to the following effect at the end of the sub-paragraph "by the licenceholder or any director, officer, employee, controller or key person."</p> <p>(2)(f) It is not clear why the Commission would consider it necessary to be notified of applications in other countries by the licenceholder's immediate parent or subsidiary.</p>	<p>It is considered that this is vital due to consolidated supervision.</p>
<p>9.16 <i>Compliance officer and money laundering reporting officer</i></p>	<p>We note that this Rule would require certain formal appointments to be made. Would this mean formally designating someone with the specific title "Compliance Officer" or would the existing title of "Compliance Manager" suffice if a reference was made within the procedures manuals that they are one and the same. I understand that this is a small point however it could mean changes to several procedures, job profiles, business cards etc.</p> <p>At present the compliance function within our licensed TSP and CSP entities is carried on by a compliance committee. Although we feel that all functions set out in clauses 9.16 and 9.17 are fulfilled by our arrangements, the compliance office acts mostly in an administrative capacity within the committee and it is the committee that takes much of the responsibility and reports to the Board. We believe that this arrangement gives added depth and strength to the compliance function and assists in permeating an awareness of compliance issues throughout the business. We would like to see sufficient flexibility in the rules to allow for arrangements of this type.</p> <p>Why would the MLRO have <u>sole responsibility</u> for compliance with the Criminal Justice (Money Laundering) Code 2007? Would it not be more practical and appropriate for the MLRO to have with the Code? It seems unduly onerous to put all of this responsibility on one person.</p>	<p>In this case it is the spirit of the legislation that matters and manager would suffice.</p> <p>There is nothing to stop licenceholders having a committee but one specific individual is needed to fulfil the Compliance Officer, MLRO and deputy MLRO roles. It is considered that this is vital for responsibility and focus so that if things go wrong one person has to take responsibility.</p> <p>Agreed. The wording has been changed to a money laundering reporting officer as required by the Criminal Justice (Money Laundering) Code 2007.</p>
<p>9.17 <i>Functions and status of compliance officer</i></p>	<p>This has commercial implications for smaller licenceholders, and will put off the smaller hedge fund managers that the Island seeks to attract.</p>	<p>This rule should not have substantial commercial implications as the arrangements are to be appropriate to the size and nature of the business.</p>
<p>9.19 <i>Isle of Man resident officer</i></p>	<p>Is "officer" defined? Could "day to day" be clarified?</p> <p>Persons authorised to act as officer of companies or as trustee or protector only should be excluded.</p>	<p>Yes (1) defines the term. Guidance will be provided to clarify this.</p> <p>Sole traders can apply for waivers.</p>
<p>9.20 <i>Absence of resident officer</i></p>	<p>Further guidance required on practical approach. Does this include absence by one resident officer due to ill health or off Island on business, is there a need to appoint a permanent position as deputy for both four-eyes?</p> <p>Requirement for 4 eyes is removed if there are 2 resident directors involved in the day to day business – do we therefore have to ensure that an additional person or persons has been approved to cover when the 2 local directors are off island?</p>	<p>Guidance can be given to explain that plans to comply with rule 9.19 (i)(b) should show what the licenceholder will do in various events. How it is dealt with is up to individual licenceholders and will vary on licenceholder size, type and travel need etc.</p> <p>Yes unless it is for a very limited period. Guidance will be given on this.</p>

	The licenceholder should carry the responsibility for determining what arrangements are appropriate and that simple notification to the Commission should suffice rather than requiring the approval of the Commission. If a licenceholder failed to have such arrangements in place it would be in breach of the Rule anyway.	The need for approval in this rule has been retained because the person put forward as “deputy” resident officer will require to be vetted by the Commission.
<i>9.22 General records</i>	More detail on the records to be retained would be appreciated. How long must these records be retained for?	Rules 9.22 and 9.25 have been merged as they cover similar requirements. This will provide extra detail on the records and specify a retention period.
<i>9.23 Clients’ records</i>	<p>Many of our clients are companies, including Spanish companies, which own foreign property and maintain their accounting records in the language of the country in which they are incorporated. We employ a number of foreign language speakers and we do not go to the trouble of translating the foreign companies own documentation or the documents relating to transactions within those companies. Our administrators are able to deal with them in their original language and it would simply be a waste of time and clients money to have to have them translated. Can the rules please allow for such circumstances as it would be very burdensome to translate everything into English?</p> <p>Who is a client from the perspective of a CIS provider i.e. the shareholder or the fund?</p> <p><i>(1)(c)</i> We have assumed that this Rule does not impose an obligation to hold an additional set of records or documentation which would have cost and resource implications for licenceholders - i.e. the licenceholder’s client file would suffice.</p>	<p>Records only need to show and explain transactions performed by the licenceholder for the client therefore not its accountancy records etc. If the licenceholder performs transactions for foreign companies in foreign language a sufficient English explanation of what/why/when on file should suffice. Extra guidance will be issued to clarify the position.</p> <p>The person it is acting for in any given circumstance.</p> <p>Agreed - the licenceholder’s client file should demonstrate compliance with the regulatory requirements. There should not be a separate file.</p>
<i>9.25 (b) Business and Accounting records</i>	Is the requirement to hold such records for 6 years after the cessation of a licence not excessive?	No it is not believed to be excessive and is a current requirement for some licenceholders.
<i>9.26 Relations with regulators</i>	<i>(b)</i> This rule could be considered rather vague.	Agreed but there has been no amendment to this rule.
<i>9.27 Compliance returns</i>	Without knowing what the requirements of the proposed annual compliance return are, it is difficult to comment on this rule. We would suggest that the Commission bear in mind that the filing of returns has time and cost implications for all licenceholders, which results in driving up the cost of doing business and impacts adversely on the competitiveness of the Island as a jurisdiction.	The compliance return has been issued for consultation separately and comments have been received. However, a form of this size should not drive up the cost of doing business in any material way.
<i>9.28 Conflicts of interest policy</i>	A definition of a conflict would be appreciated.	A definition will not be given but guidance to add clarity may be issued.
<i>9.30 (1) Complaints</i>	Should verbal complaints not go the same route? Would it be better here to have a definition of what exactly is defined as a complaint, is it ‘any expression of dissatisfaction’ or is it up to the licenceholders to define?	This rule will still only apply to written complaints as this is regulation, not best practice, and if someone feels strongly enough they will provide a written complaint. The Commission would not want to define a normal dictionary word so it will be for licenceholders to define “complaint”.
<i>9.30 (1)(d) Complaints</i>	I suggest ‘final response’ has to have been issued to complainant within 12 weeks of receipt after necessary investigations rather than investigation complete within 12 weeks – could be very different. Plus, final response should be in writing rather than	This rule has been amended to include 1(e), “including the issuance of a written final response.” However, it does not state that this must be within 12 weeks as it is considered unnecessary for this to lead to regulatory action.

	settled during meeting/chat as can happen now. Should be best practice if such a discussion is held is that salient points are then confirmed/followed up in writing and that in all cases if written complaint received it is answered in writing. Plus 'final response' should always refer client to FSOS if client is dissatisfied with response. It is up to FSOS to decide whether complaint is within jurisdiction not the licenceholder.	There may be good reason for the delay i.e. complainant goes on holiday and can't be contacted. Additionally, the rules have not been amended to say that the final response must mention FSOS. These rules apply to many classes of regulated activity that FSOS doesn't apply to i.e. TSP/CSP so it could set wrong expectations. A note to point to guidance issued by FSOS will be included.
<i>9.30 (2)(b)</i>	This states that complaints procedures have to be readily accessible to the public however I note in rule 7.62 it is not a requirement to include this in the terms of business-does this mean a licenceholder only has to make the procedures accessible if the complainant requests a copy?  We do not understand the need to make all licenceholders' complaints procedures readily accessible to the public. Surely such procedures should only have to be made available to the customers/clients and persons seeking to become customers/clients of a licenceholder.	Yes. Guidance will be provided to state that it is up to licenceholder how they want to tell customers that they are available i.e. terms of business, website, complaints leaflet etc.  This rule has not been amended as the complaints procedures will only need to be made available to those who complain, and this might also include ex-customers.
<i>9.30 (2)(c) Complaints</i>	We would like to see licenceholders looking at all customer base if error/systematic problem identified by complaints to see who else is effected rather than wait for the problem to be spotted by individual customers.	Guidance will be issued to make it clear that if one problem might affect others then the licenceholder should review them all.
<i>9.30 (3)(b) Complaints</i>	Procedures for all IOM business should include reference to FSOS. We suggest that a provision is included for the notification to all IoM clients of the availability of mediation and adjudication services as provided by the FSOS.	These rules cover licenceholders that are not included in FSOS therefore the inclusion of "where appropriate" is correct in this situation.
<i>9.30 (4)(b) (ii) Complaints</i>	Should this be date received rather than date made? Plus to record: a) method of complaint, written or verbal b) whether complaint is justified /unjustified c) date when final response letter issued d) if referred to FSOS by client and outcome of referral	Agreed that this should be date received and rule has been amended accordingly. As complaints must be written (a) is not required; (b) is likely to appear in the log as part of the actions taken; (c) is likely to be the date the complaint is considered closed and (d) is considered to detailed to be included in a register but details would be expected to appear on the file. Guidance will be issued to cover this point.
<i>9.30 (4) (b) (ix) Complaints</i>	I am struggling to ascertain to what practical/risk benefit (to all parties) the requirement requires inclusion (i) in the register and (ii) at all	The rationale for this is to have it clearly noted whether or not the PI insurers have been informed. There have been instances of licenceholders not informing PI insurers who then are reluctant to pay out on a claim.
<i>9.40 (4)(a) Arrears and provisions policy for bad and doubtful debts</i>	What would be regarded as an "adequate level" of provisions? Is the licenceholder free to determine this?	Yes the licenceholder will determine this.
<i>9.53 PII</i>	Regulations now state amount of cover required and that it must be obtained. There is no option to have a letter of comfort from a Parent company instead of obtaining PII or relying on PII that group has taken out. Some groups are large enough to absorb risk from our own reserves.  For these purposes, what constitutes an "acceptable jurisdiction"?	Guidance will be issued which states that an undertaking from the parent with regard to the level of cover maintained may be acceptable. In certain circumstances you may seek a waiver from or modification to this rule.  Guidance will be issued regarding acceptable jurisdictions.

<b>Administration</b>		
<i>8.3 Changes in capital structure</i>	In our view decisions to increase or reduce or change the nature of the share capital or loan capital of a licenceholder are business decisions, which may have to be implemented fairly quickly in the best interests of the business and its employees. The need for the consent of the Commission to these actions seems to be an interference with ordinary business decisions, unnecessary and cumbersome. The raising of loans of whatever nature would be pure business decisions.	Rule 8.3 is basically about debt which is essentially like equity (e.g. sub loans), so consent is perfectly reasonable given the supervisory ratios that need to be adhered to. Rule 8.3(a) remains as consent, but this does not mean that consent is required to pay a dividend (for example). Rule 8.3 (b) has been reduced to prior notification of the Commission.
<i>8.4 (2)(b) and (3)</i>	The period of 20 business days in advance would appear to be rather lengthy. We suggest no more than 10 business days.	It is considered that 20 business days is reasonable.
<i>8.5 Acquisition etc. of business</i>	The transactions contemplated in this rule are all transactions involving pure business decisions that would, in accordance with well established principles, have to be made in the best interests of the licenceholders concerned. Such decisions should be left to the persons best placed to make them, namely the parties concerned. Again, simple notification of the proposals would appear to be entirely adequate.	The essential criteria of Basel Core Principle 5 (major acquisitions) states “laws or regulations clearly define what types and amounts (absolute and/or in relation to a bank’s capital) of acquisitions and investments need <u>prior supervisory approval</u> ”, on this basis consent is valid for all aspects of rule 8.5.
<i>8.6 Subsidiaries etc.</i>	Is there an exemption for CSPs establishing subsidiary companies that are acting as nominees etc.?  Again, the need for the consent of the Commission to these actions seems to be an interference with ordinary business decisions, unnecessary and cumbersome, creating unnecessary additional work and risk for the Commission as well as potential delay and frustration for the parties concerned. Furthermore, a proposed subsidiary might not conduct licensed activities, in which case the Commission would have no jurisdiction over its activities anyway. Again, notification would be adequate.	“Trading” has been added to this rule before “subsidiary, branch or representative office”, but guidance will also be issued to clarify that it is to cover nominees.  Basel Core Principle 5 also contains the proviso that “the supervisor can prohibit banks from making major acquisitions / investments (including the establishment of foreign branches and subsidiaries) in countries with secrecy laws or other regulations prohibiting information flows deemed necessary for adequate consolidated supervision”. It is therefore considered that 8.6 is satisfactory. In cases where a simple non trading subsidiary is being established in the IOM or elsewhere it would be pushed through very quickly in any case.
<i>8.7 Sale etc. of whole or part of business</i>	The period of 20 business days in advance would appear to be rather lengthy. We suggest no more than 10 business days.	It is considered that 20 business days is reasonable.
<i>8.8 Acquisition of shares of a company</i>	It is felt that this could impinge upon entrepreneurial freedom. There may also be commercial sensitivities. What is achieved by consent? This will interfere with day to day commercial decision making. Simple notification of the proposals would appear to be entirely adequate.  This Rule could have significant implications on fiduciaries. In the majority of cases fiduciary licenceholders act in their own capacity, and not through a nominee company, as Trustee of a client trust. Therefore technically this Rule would imply that licenceholders would need the prior approval of the Commission when any new company and trust structure is set up. I am sure that this was not the intention and I assume that it has been drafted with the scenario of one licenceholder acquiring share capital in another company as part of an acquisition or merger.	As rules 8.5 and 8.6 require consent for certain acquisitions and investments, and this is considered to be a lesser step than establishing a subsidiary this rule has been reduced to notification of the Commission.  This is a very valid and important point. The rule has been amended to show that it does not apply to nominee companies and shelf companies.
<i>8.9 New</i>	The period of 20 business days in advance would	Twenty days is needed to give the Commission

<i>appointments and departures from office</i>	appear to be rather lengthy. We suggest no more than 10 business days.	chance to complete their vetting. Most candidates have a month's notice anyway. A waiver would be considered if there were special circumstances.
<i>8.10 Staff disciplinary action</i>	<p>We consider this to be too wide and suggest that it should apply only to key staff with the possible exception of dishonesty. We also note that there could well be problems with tribunals and potential conflicts with employment law.</p> <p>The needs of the commission to have sufficient information to vet managers etc. must be balanced against the personal data and rights of employees. It is not a problem to notify FSC of disciplinary action against an existing employee, however the FSC should establish clear reporting obligations on licenceholders when events with disciplinary issues are identified after an employee has left employment of a licenceholder.</p>	<p>It is necessary for the Commission to have enough information to vet key staff of licenceholders. As a number of institutions have been reluctant to provide full responses to reference requests, it is considered essential to keep this rule requiring licenceholders to tell us about disciplinary actions, including the names of key staff.</p> <p>There is guidance around the current rules which addresses such cases as where someone resigns but would have been subject to action if they had not and this seems to be sufficient.</p>
<i>8.12 Service of notice</i>	<p>Surely this must be qualified by "in so far as the licenceholder is aware".</p> <p>What about equivalent legislation in other jurisdictions?</p> <p>Does this extend to investors in funds?</p> <p>What is the definition of "associated company"?</p>	<p>This rule already reads "as soon as [the licenceholder] becomes aware".</p> <p>We have not gone this far but could consider it in future.</p> <p>No – it's the person the licenceholder provides services to therefore it is the fund in the case of a fund manger/administrator, but would be a client /investor for an IFA, or depositor for a bank etc.</p> <p>Definition to be included in definition section.</p>
<i>8.13 Criminal proceedings and convictions</i>	<p>As regards staff, again surely this must be qualified by (in so far as the licenceholder is aware)? Employment law issues of confidentiality need to be considered.</p> <p>Require definition of criminal proceedings i.e. does this include speeding fines? There is no requirement on employees to notify us. Is this a passive approach or is the expectation for licenceholders to search the media on articles of employees on minor convictions.</p> <p>Clarification required if this is in relation to a regulated activity or in the case of employees something that may have occurred outside of business?</p> <p>It is accepted that the Commission should be notified of the conviction of a licenceholder or of any associated company, or of any officer or employee of the licenceholder or of any associated company. I would suggest that this rule be looked at in terms of a possible conflict with employment legislation, and the concept of "innocent until proven guilty".</p>	<p>This rule already reads "as soon as [the licenceholder] becomes aware".</p> <p>Agreed</p> <p>Rule 8.13(2) lists the relevant offences and does not include speeding or minor motoring fines. A passive approach would be sufficient.</p> <p>This rule is not restricted to regulated activities, so theft from a previous employer would still be notifiable, for example.</p> <p>There has been no change to this rule. The fact that criminal proceedings are being taken means that there is a possible case to answer. The concern is with any negative effect on the licenceholder and as the name of the individual is not requested they could not be judged. The Commission has dealt with these situations for years on an "innocent until proven guilty" basis. For example, the Licensing Policy states: 3.1.5 In cases where legal or disciplinary investigations or proceedings are in progress or pending, it would not be appropriate for the Commission to prejudge the outcome and, therefore, the Commission may not be able to form a view as to the fitness and propriety of the individual or organisation concerned until the</p>

		<p>matter has been concluded. In such cases, the Commission may consider it appropriate to defer making a decision on the licence application. Where this is the case, the Commission will keep the matter under regular review and seek to ensure that a decision is made as soon as possible.</p>
<p><i>8.18 and 8.19 Legal proceedings</i></p>	<p>In light of the provisions of Rule 8.13, it would appear that this rule is intended to cover proceedings other than criminal proceedings. This should be made clear. The notification of “intended legal proceedings” should be removed so that this only applies to actual legal proceedings. What constitutes intended legal proceedings might be difficult to define.</p>	<p>It is agreed that it should only apply to actual proceedings and not intended. This rule applies to all proceedings criminal or not.</p>
<p><i>8.19 Legal proceedings</i></p>	<p>This figure is very low and will mean that effectively everything will need reporting. We suggest that this be increased to £50,000 with an appropriate increase in the percentage referred to in (b).</p> <p>The regulation has split between deposit takers and Investment and Fiduciary activity but removed the exemption from this if the business holds a banking licence then the requirement is £500k. Clarification required for licenceholders who hold licences for all activities to establish if this exemption is intended to be inserted.</p>	<p>This is a valid point and the levels are being reviewed.</p> <p>It is agreed that rule 8.19 should be changed to read “This rule applies to licenceholders authorised to carry on regulated activities falling within Class 2, Class 3, Class 4 or Class 5 who are not also authorised to carry on regulated activities falling within Class 1”.</p>
<p><i>8.20 Criminal proceedings against client</i></p>	<p>It is accepted that the Commission should be notified of the conviction of a client. The requirement to notify the bringing of proceedings should be removed.</p>	<p>There has been no change to this rule as it is an important provision. If the client or client company is charged it usually creates a significant risk for the licenceholder. Often, its staff will be directors of the client company. However, a summary case is only required to be provided “where possible” and names are not required.</p>