

**CAROL 7 – A Consultative Paper on
the Clients' Money and Clients' Investments Chapters of the Financial Services Rule Book
and the format and content of the Annual Compliance Return**

Summary of comments in responses to CAROL 7 consultation

Clients' Money	Industry comment	FSC's Response
<i>General</i>	<p>The recent rules on Client and Trust Money are very difficult to understand and to apply, particularly in relation to the inclusion of the concept of 'Trust Money'.</p> <p>Whilst appreciating that "Clients' Money" now includes "Trust Money", it is not clear throughout Part 4 whether references to "Client Bank Account" are intended to also refer to Trust Bank Accounts.</p> <p>Money held by a licenceholder as Trustee under the terms of a Trust Deed does not need to be included in the Client Money rules. The handling of such trust assets by the trustee is governed by the deed and that should be sufficient. Indeed the definition of "trust money" in clause 4.2 would seem to exclude such assets which the licenceholder holds as trustee, but then it is brought back into the net of Client Money by virtue of Clause 4.3(6).</p>	<p>The definition of trust money has clearly caused some confusion and, as a consequence, this is being amended to ensure that where trust money is held by the licenceholder in a clients' account the licenceholder must follow the clients' money rules. However, where the money is paid into an account that relates to a specific trust only, the only requirements will be that -</p> <ul style="list-style-type: none"> ✦ the licenceholder should account for the money properly; and ✦ ensure that it can, at any time, identify and reconcile how much trust money is held. <p>Separate rules for trust money are contained in a separate section of this part which should clarify the position.</p> <p>The Commission believes that there should be some requirements in relation to trust money as trust deeds are usually silent on the sort of detailed administrative points that these rules cover. There is a carve-out from the requirements where trust money is held in a trust bank account, which is the usual practice. Rule 4.6(3) effectively says that if the trustee doesn't set up a separate account then he should handle it as client money.</p>
<i>4.2 Interpretation</i>	<p>(1) After the word "client" it should read 'MAY include the trustee of a trust'.</p> <p>(1)(b) - does this definition include items such as quoted shares and bonds?</p> <p>This section classifies cheques, drafts and bills of exchange as money. We point out that cheques, and bills of exchange are orders to pay and may not be honoured. They are not money and should not be defined as such.</p>	<p>The trustee of a trust would be a client and therefore the definition includes this.</p> <p>No as these would be investments and not something which can be directly converted into legal tender.</p> <p>Whilst this may be the legal position, it is possible to define something differently for regulatory purposes only, which is what has been done in this instance.</p>
<i>4.3 Meaning of client money</i>	<p>(1) is it necessary to include the words "and includes trust money"?</p> <p>(3)(b)(i) and (ii) - this would seem to capture fiduciary service fees billed in advance which although perhaps due and payable on a certain date cover a future period and in accounting terms is 'unearned' income. It is not surely the intention that such sums would be regarded as client money as the administration involved would be huge.</p> <p>The definition of "client money" includes "trust</p>	<p>This has been amended to exclude money held in a trust bank account.</p> <p>This is the same wording as the current code and there have not been any issues raised previously.</p> <p>See previous comment re excluding money</p>

	<p>money”. This seems to imply that a licenceholder must comply with the rules relating to client money for every trust of which it acts as trustee. This may place an impractical, costly and unfair burden on trustees. In practical terms (and provided the account is clearly designated as an account held in the capacity as trustee – see comment to rule 4.10) there would be little difference between trust bank accounts and bank accounts maintained by companies administered by CSPs.</p> <p>We cannot see the need for nor the advantage in changing the current status whereby “client money” ceases to be client money when paid into a trust money account.</p> <p>The implication is that a licenceholder must comply with the rules relating to clients’ money for every trust where it acts as trustee. This would appear to place a potentially excessive burden on trustees. Provided that a trust bank account is clearly designated as such then there should be little difference in how a trust bank account and an account of a company administered by a CSP should be treated. It is also the case that Trust law imposes stringent obligations on trustees to account for monies held in trust. Therefore we suggest that Trust Money should be specifically excluded from the definition of clients’ money.</p> <p>Whilst I can appreciate that in many respects trust money is akin to client money would it not be better to allow trust law to govern the handling of trust money rather than try to include in the client money rules?</p> <p>(6) We don’t think it is the intention of this section to include funds held by the licenceholder as trustee if the funds are held in a separately designated account, but it is not clear. The funds are held by the trustee, who is also the licenceholder, but they are not held by the licenceholder in its own right and therefore are not covered by the client money regulations. Could you confirm that our understanding is correct?</p> <p>If our interpretation is incorrect, we believe that as drafted the treating of trust money as client money may have some unintended consequences. For example, I do not believe that any licenceholder would include in its ledgers details of money received or paid out on trust bank accounts as is implied should be the case in 4.11(2)(c)(iii).</p> <p>The meaning of client money in Part 4 is so widely drawn that trust money may in certain circumstances be covered when it is not necessary.</p>	<p>held in a trust bank account.</p> <p>See previous comment re excluding money held in a trust bank account.</p> <p>See previous comment re excluding money held in a trust bank account.</p> <p>See previous comment re excluding money held in a trust bank account.</p> <p>See previous comment re excluding money held in a trust bank account.</p> <p>See previous comment re excluding money held in a trust bank account.</p> <p>See previous comment re excluding money held in a trust bank account.</p>
<p><i>4.4 Meaning of client bank account and related expressions</i></p>	<p>"trust bank account" (a)- this clause does not seem to work with the current definition of trust money.</p>	<p>See previous comment re excluding money held in a trust bank account.</p>

	<p>A “separate client bank account” seems to just be a “designated client bank account” which only holds money for one client so to simplify matter could they be combined as it does say under the designated client bank account that it holds money of one (ie. is in effect a separate client bank account) or more specific clients.</p> <p>The condition that funds held are not pooled with other accounts in the event of a licensee failing is only included for designated client bank accounts. Surely this should apply to all client bank accounts?</p> <p>The statement that “general client bank account means a client bank account other than a separate client bank account” is confusing. Is then a designated client bank account included within general client bank accounts?</p>	<p>The “designated client bank account” is one where the client has selected the bank and can hold the monies of more than one client which has selected that particular bank. The “separate client bank account” holds only the money of one client but the client will not necessarily have selected the bank.</p> <p>It is only intended that clients’ money is pooled with other client money accounts (except “designated client bank accounts”. This has been clarified</p> <p>This has been amended to clarify that a “general client bank account means a client bank account other than a “separate client bank account” or a “designated client bank account”.</p>
<p><i>4.6 Duty to hold client money separately</i></p>	<p>(5) We suggest that the words 'on trust' should be changed to avoid confusion. Perhaps the phrase 'to the order of' or 'as nominee' may be better.</p> <p>We agree that clients should be aware if their funds are not subject to the same level of protection than if (1), (2), and (5) did apply. Assuming that the relevant agreement is the client engagement letter, would this mean it is possible for a licensee to avoid the client money rules by choosing for their agreements to be ruled by the law of a jurisdiction that does not have equivalent client money rules in place. Even if they do warn their clients in writing, the fact that client money held in these circumstances doesn't have the same level of protection could have a detrimental impact in the Island's reputation if it were abused.</p> <p>We would like to query the apparent blanket application of paragraph (4). Whilst we appreciate there are instances where this may be appropriate, we do not believe this is always the case. When acting as a trustee, client money only passes through our client account and is not held there as a matter of course. In the event that we were obliged to arrange for individual client accounts with our bankers whenever asked to do so, this would result in an increased administrative and financial burden upon the company for a very limited, if any, benefit for the client. We question the application of this rule to all licensees.</p>	<p>“on trust” is a term which has been used since 1992 and there has not been any confusion to our knowledge: it has therefore been left as is.</p> <p>It is not possible to apply (1), (2) and (5) in all cases as some jurisdictions have different concepts of clients’ accounts and monies held “on trust”. However, this does mean that it may be possible for a licensee to avoid the client money rules by choosing for their agreements to be ruled by the law of a jurisdiction that does not have equivalent client money rules in place. The only way in which to mitigate this is to ensure that clients are warned of this fact. Licensees are deemed to be “fit and proper” by virtue of the fact that they hold a licence and so it is believed that it the system should not be abused.</p> <p>If client money passes through a clients’ account and is not held there as a matter of course, it would not be appropriate to open up separate client bank account. It is also unlikely that any clients would expect or ask for a separate client bank account in these situations. However, in order to clarify this, guidance will be given on this rule to ensure that it would apply only in situations where the money will remain in the separate client bank account for some time.</p>
<p><i>4.8 Notification of receipt of client money in certain cases</i></p>	<p>It is unclear what Rule 4.8 (1) is trying to achieve since it effectively says the same thing as Rule 4.6(1). If licensees are prohibited from receiving client money, unless authorised by the terms of their licence, then all that would appear to be required is a rewording of rule 4.8(2) and the insertion of the reworded rule as a further subparagraph of rule 4.6.</p>	<p>Rule 4.8 is providing for the Commission to be notified if, for example, a financial adviser who is not authorised to hold clients’ money, receives clients’ money. The rule has now been cross-referred to rule 4.6 regarding how such money should be treated.</p>

<p><i>4.9 Account to be specified in cheques etc.</i></p>	<p>The consultation is being very proscriptive. Bank systems have limited data field lengths, often limited to 35 characters to follow SWIFT standards. Under FATF VII, banks are required to attach remitter details to payments. Given the system limitations the account descriptions requirement may not be achievable and should be reviewed.</p> <p>For this to be practical the Commission must accept that all monies will have to be paid into the client account in the first instance and then the non-client money paid out as in reality clients will not differentiate between funds that are client money and those that are not and will tend to make all cheques out in the same manner.</p>	<p>This is an existing requirement for investment business which has been extended to fiduciaries. The existing requirement has not been identified as an issue to date and therefore remains.</p> <p>Yes, this is correct. This is the status quo.</p>
<p><i>4.10 Operation of client bank account</i></p>	<p>The consultation is being very proscriptive. Bank systems have limited data field lengths, often limited to 35 characters to follow SWIFT standards. Under FATF VII, banks are required to attach remitter details to payments. Given the system limitations the account descriptions requirement may not be achievable and should be reviewed.</p> <p>In the case of trust money, the bank account would usually be designated “XYZ as trustee of the ABC Trust”. This rule seems to imply that the above designation is insufficient, requiring further designation. It is submitted that the above designation is clear enough in the case of trust money.</p> <p>(3) These provisions seem wholly inappropriate in the case of trust money which is held in a trust bank account. This fact will have been made clear in the opening of the account and in the designation of the account. We suggest that it should be made clear that this rule does not apply to “trust money”.</p> <p>(5) It is not unusual for trusts to have an overdraft facility or for trusts to trade or operate businesses or investment portfolios which may have overdraft facilities or other borrowing arrangements. If “trust money” is included in the definition of “client money” a trust will no longer be able to have an overdraft facility and as a consequence it would be prevented from carrying on its legitimate business. It should be made clear that (5) does not apply to trust bank accounts.</p> <p>(9) Subject to paragraph (10) should be inserted at the beginning.</p> <p>In light of the uncertainty around the meaning of “Client Bank Account”, is it going to be a requirement to obtain the confirmation letter from the bank for Trust Bank Accounts?</p>	<p>This is an existing requirement for investment business which has been extended to fiduciaries. The existing requirement has not been identified as an issue to date and therefore remains.</p> <p>See previous comment re excluding money held in a trust bank account.</p> <p>See previous comment re excluding money held in a trust bank account.</p> <p>See previous comment re excluding money held in a trust bank account.</p> <p>This is a drafting point and is being considered by the drafter.</p> <p>See previous comment re excluding money held in a trust bank account.</p>
<p><i>4.11 Records to be kept by licenceholders</i></p>	<p>(2) and (4) would seem to imply that licenceholders must implement real time accounting systems. This may have significant</p>	<p>There appears to be some confusion here. This rule relates to how records should be kept and not when they are updated. The</p>

	<p>practical and cost implications for CSP and TSP licenceholders in particular. Furthermore, in the case of investment portfolios held in trust bank accounts, the nature of the assets held may not make it possible to hold an “up-to-date record of the balances on all accounts...with brokers and other persons”. These rules should be reworded so that licenceholders are able to comply with these requirements within the practical constraints of particular circumstances.</p> <p>We suggest CSPs and TSPs should have flexibility to update records on a less frequent basis, but at least on a monthly basis, as is common practice.</p>	<p>requirements are based on current regulatory codes for investment business.</p> <p>If necessary, guidance on these points can be given.</p>
<p><i>4.12 Accounting for and use of client money</i></p>	<p>(2)(a) Should refer also to 4.10 (7) as this allows clients' money and non-clients' money to be mingled.</p>	<p>No - rule 4.10 (7) is not saying it may be mingled. Its intention is simply to show what action should be taken if such mingling occurs (even though it should not occur).</p>
<p><i>4.13 Reconciliation requirements</i></p>	<p>As CSPs/TSPs may have many hundreds of trust bank accounts, the application of this rule would prove to be administratively very difficult. It should be made clear that this rule does not apply to trust bank accounts, as is currently the case.</p> <p>"There is a new requirement to notify the Commission of any amount outstanding on a Client Money account for more than 1 month" My question is do you require notification of outstanding items or discrepancies? For example we regularly hold the following type of items in our client account for over 1 month:-</p> <ol style="list-style-type: none"> 1. Monies due to the Government for annual returns and taxes 2. Monies due to Foreign Agents (who provide services to our clients) 3. Funds received for a new Company or Trust which is pending further information from the client before the structure can be set up (Once done so, the relevant portion is passed to our company bank account) 4. Clients who have numerous companies sometimes pay a lump sum to cover future annual fees <p>In the above instances we know why funds are being held and who they belong to, so do you require notification if we have had the funds for more than 1 month or is it just funds we can not identify?</p> <p>(2) I believe that the wording is a little misleading – all client bank accounts must be reconciled at least once a month on the same date but some accounts require reconciliation more frequently in which case the other accounts will not be reconciled on the same date. Please clarify?</p> <p>Different banks credit interest on different dates. It might therefore be difficult in practice to reconcile</p>	<p>See previous comment re excluding money held in a trust bank account.</p> <p>This statement is taken from the RoadMap and is not the rule as it stands. The rule states that “the licenceholder must notify the Commission if it has completed the reconciliation but more than one month after completion, a discrepancy has not been corrected”. Therefore the items listed would not be caught under this rule.</p> <p>To clarify, the notification should be for funds which are not identified.</p> <p>Whilst some accounts may be reconciled more frequently, all accounts should be reconciled at one date so that individual totals can be reconciled to the overall total to ensure a full reconciliation.</p> <p>Bank accounts should be reconciled at the same date regardless of whether interest has</p>

	<p><u>all</u> client bank accounts to the same date, particularly where client accounts are held in different currencies across different banks.</p> <p>We query why all accounts must be reconciled as at the same date? This is particularly pertinent if the requirement is also applied to Trust Money, as we believe it will be, as responsibility for such accounts may be widespread across organisations and the accounts do not, and indeed, should not be linked in anyway.</p> <p>This would be difficult to apply to all bank accounts on the same day each month. We suggest (2) is removed.</p> <p>(6)(b) For clarity define discrepancy – in this context we interpret discrepancy to mean an un-reconciled item. E.g. receipt of subscription money but no application to match it against?</p> <p>This appears to be quite onerous. Amounts might be outstanding on client account reconciliations for various legitimate reasons and a requirement to notify the FSC every time they are over one month old would be onerous and time-wasting for both sides. The fiduciary service provider should be managing the business, including at least monthly review of the reconciliations, and full records would be kept of when and how items were cleared, which would be available to auditors. We therefore consider this provision to be “overkill”.</p> <p>Fixed deposit contracts of tenor longer than one month will not change in value and not produce statements monthly. Certain other savings product types may only produce quarterly and half yearly and annual statements. These products would appear to conflict with the monthly reconciliation rule as it may not be practical to generate monthly movement on these products. We suggest the wording is amended accordingly.</p> <p>I suggest that we need to be clear on what exactly the Commission is looking to be achieved by requiring the reporting. The rule advises "correct any discrepancy" whereas the Section advises "any amount outstanding". There is an important difference. For example, any reporting that would be required of a fund admin business will include CM's that have been sent by the investor prior to the deal date (and therefore would not reconcile until subscription day+1) and a similar situation would arise for redemptions issued by cheque. The aforementioned scenarios would be classed as discrepancies as they are a practical reality.</p> <p>We query whether or not it would be more appropriate to allow 3 months to correct discrepancies.</p>	<p>been credited by that date or not.</p> <p>All accounts should be reconciled at one date so that individual totals can be reconciled to the overall total to ensure a full reconciliation.</p> <p>See previous comment re excluding money held in a trust bank account.</p> <p>All accounts should be reconciled at one date so that individual totals can be reconciled to the overall total to ensure a full reconciliation.</p> <p>Correct.</p> <p>To clarify, the notification should be for funds which are not identified.</p> <p>Guidance can be issued to indicate that where statements are not produced monthly, a less frequent valuation would be acceptable.</p> <p>Initially consideration was being given to –</p> <ul style="list-style-type: none"> ✦ discrepancies being for funds which are not identified and these being notified if outstanding for one month; and ✦ any outstanding items (being discrepancies and other uncleared items) being notified if outstanding for three months. <p>However, following comments, the rule will be amended to discrepancies only.</p> <p>The 1 month time limit is to notify the Commission that there are discrepancies, not necessarily to rectify them.</p>
4.14 Interest on	There may be a need to distinguish “trust money”	See previous comment re excluding money

<i>client money</i>	<p>here.</p> <p>(3) It may be considered necessary to clarify whose responsibility this is when CIS are involved i.e. the Board of the CIS will be responsible for the contents of the Scheme Particulars (which is in essence the client agreement) yet the Board will not be a licenceholder. Where might the licensed administrator or manager stand vis-à-vis inclusion of this provision in the client agreement.</p>	<p>held in a trust bank account.</p> <p>It has been agreed that this rule should not apply to Class 3 activities and the rule will be amended accordingly.</p>
<i>4.15 Accounts for margined transactions</i>	<p>(2) (a) and (b) could be interpreted to mean that every Class 2 licenceholder must maintain a client bank account for the purpose of holding margined client money. In our experience, few licenceholders hold this form of client money and we consider, therefore, that the requirement should only apply to those licenceholders who hold this type of client money.</p>	<p>Agreed – the current wording does not make this clear. The rule will be amended to reflect this point.</p>
<i>4.17 Subscription and redemption accounts</i>	<p>(2) Please clarify if this means that separate subscription and redemption accounts are required or if one client account may be utilised for both receipt of subscriptions and payment of redemptions.</p>	<p>Guidance will be issued which will state that one client account may be used for both receipt of subscriptions and payment of redemptions.</p>
Clients' Investments		
<i>5.2 Application to CIS service providers</i>	<p>We have interpreted this section to mean that where a provider is providing services to a scheme and these services fall under the requirements of the chapter, the provider should treat the scheme as its client. We would appreciate your confirmation that this is what is intended by this Part.</p> <p>It is our interpretation, on reading this section, that Part 5 will not apply to managers or administrators of CIS. Is this correct? If not, can requirements, as they would apply to managers and administrators be clarified.</p>	<p>The interpretation is correct - where a provider is providing services to a scheme and these services fall under the requirements of the chapter, the provider should treat the scheme as its client. The rule has been clarified.</p> <p>The rule has been clarified to extend to managers and administrators where appropriate.</p>
<i>5.3 Interpretation</i>	<p>(1)(c) would appear to imply an obligation to check whether a person carrying on business outside the Island would require a licence if operating from the Island to ensure that such a person is regulated in that foreign country.</p> <p>This would further imply that unless the foreign country imposes regulation on safe custody activities that person would not qualify as an eligible custodian, thereby preventing Isle of Man licenceholders from engaging persons in foreign countries who may be of excellent quality and standing, carrying out perfectly legitimate businesses.</p> <p>Whether or not there is a specific rule, it is submitted that any licenceholder could be found negligent and accountable if losses were suffered arising from the appointment of a foreign custodian in circumstances where the licenceholder had engaged that foreign person as eligible custodian without having done a reasonable level of due diligence on that person in advance.</p>	<p>Correct.</p> <p>Correct, although the licenceholder may wish to seek a waiver from this rule from the Commission in such a case.</p> <p>It is possible that this could be the case.</p>
<i>5.6 Use of custodians</i>	<p>(2) requires a licenceholder to ensure that its own custodian complies with the "following</p>	<p>This rule has been amended to clarify the position.</p>

	<p>requirements of this Part.” The ‘following requirements’ appear, however, to be specific to eligible custodians and it is not clear, therefore, which requirements should apply to the own custodian.</p> <p>This section would seem to preclude securities held by a custodian being charged as security for a loan. It seems to conflict with 5.12 Investments etc. held as collateral. We suggest the wording is amended to clarify the intention.</p>	<p>Rule 5.6 relates to investments held for investment purposes by eligible custodians. Rule 5.12 covers where investments are held as collateral; a different purpose.</p>
<p><i>5.8 Reconciliation of investments and client title documents</i></p>	<p>(2) and (3) relate to the total check and rolling stock check methods respectively. We understand that these are alternative ways of fulfilling the reconciliation requirement. There does not, however, appear to be any text which links these sub-parts with sub-part (6) which explains how the reconciliation should be undertaken. Indeed, it is considered that sub-part (2) (b) causes an element of confusion as it relates to what should occur during a reconciliation.</p> <p>(8) There has been no requirement previously to notify the Commission of discrepancies. Please clarify the term “discrepancy”? An unreconcilable item?</p> <p>(8) (b) (ii) requires a licenceholder to notify the Commission if a reconciling item is more than six months old. We would expect the funds industry to comment on whether this timeframe is realistic given the delays that can sometimes be experienced in obtaining statements from various custodians.</p> <p>Is it the intention that managers and administrators of CIS will not be required to perform reconciliations of assets held by the CIS per their records with those of the Custodian as is industry practice?</p>	<p>The rule has been reworked to clarify the position.</p> <p>There is an existing investment business code which requires notification if a reconciliation has not been carried out or if, having done so, the licenceholder is unable to correct any differences (Clients’ Investments 7.6).</p> <p>This is purely a notification requirement (reconciling items are not required to be cleared within this timeframe). Other comments on this rule are included in this section and there do not appear to be any major concerns.</p> <p>No. The application to CIS service providers has been extended to managers and administrators and therefore they will be required to undertake the reconciliation of assets in line with industry practice.</p>
<p><i>5.9 Periodical statements</i></p>	<p>The rule states "deliver" - I am assuming that "deliver" encompasses both delivery in hardcopy (by snail mail) and delivery by the information being made available "on-line". Is now an opportunity to modernise the phraseology we use?</p>	<p>“Deliver” would encompass delivery by e-mail. However, wording has been amended to “provide”.</p>
<p><i>5.10 Borrowing from a client</i></p>	<p>An exemption should be made for circumstances where the client is a trust or company administered for the benefit of the individual director or employee or his relatives i.e. where a CSP or TSP administers a trust or company for the ultimate benefit of one of the CSP/TSP’s own directors/employees or their relatives.</p>	<p>The licenceholder can seek a waiver from this requirement in these cases.</p>
<p><i>5.11 Loans of investments</i></p>	<p>(1)(b)(i) The obligation is placed on the client to take tax advice. Surely the taking of tax advice should be a decision for the client. All the licenceholder can do is recommend that a client take tax advice. If the client does not wish to do so, this rule would seem to imply that the licenceholder must take and pay for tax advice for which it may not be reimbursed.</p>	<p>Agreed. The rule has been amended to state that the licenceholder should recommend that the client seeks advice on his rights in relation to the investment and his tax position,</p>

	<p>(2) (c) and (d) would appear to be repetitions of each other.</p> <p>(3) (c) should refer to (2) (f) rather than (3) (f).</p> <p>In the case of CSP and TSP business, decisions to lend client investments or title documents relating to a clients investments are business decisions to be made by the individual trustees and directors concerned and may be effected relatively frequently depending on particular investment strategies and the proper operation of particular structures. To require the consent of the Commission in such circumstances would seem to imply that the professional persons are not capable of making such decisions themselves. Furthermore, these actions may have to be implemented quickly in the best interest of the client. The need for consent seems to be an interference with the ordinary business of CSP/TSP licenceholders.</p> <p>There is no obligation on the Commission to make a decision within a particular time frame, or at all. The failure or delay in permitting such transactions to proceed may have severe detrimental effects on a particular client or business and may open the Commission to claims against it. We submit that holders of CSP or TSP licences be exempt from the provisions of this rule.</p> <p>This requires written approval before a client's investment can be lent. The need for approval is unclear, and would potentially introduce unnecessary delay. We suggest (1)(a) should be removed.</p>	<p>Agreed, (c) has been removed.</p> <p>Now changed to (2)(e) because of amendment above.</p> <p>This is a current requirement and no licenceholder has raised this as an issue to date. The requirement for consent therefore remains.</p> <p>In discharging its functions, the Commission must have regard to the need for supervisory regime to be effective, responsive to commercial developments and proportionate to the benefits which are expected to result from the imposition of any regulatory burden. We would therefore progress any such requests promptly.</p> <p>See comments above.</p>
Annual Compliance Return		
<i>General</i>	<p>When do you plan for existing licenceholders to complete the proposed Annual Compliance Return? We appreciate that 1 Jan 09 is the target date for existing licenceholders to be compliant with the proposed Rule Book. However, we believe that there could be issues in seeking to apply, retrospectively, the requirements of the proposed Rule Book, or in completing the Declaration of Compliance, if the proposed Annual Compliance return is to be in use with effect from 1 Jan 09.</p> <p>I see that it is proposed to include additional reporting. As far as I can see the following would be "new": Section 2 - key person qualifications Section 4 - table lines 3 & 4 Section 5 - all table lines is this correct?</p>	<p>Compliance must be with the rules in force at the time. Guidance will be issued to clarify the position for licenceholders.</p> <p>This has now been removed. Yes Yes, it links in with new requirement that spells out the need for a breaches register.</p>
<i>Guidance notes</i>	<p>We query why all such returns need to be made within 1 month of the year end. Under current Banking Code, Section 25 allows four months for the submission.</p>	<p>In light of the more extensive information that is now being sought from licenceholders, it is agreed that the 1 month turnaround is tight given that this document will probably need to</p>

	<p>With specific reference to the Compliance letter, there could be compliance issues with the Quarterly Banking Return itself for year end. If this was submitted at the latest time available to submit the Return (21 working days), there may not be time to advise the Board before the compliance letter is required to be submitted. We feel further time needs to be allowed and note the current position is four months. CSP/TSPs currently have 4 months from the year end to submit returns. Perhaps 4 months could be considered appropriate for all especially where multiple licences may be held in a group?</p>	<p>be tabled at the Board meeting for approval before submission to the FSC. This rule has been changed to allow four months for submission.</p>
<p><i>Other documentation which forms part of this return</i></p>	<p>PII is not necessarily applicable for deposit takers in the context of the rulebook.</p> <p>Requirement to include a copy of the PII policy – is this necessary, we have previously submitted a statement from the broker.</p> <p>The accounts and auditors confirmation letter were previously included. It is still a requirement for licenceholders to produce these documents so would it not make sense to receive them at the same time?</p> <p>The note re 'letter of comfort' requires submission of the latest audited financial statements of the entity providing the letter. If this were a large Group (ie plc) and most likely the parent, it is likely that only the previous years accounts would be available within the one month timescale. We feel in such circumstances it is appropriate to allow more time to receive the latest financial statements/accounts and suggest the time line should run parallel with the reporting end date.</p> <p>We feel the requirement to submit this Return within one month, could conflict with all the other audit/ compliance submissions required within the four month period set down in Section 25 of the Banking Code and suggest the time frame be re considered to avoid such conflicts.</p>	<p>If it is not applicable then it doesn't need to be included.</p> <p>This has been amended to refer to "details of the policy" and guidance will be issued to clarify what will be acceptable.</p> <p>Originally accounts were left out as the requirement was still 4 months for the submission of accounts. The submission of the compliance return is now also 4 months, so they could be submitted together but as the accounts do not form part of the compliance return they have not been included in the list.</p> <p>Submission has been changed to 4 months.</p>
<p><i>2. Controllers, Directors and Key Persons</i></p>	<p>Definition of "relevant qualifications" may be required. We query why details of relevant qualifications must be provided annually? It is not the licenceholder's responsibility to ensure that its staff remain fit and proper?</p> <p>"Disciplinary actions" in the second to last box requires definition and should be limited to those cases where a key person has been found guilty or liable in particular disciplinary proceedings. We note that the Return requests licenceholders to detail the number of disciplinary actions taken against key persons during the year. We believe that the wording on the Return should be amended to 'serious disciplinary action' to reflect the definition at 8.10(5) of the Rule Book</p>	<p>This question has been removed,</p> <p>This question has been cross referred to the Rule it is related to, and should be interpreted in the context of that Rule.</p>
<p><i>4. Complaints</i></p>	<p>Is it worth companies reporting 'how many complaints have been referred to Financial Services Ombudsman Scheme and any awards made against</p>	<p>This change has been made for Class 1, 2 and 3 licenceholders only as the FSOS doesn't cover all licenceholders.</p>

	<p>company'?</p> <p>We query why the level of detail in relation to complaints is required. It is not the licenceholder's responsibility to ensure that any remedial action is undertaken as required?</p> <p>We query how a licenceholder would be able to answer the other questions in this section if their compliance register was not complete and accurate?</p>	<p>Yes it is. This question has been altered to cover only material changes.</p> <p>Agreed, this question has been amended to determine whether the complaints register complies with rule 9.30.</p>
<i>7. Disaster Recovery plan</i>	The last question appears out of context.	Disagree – this question has been left in.
<i>8. Other regulatory action</i>	<p>We would only be able to respond “to the best of our knowledge & belief” as it is probable that we would not be made privy to such information.</p> <p>We submit that this should be amended to read: “Has the licenceholder, its immediate or ultimate parent company (if any) been found guilty of any offence under any disciplinary rules or to be in breach of any disciplinary rules by any other regulatory body?”</p> <p>It is suggested that this should be looked at in terms of a conflict with the concept of “innocent until proven guilty” A time span is not defined for consideration in respect of this question. Could you clarify the intended scope of this consideration?</p> <p>This section would appear to be "new". I am struggling to determine how or if, for an organisation the size of X, the information required would be obtained or in fact if it would be shared by the "immediate" or "ultimate parent company". My concerns surround appropriateness and why the Commission would not, under its cross regulator arrangements have this information available.</p> <p>As these matters should be reported as soon as the licenceholder is aware of them, we wondered why they were included in the annual compliance return.</p>	<p>“To the best of its knowledge” has been added to the question.</p> <p>This question has been amended slightly.</p> <p>It has been cross referred to the appropriate rule, which has been looked at in terms of a conflict with this concept. The rule states that it must be notified to the Commission as soon as it becomes aware.</p> <p>This has come from the Investment Business compliance statement so is not “new” as such. The rule states that licenceholders should respond “to the best of their knowledge & belief” so if they are not aware of such information there is no issue. Whilst the Commission would expect to be informed under our cross-regulator arrangements, it is helpful to adopt a “belt and braces” approach to ensure that information is received in a timely manner and it also gives the licenceholder an opportunity to explain their views on any action.</p> <p>In an ideal world they would not be included, but licenceholders are human and this provides an opportunity to ensure that all matters have been reported to the Commission.</p>
<i>9. Legal Action</i>	<p>We submit that this should be amended to read: “Has the licenceholder been found guilty of any criminal offence or to be liable in any civil trial by a competent court?”</p> <p>It is suggested that this should be looked at in terms of a conflict with the concept of “innocent until proven guilty”.</p>	<p>“To the best of its knowledge” has been added to the question, and it has been cross referred to apply within the limits imposed by the appropriate rules.</p>
<i>12. Clients' Money and Investments</i>	We note that 'client account' is not a defined term in the new Clients' Money chapter and would suggest that equivalent terms are used as are used in that chapter.	This question has been removed

	<p>“Trust money” should be excluded from the requirements applicable to client money. If not, there will potentially be a need for TSP licenceholders to perform hundreds or thousands or reconciliations each month. We cannot see the benefit of such actions.</p> <p>What is the purpose of including this additional administrative burden?</p>	
<i>13. Claims on PII</i>	<p>As we are covered under a group policy we would not be able to respond fully to this question – only in relation to Isle of Man office matters. This question and the other PII questions would be better worded -</p> <p>“How many matters have you referred to your PII insurers”</p> <p>“How many claims have you made on the PI Insurance during the year?”</p> <p>Etc etc</p>	<p>Agreed, this change has been amended in line with the suggestions</p>
<i>14. Statistics</i>	<p>Appears to be specific to insurance policies as it requires information in relation to indemnity commission and persistency rates. It is not clear which licenceholders this information would be required from as we would anticipate that such licenceholders would be regulated by the Insurance & Pensions Authority.</p> <p>Definitions may be required for “indemnity commission liability” and “persistency rate”.</p>	<p>It relates to licenceholders conducting investment business, and is particularly applicable to Independent Financial Advisors who are regulated by the Commission, notwithstanding they may also be regulated by the IPA.</p> <p>This is not considered necessary.</p>
<i>15. Companies and Trusts</i>	<p>We note that licenceholders are not asked how many Partnerships they provide regulated services to.</p>	<p>Sorry – this was an oversight. It has now been extended to include Partnerships and other corporate entities such as LLCs or Foundations.</p>
<i>Declaration of compliance</i>	<p>We note that the guidance notes included on the Return state that it must be received by the Commission within one month of the end of the licenceholder's accounting reference date, that the Declaration of Compliance at Appendix I is to be completed in accordance with Rule 9.27 of the Rule Book and that Appendix I is not included in the list of documentation which forms part of the Return.</p> <p>Paragraph (2) Appendix I asks licenceholders authorised to conduct Class I regulated activity to declare that certain risk policies have/have not been reviewed and assessed as being up to date and appropriate. However paragraph 9.33 of the Rule Book provides that a licenceholder must notify the Commission within 4 months after the end of its financial year that during the year the Board reviewed, approved and assessed the aforementioned policies. The second declaration appears to have statements that will not be relevant for all licenceholders.</p> <p>Is it really the intention that all breaches, regardless of materiality, need to be notified to the Commission? For example, all Clients' Money Accounts must be reconciled as at the same date. If a licenceholder has 20 such accounts and 1 of them was reconciled once to a different date -</p>	<p>The declaration has been made part of the Annual Compliance Return and is now listed as documentation to be provided.</p> <p>This has now been removed as the declaration has been simplified.</p> <p>This has been amended to cover only material breaches.</p>

	would this need to be notified?	
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