CAROL 8 - Second consultation on the draft Regulated Activities Order 2008 and Financial Services (Exemptions) Regulations 2008

Summary of comments in responses to CAROL 8 consultation

Regulated Activities Order 2008	Industry comment	FSC's Response
	i) I have probably overlooked it however there used to be exemption where the regulated activity was "incidental" to the primary licensed purpose and therefore did not require a specific licence inclusion. Under the CAROL proposal is it the intention that there would be one licence which would contain permeations for both licensable activities or would the CSP activity continue to fall under an "incidental" style rule? ii) Am I correct in thinking that a subsidiary entity, to a licenceholder, that is conducting licensable activity will continue to be exempted if its parent/the licenceholder has the necessary permission and the activity being undertaken by the subsidiary is for and on behalf of its parent/clients of the parent? There is no numbering in parts of Schedule 1 and numbering appears to be inconsistent.	The exemption was originally included to prevent licenceholders from applying for and holding different licences under different pieces of legislation. Now there will be one licence that lists all classes of regulated activities that it is authorised to carry out under one piece of legislation. It depends on which regulated activity is the focus of this question. This Order contains exclusions not exemptions. For each activity one needs to look at the definition of the activity, take away any exclusion, then see if the activity falls within an exemption. In general – previous arrangements apply. Drafting suggestions have been submitted.
Paragraph 3(2)	We find the wording cumbersome and difficult to understand easily. We suggest rewording – for example, it might read: "Where any expression marked * in Schedule 1 is defined in Schedule 1, that definition shall take precedence over any other definition for that expression which may be set out in Schedule 2."	Agree it is could be cumbersome – we will simplify if possible.
Paragraph 4	It seems to us that the provisions of this paragraph should be set out in the Act.	The Bill is now well on its way and no further amendments will be made to it. Whilst the current situation is not ideal, it does still work.
Schedule 1, Class 1	The proposed definition of "deposit taking" is not restricted to activities carried on by way of business. As currently drafted, it may have unintended consequences. In principle, a loan made between cousins, friends or an employer and an employee could be caught by the definition. The determination of what constitutes deposit taking activity is extremely wide, particularly in view of the wide definition of "deposit". As currently drafted, a simple back to back loan arrangement will not be possible without a banking licence, unless between closely connected persons.	The Financial Services Act will only come into operation when a regulated activity is performed "by way of business" (see clause 3(1)(b) of the Bill). Therefore deposit taking, and all other regulated activities, are only regulated activities if undertaken by way of business. This is therefore exactly the same as the current situation, and will not inadvertently include private / family activity not performed by way of business. In discussion with other Divisions of the Commission it is not proposed to amend this to permit back to back loan arrangements. However, with regard to "by way of business" see above.
Schedule 1, Class 1, exclusion 1(b)(a)	Just to confirm that, when the definitions book is finally published, a 'close relative' will need to be defined. There is no provision to include trustees and	It already is, see Schedule 2 – interpretation. This has been discussed within the Commission

	settlors or beneficiaries of trusts. We submit that the exclusion should be widened to incorporate trustees, settlers and beneficiaries.	and it is not proposed to widen this. It would be widened beyond the current situation, and beyond that in the UK. Any decision to do so would need much research, and there is no time for this at this stage, nor any clear and pressing rationale to do so.
Schedule 1, Class 1 Exclusion 1(e)	The very concept of electronic money would suggest that it cannot be paid into a bank account. The definition defines electronic money as value represented by a claim which is stored on an electronic device. Paragraph (b) of the exemption requires rewording to make it clear that the funds received in exchange for the claim on the issuer must be paid into a client bank account.	Agree –wording will be amended accordingly.
Schedule 1, Class 1 Exclusion 1(f)	The group exemption would seem to exclude trustees of a trust from qualifying as a member of a group. We suggest that the definition of a group be widened to include trustees of a trust and possibly the settler and beneficiaries of that trust too.	This has been discussed within the Commission and it is not proposed to widen this. It would be widened beyond the current situation, and beyond that in the UK. Any decision to do so would need much research, and there is no time for this at this stage, nor any clear and pressing rationale to do so.
Schedule 1, Class 1 Exclusion 1(h)	Our concern is that the Methodist Church on the Isle of Man (through The Trustees for Manx Methodist Church Purposes) might get caught under Class 1 of the Regulated Activities Order 2008, whereas a similar body, the Diocesan Board of Finance, has a specific exclusion. Other entities of which we are aware that may be affected are Liverpool Roman Catholic Archdiaconal Trustees, and the United Reform Church.	The rationale for a specific exclusion for the Diocesan Board of Finance is that no denomination, other than the Church of England, is "by law established" and its activities are far wider than mere trusteeship. If any trustees acting for other denominations feel that their activities fall outside of the general trustee exemption, and are "by way of business" (see clause 3(1)(b) of the Bill) they should discuss this with the Commission individually.
Schedule 1, Class 2 paragraph (4)(a)	This would seem to catch persons acting in a private capacity.	The Financial Services Act will only come into operation when a regulated activity is performed "by way of business" (see clause 3(1)(b) of the Bill), and therefore the specified activity of investment business (and all other regulated activities) are only regulated activities if undertaken by way of business. This is therefore exactly the same as the current situation, and will not inadvertently include private / family activity not performed by way of business.
Schedule 1, Class 2 paragraphs (4) and (5)	Please clarify whether this covers administration AND safeguarding i.e. providing both services, or purely providing either service. The exemption mentioned in exclusion 2(p) of this Order is for safeguarding OR administration e.g. We provide an 'open safe custody' service, (purely safekeeping) which, if section (5) covers either service would appear to now be included.	It is not intended that providing an open safe custody service which is purely safekeeping would be classed as Investment Business. Exclusion 2(p) is being reviewed to ensure that it reflects the intention – it may be reworded to say safeguarding AND administration.
Schedule 1, Class 2 paragraph (6)	We note from the 'Road Map' that the wording has been changed to clarify that the definition includes an attorney giving investment advice to an investor or a potential investor. In our opinion, however, the wording of Paragraph 2 (6) of Schedule 1 of the Order does not address an attorney giving investment advice but rather addresses the situation of an attorney receiving investment advice on behalf of an investor or a potential investor.	Agree – the wording in the RoadMap is incorrect. It is where an attorney is given advice, not where the attorney gives advice.
Schedule 1, Class 2	In our experience, the wording in exclusion 2(c)(a)	We have not been approached by practitioners

Exclusion 2(c)	(which replicates the wording in the Investment Business Order 2004 (the "**IBO**")) is unduly restrictive as it is limited to groups of companies and excludes group structures based on LLCs or LPs. We suggest that Exclusion 2(c)(a) is revised to include LLCs and LPs within the same group. We also note that the term "group" is not defined in Schedule 2 of the Order. The definition of "group" relating to the Exclusion 1(f) is specifically limited to that exclusion. It should be wide enough to include trustees, settlors and beneficiaries	with a problem in this regard and as this is a consolidation exercise it would not be appropriate to alter policy at this stage. LLC are covered in any case by company definition. The term group is not defined in this section of the secondary legislation because it has the same definition as the primary (therefore covered by Interpretation Act). In discussion within the Commission there is no desire to widen this beyond the current situation, and beyond that in the UK. Any decision to do so would need much research, and there is no time for this at this stage, nor any clear and pressing rationale to do so.
Schedule 1, Class 2 Exclusion 2(d)	We would appreciate your confirmation that this exclusion means that overseas firms cannot actively target Isle of Man residents for investment business without authorisation as this is considerably more restrictive than the exemption currently contained in paragraph 11 of the IBO . It is noted that this exclusion does not apply to any of the other classes of regulated activities and, again, it would be appreciated if you could confirm that the exclusion only applies to investment business. The proposed exclusion requires the person carrying on the activity to be authorised by the Financial Services Authority ("**FSA**") and only to carry on the activity by reason of an unsolicited approach by a person in the Island. A similar exemption should be available for persons licensed in other jurisdictions as any other overseas person is in doubt as to whether it can proceed with a transaction with an Isle of Man resident that was wholly unsolicited. We consider this to be unduly restrictive and unworkable in practice. A possible implication is that an FSA regulated entity which placed an advertisement for a financial services product in a national newspaper which was circulating in the Island would be deemed to be carrying on a regulated activity in the Isle of Man. We would strongly suggest that the present exclusion contained in paragraph 11 of the IBO is retained: to do otherwise will simply mean that the new provision will be more honoured in the breach than the observance. If the new proposal is to be introduced then the FSC will need to consider how it will treat FSA regulated entities who are currently conducting unsolicited investment business on the Island once the Order comes into force.	Agreed – the investment business needs to be actively sought by the IOM resident. The section has been slightly reworded to permit solicitation by media not directed specifically to IOM – therefore clarifying that an IOM resident responding to advert in UK national paper or from the internet will not fall foul of the Act. Agreed – only investment business. Additionally, the rewording has the effect of not restricting to UK authorised persons but those regulated by their regulator wherever situate. The Commission will be liaising with the Financial Services Authority in relation to this change of status so that it and their authorised firms will be aware of the change of policy in this regard.
Schedule 1, Class 2 Exclusion 2(h)	Why is this limited to nominee companies holding shares in private companies only? This should be extended to public companies too. Care would of course have to be exercised to ensure that brokers and investment managers who make use	This is a consolidation and the suggestion goes beyond this. The provision mirrors existing provisions, and given there are obvious risks involved in any extension this is not the time to make an extension without thorough research.

	of nominee companies could not exploit this exclusion to avoid be licensed altogether.	
Schedule 1, Class 2 Exclusion 2(j)(b)	The term "beneficiary" is not defined. Does this include potential beneficiaries under a discretionary trust?	At the time when / if the potential beneficiary becomes a firm beneficiary then yes – they will be included.
Schedule 1, Class 2 Exclusion 2(m)	There does not appear to be a definition of "exempt person".	Requested that a definition be added – along lines of someone exempted by virtue of regulations made under section 43(2) of the Act.
Schedule 1, Class 2 Exclusion 2(p)	Is the result of the exclusion that confusion surrounding the classification safe custody bailee activities are not now subject to the frequent reconciliations it would be if classified as investment business. To improve certainty a definition of "safeguarding" should be incorporated.	Yes – as long as in sealed packages and contents unknown. Under consideration as a drafting issue.
Schedule 1, Class 2 Interpretation of Exclusion 2(f)	"relevant person" – the limit to children under the age of 18 seems arbitrary. Children over this age may still be dependent. Furthermore, employee schemes could conceivably provide for benefits to flow to children, where the employee and his/her spouse have predeceased.	This is a consolidation and the suggestion goes beyond this. The provision mirrors existing provisions, and there have been no industry / practitioner representations for change. No change to be made at this time.
Schedule 1, Class 3	Is it intended to retain the "*"markings ? This seems an unconventional way of referring to definitions given elsewhere. If the objective of CAROL is to consolidate all legislation, why is a separate Collective Investment Schemes Act being put in place?	Yes. All regulated activity is in Financial Services Bill, the schemes are products and better addressed separately.
Schedule 1, Class 3 (6)	An asterisk has been omitted after "asset manager".	No, it has not. See interpretation (1) where asset manager is said to have same definition as in CIS Act.
Schedule 1, Class 3 Exclusion	It would appear from the draft legislation that a CSP would not be able to administer more than one excluded scheme manager, or what would now be termed the exempt manager, if they were in the same economic group unless it now obtains an investment business licence. It is our view that the provisions of the proposed legislation should be reviewed as there would be many licensed corporate service providers who would be caught by the legislation. The impact would be immense, in that many existing exempt international schemes would have to expend considerable expense on re-structuring. The exempt international schemes, or what would now be termed exempt schemes, are in essence private arrangements without being viewed as a typical investment fund. There is surely adequate control under the Corporate Service Providers Act to govern the activities of trustees in such situations. If the draft legislation is now amended, or at least provides for the fact that existing exempt schemes should be allowed to continue, it is felt that it would be inequitable to impose on such schemes the cost of re-structuring their affairs.	This section has been reworked. The exclusion now permits one of each role per economic group – so it is wider. More importantly, new classes of CIS activity (Class 3) introduced to cover acting for exempt schemes or exempt type, which will not be onerous and which will involve little more than ticking that box when determining the type of licence required under Financial Services Act. The requirements will be similar to those under TSP / CSP regime for capital and PI, and only some schemes requirements will apply so this is not considered to be onerous.

	We do not see any reason why exempt funds which are genuinely private and restricted should not be able to be operated outside the scope of the proposed fund regulation. They would be administered by CSPs in any event and there should be a way of providing, if it is deemed fit, certain rules regarding the operation by CSPs of such exempt schemes. The same would apply to the position of exempt managers administered by a CSP We have concerns in relation to the effect of the proposed new regime in relation to exempt schemes for current licence holders under the Corporate Service Providers Act 2000 (the "**CSPA**") (a "**CSP**") and licenceholders under the Investment Business Act 1991 (the "**IBA**"). We have reviewed the exclusion from Class 3 regulated activities in relation to exempt schemes (the "**Class 3 Exclusion**") where a person (an "**Excluded Provider**") acts as a manager etc and meets the requirements. We have also considered the Class 3 exemption from the licensing requirement under paragraph 3.2 of Schedule 1 of the Regulations (the "**Class 3 Exemption**") for a manager or administrator who provides services to no more than one exempt-type scheme and meets the conditions specified thereunder (an "**Exempt Manager**"). Currently, a CSP can administer any number of excluded scheme managers under paragraph 20(4) of the IBO. Our interpretation of the proposed legislation is that a CSP will only be able to administer one Excluded Provider in relation to an exempt scheme. If a company which is affiliated to a CSP administers any Exempt Managers in relation to any exempt-type schemes then the CSP will not be able to administer any Excluded Providers in relation to an exempt scheme, since the Excluded Provider and the Exempt Manager will be deemed by virtue of the definition of same "economic group" contained in the Order if a CSP director is on the board of both companies.	
	A CSP will not be able to administer an Exempt Manager of an overseas domiciled exempt type scheme.	Yes it will – this has been clarified.
	A CSP which currently provides administration services to more than one excluded scheme manager will need to either obtain a licence that includes activities under Class 3 of the Order or cease to act.	Yes
	The reference to "ordinary share capital" in paragraph (b) should be "issued share capital".	Sorry – no change due to potential abuse of voting rights within that class.
Schedule 1, Class 4 (6) and (7)	The CSPA contains a definition of "director" which we consider should be replicated in the Order.	Director is defined in the Act therefore the secondary has same definition unless otherwise

	The list of officers referred to in paragraphs 6 and 7 should also include acting as a company's manager or registered agent under the Limited Liability Companies Act 1996. Alternatively, we suggest that the words "but not limited to" be inserted after the word "including" in each of paragraphs (6) and (7).	stated. No change required. "Including" automatically means "and not limited to". However, will add registered agent of LLC to (5).
Schedule 1, Class 4 (9)	We suggest that a definition of "the provision of administration services" in relation to a company be included as is currently contained in Section 8(2) of the CSPA.	This definition is included in the RAO.
Schedule 1, Class 4 Exclusion 4(c)	Now states that "holding out" to provide such services is not included in the exclusion. Can it be assumed that providing the professional does not advertise the service or actively promote it to their clients that they are not "holding out" to provide the service?	Yes – this seems a reasonable view. As long as not marketing the service and the service is conducted alongside the main business (being incidental to it).
Schedule 1, Class 4 Exclusion 4(d)	Is it intended to retain the "*"markings in relation, to the definition of "in respect of". Definition of "group" might be useful.	Yes The term "group" is not defined in this section of the secondary legislation because it has the same definition as the primary (therefore covered by Interpretation Act).
Schedule 1, Class 4 Exclusion 4(h)	The exclusion should be widened to permit a person to act as a director or secretary of a company where: i) that person; or ii) one or more close relatives of his; or iii)one or more close relatives and him Hold more than 50% of the controlling shares in the company. The definition of close relative has been removed. We think it should be included even if it is in the guidance.	This is a consolidation and the suggestion goes beyond this. We agree with (iii) but not the 50%. The provision mirrors existing provisions, and there have been no industry / practitioner representations for change. No change to be made at this time. Definition exists in Schedule 2.
Schedule 1, Class 4 Exclusion 4(i)	We query why it was thought necessary to change the exemption in relation to other Regulated Businesses and do not consider that it is clear how for example, CIS Providers are exempt from the need to have a CSP licence when they are providing CSP services to the CIS.	It is because such scheme specific activity is best placed as the regulated activity of services to schemes, rather than CSP as it is only where schemes are the company in question. As now all holders of one licence, the activities need listing separately under the licence. The concept of other regulated businesses no longer applies.
Schedule 1, Class 5 Interpretation	It is considered that the interpretation text in respect of the exclusions which apply to Class 5 activities should refer to exclusion 5 (b) rather than exclusion 4 (b). Definition of "trust corporation" required.	Agreed – change required to number. This is contained in Schedule 1.1 – Interpretation of the Rule Book.
Schedule 1, Class 5 Exclusion 5(a)	Now states that "holding out" to provide such services is not included in the exclusion. Can it be assumed that providing the professional does not advertise the service or actively promote it to their clients that they are not "holding out" to provide the service?	Yes – this seems a reasonable view. As long as not marketing the service and the service is conducted alongside the main business (being incidental to it).
Schedule 1, Class 5 Exclusion 5(b)	Definition of "group" might be useful.	The term "group" is not defined in this section of the secondary legislation because it has the same definition as the primary (therefore

		covered by Interpretation Act).
Schedule 1, Class 5 Interpretation (1)	Paragraph (i) of the definition of "third party" should be amended along the following lines: "(i) an individual who is not a member (legal or equitable), officer or employee of any company which is a member of the group, or who is not a spouse, widow/widower or child of an officer or employee of any company which is a member of the group.	No change. Narrowing current provision could have inadvertent effects on those relying on it in current guise.
Schedule 1, Class 6 Exclusion 6 (h)	It is not clear what Exclusion 6 (h) is seeking to exclude. In our view, the current wording could be used to exclude e-wallet transactions to purchase goods and services or money transmission facilities to enable a person in country A to access his money in country B. Given that consultation has recently closed which would include both of these as regulated activities, perhaps you could advise on the objective of exclusion 6 (h),	It intends to exclude shop / bar / restaurant etc transactions where people pay for the goods / services by electronic means such as debit / credit cards. Also the second part intends to exclude ATM machines and providers of ATM services / cash backs etc. In internal discussions it was agreed this wording was sufficient and not too wide.
Schedule 1, Class 7	As the licenceholder will remain responsible for the performance of any duties that it delegates, the FSC already has control of this area and we feel that it is more appropriate for the licenceholder to maintain this responsibility than to complicate the issue by potentially having 2 licenceholders responsible for the activity Should locum be excluded?	No – we need a licenceholder to seek this licence category when they want to provide such services as we may wish to place additional / different requirements on them. This category reflects the current situation with managed banks / fiduciaries etc. and puts position in public domain by virtue of licence. Under consideration as drafting point.
Schedule 2 Part 1	**"close relative"** Should be widened to include grandchildren and the trustees of trusts for the benefit of the family concerned.	This is a consolidation and the suggestion goes beyond this. The provision mirrors existing provisions, and there have been no industry / practitioner representations for change. No change to be made at this time.
	"electronic money" The term "issuer" is not defined.	That is because there is not a useful definition – not even the UK define it – they just make it circular to the regulated activity.
	"eligible custodian" The term "Rule Book" is not defined. Why is it necessary to be licensed in order to recommend a custodian? This seems to contradict exclusion 2(o).	To be inserted – also the same in the Exemption Regulations. A recommendation to an eligible custodian is excluded – you do not need to be licensed to recommend, BUT if you are regulated then you should only recommend eligible custodians.
	"joint enterprise" As there is no definition of group contained within Schedule 2 of the Order this definition is unclear. Groups comprising other entities such as LPs and LLCs should be specifically included.	The term "group" is not defined in this section of the secondary legislation because it has the same definition as the primary (therefore covered by Interpretation Act). No change being considered.
	"long-term business" The definition contained in the Order does not wholly accord with the definition of "long-term business" under the Insurance Act 1986 (the "**Insurance Act**") which is contained in Regulation 3 of the Insurance Regulations 1986 (the "**Regulations**"). The definition in the Order expressly includes 'pension fund regulation'. For consistency, we would suggest the definitions are conformed. In principle, the possible implications of this appear to include a risk that an activity which constitutes long-term business under the Insurance Act but	A very good point. Leaving definition as is for now, but when IPA new definition comes in we will compare and ensure the two complement each other.

	does not involve long-term insurance under the Order may lawfully be carried out by an intermediary who is not required be registered under the Insurance Intermediaries (General Business) Act 1996 (because it does not constitute "general business") or to hold a licence under the Financial Services Bill, when enacted (because the activity does not fall within the definition of long-term insurance under the Order), assuming that the activity is not otherwise caught by the Order. A possible mismatch between definitions under the Order and under the applicable insurance legislation, respectively, is rendered more difficult to assess in practice by the fact that the Insurance Act 1986 is itself expected to be repealed upon enactment of the Insurance Bill 2007, which is expected to take place later this year. (Under Section 54 of the Insurance Bill 2007, "long-term business" is defined as "any kind of insurance business declared by regulations to be long-term business"; we are not aware of any draft regulations having been made available for comment as yet).	
	"private company" There are jurisdictions which do not distinguish between public and private companies. This is acknowledged in this definition in relation to Isle of Man companies incorporated under the Companies Act 2006. This should be amended to include companies incorporated under the laws of foreign countries which do not in fact offer their shares or debentures to the public, so that such other companies are on the same footing as Isle of Man companies.	Not to be extended to foreign companies.
Schedule 2 Part 2	**"controller"** This definition is based on the control of body corporates. The FSC may consider it appropriate to refine this definition to include other types of group structures, for example, those based on partnerships.	Not inclined to change – group structures at present is restricted to corporates.
Financial Services (Exemptions) Regulations 2008		
	Under the current legislation, it is possible for a firm or person who is unlicensed to sell companies to a licensed firm. However this appears to no longer be the case going forward. Is this an oversight?	The amendment to 4.6 now makes it clear this activity is not licensable if it is conducted solely on behalf of a person licensed to carry on that activity.
Schedule 1 paragraph 2.1	The exemption should be widened to permit private arrangements not carried out as business.	The Financial Services Act will only comes into operation when a regulated activity is performed "by way of business" (see clause 3(1)(b) of the Bill), and therefore all regulated activities that are not conducted by way of business are outwith the Act and do not require either exclusion or exemption.
Schedule 1 paragraph 2.4	The holder of an enduring power of attorney, who is a family member or friend of the grantor should not be forced to engage a professional asset manager where such person is acting in a private capacity in the best interests of the grantor.	The Financial Services Act will only comes into operation when a regulated activity is performed "by way of business" (see clause 3(1)(b) of the Bill), and therefore all regulated activities that are not conducted by way of business are outwith the Act and do not require either exclusion or exemption.

	(a) We assume this means that the power has to be registered under the Mental Health Act but could this be clarified?	Being clarified that the power has to be registered under section 6 of the Powers of Attorney Act 1987.
Schedule 1 paragraph 2.7 (d)	It is noted from the 'Road Map' that under CAROL 8, the annual audit report may be provided by the licenceholder where the nominee is not audited. We assume that this does not mean that the licenceholder provides a report written by it in respect of the nominee but rather, and as envisaged by Paragraph 2.7 (d) of Schedule 1 of the Regulations, that the auditor provides the report to the licenceholder for onward submission to the Commission in the instance that the licenceholder undertakes clients' money and clients' investment recording for the nominee.	Agreed – the auditor writes the document, but based on audit of the licenceholder rather than the nominee. Wording of RoadMap slightly misleading due to trying to squeeze concept into small space.
Schedule 1 paragraph 2.9	There is a heading of 'Interpretation' following Paragraph 2.9 of Schedule 1 of the Regulations. No wording follows this heading. Definition of "department", "statutory board" and "local authority or joint board" required.	Agree - the heading should be removed. Definition of "department", "statutory board" and "local authority" contained within the Interpretation Act but "joint board" is not. Definition of joint board will be included.
Schedule 1, Class 3	We note that the express exemption from the investment business licensing requirements of the IBA for an open-ended investment company provided its business is confined to acting as such, does not seem to have been replicated under the proposed legislation. This may be because the regulated activities under Class 3 are framed in different terms than in the IBO, but in our view it would be useful for it to be retained as there could be circumstances in which there might be an element of doubt, i.e. in relation to a protected or incorporated cell company In our view there should be an equivalent exemption for the general partner or managing partner of a partnership that is a CIS, provided, again, that it is restricted to that activity. We have a residual concern that the interplay between the inclusion of trustee activities with Class 3 of the RAO and the requirements for dealing as a trustee of a Specialist Fund, a Qualifying Fund or a Continuing EIF has not been fully worked through.	No exemption needed as is doing business for itself. This is not considered necessary.
Schedule 1 paragraph 3.2(2)(a)	We have concerns about this paragraph which refers to all activities of the manager or administrator in relation to the scheme that would (apart from this paragraph) constitute regulated activities of Class 3 [*of the Order*] being delegated to the licenceholder. We are not convinced that such a "delegation" would operate in practice. Under the proposed legislation, exempt-type schemes can be operated using an Exempt Manager but this will not apply to exempt schemes. We do not believe it is justified or necessary to treat overseas domiciled exempt schemes and Isle of Man domiciled exempt schemes differently and this regulatory burden will only act as a deterrent to persons using the Isle of	This section has been extensively reworded to the respondee's satisfaction.

	Man to conduct legitimate business.	
Schedule 1 paragraph 4.1 (2)	Any definition of 'permanent establishment' could have wider implications. I appreciate that, on the face of it, your definition follows the UK model, but I would be concerned if establishing this definition for the specific purposes of these exemption regulations then caused a knock-on impact in terms of, for example, registration under the F register.	The definition is purely "for the purposes of this paragraph" so very narrow – it does not even cover the whole regulations therefore no possible impact on F Companies.
Schedule 1 paragraph 4.2 (2)(a)(i)	This should be broadened such that Company C can be the holding company of Company A or a member of the same group as Company A.	This is not possible as it would broaden the scope significantly so that any group company in the same group as the licenceholder could undertake regulated activities and they may not necessarily therefore be under the control of the licenceholder.
Schedule 1 paragraph 4.3 (5)	What would the Commission expect of a licenceholder in practice in order to demonstrate these requirements? It is important to strike a balance between ensuring that persons concerned are suitable and competent, and smothering business with too heavy a burden of compliance. We would submit that it is in the interests the licenceholder to ensure that its clients are professionally serviced, failing which the licenceholder's business would suffer. The licenceholder should be relatively free to determine the suitability and competence of the person and to determine its own tests to satisfy itself of the individuals attributes.	This section is a consolidation and does not bring anything new. However, the point made suggests that this is an area upon which the Commission could usefully prepare some guidance.
Schedule 1 paragraph 4.4	We suggest that for the purposes of determining the number of companies, all companies within the same group be counted as one. It is quite common for a business to segregate different activities or assets into different companies.	Notwithstanding this being common, the rationale behind 4.4 is de minimus and to extend the numbers in this way, which could be a very large extension depending on group set up, does not fall within the spirit of a de minimus exemption.
Schedule 1 paragraph 4.5 and 5.5	Liquidators, Receivers etc. used to be covered under the "special cases" exemption. There were other persons included in that exemption for example trustee in bankruptcy and a guardian of a minor that no longer appear to be included within the exemptions or exclusions.	No longer included on the basis that these activities are not being done by way of business and would not be caught by the Act.
Schedule 1 paragraph 4.5 (e)	We assume that patient refers to patient under the Mental Health Act, could this be stated to clarify the point?	Yes it does – see Schedule 3.
Schedule 1 paragraph 5.1	The heading "Nominee Services" is misleading. If a subsidiary or group company of a licenceholder acts as trustee, it will in most cases have all the responsibilities of a trustee and can not be a nominee. Suggestion that the heading be amended to, for example, "Subsidiaries and Group Companies". (a) should be broadened such that Company B can be the holding company of Company A <u>or</u> a member of the same group as Company A.	Technically this is correct, but the same applies to corporate directors where we use the heading nominee. This has been accepted use of nomenclature by the industry for the past 7 years or so and everyone understands what is meant so the inclination is to leave it alone. This is not possible as it would broaden the scope significantly so that any group company in the same group as the licenceholder could undertake regulated activities and they may not necessarily therefore be under the control of the licenceholder.
Schedule 1 paragraph 5.2	The heading should read "Company officers and employees".	Agreed – amended throughout the Regulations.
Schedule 1 paragraph 5.3	This paragraph requires that the person is or was employed <u>solely</u> for the purpose of acting as	Agreed – the wording appears incorrect and has been amended to say the exemption does

	trustees, which would imply that this exemption would not apply to someone who has other roles or duties within the business of the licenceholder. Why can an ordinary employee of the licenceholder not have any involvement as trustee of an employee pension scheme or employee share/debenture scheme without the need to himself be licensed? Is it intended that exemption 5.2 apply in the above circumstances? If so, 5.3 would only be necessary to permit former officers or employees to act as trustees.	not apply IF a person was taken on especially for the role, rather than UNLESS as it is currently worded. In this way it mirrors the current exemption. Therefore you are exempt if acting as trustee for employee pension schemes etc if an employee or former employee of the company, but not exempt if became trustee after left or were taken on purely for that purpose.
Schedule 1 paragraph 5.4 (1)	The exemption for de minimus activities should be broadened to permit 10 trusteeships, 10 protectorships and 10 enforcer roles. Alternatively, it should be broadened to permit the holding of office as trustee, protector or enforcer for no more than say 20 trusts. Private, non business arrangements should be excluded from this number – for example acting as trustee in a private capacity for a friend.	No – changes current situation and not in keeping with spirit of de minimus exemption. The Financial Services Act will only come into operation when a regulated activity is performed "by way of business" (see clause 3(1)(b) of the Bill), and therefore all regulated activities that are not conducted by way of business are outwith the Act and do not require either exclusion or exemption.
Schedule 1 paragraph 5.9	There is no definition of "specified person". Will this be included elsewhere? We submit that (1)(c) should be deleted. There are cases where persons who are not resident or domiciled in the Isle of Man make an Isle of Man will to deal with property located in the Isle of Man. We submit that (2)(c) should be deleted. There are cases where persons who are not resident or domiciled in the Isle of Man settle a trust during their lifetimes and which settlements would be ancillary to other professional activity.	Defined in Schedule 3 – Interpretation. The section is a lift from existing provisions, and to change without full consideration of appropriateness is not favoured. Originally, it was put in for 'local business' and the suggestion takes beyond this. The section is a lift from existing provisions, and to change without full consideration of appropriateness is not favoured. Originally put in for 'local business' and suggestion takes beyond this.
Schedule 1 paragraph 6.1	This wording differs from the wording set out in Appendix B of the Consultative Paper on the proposed regulation of MSBs dated 17th December. The effect of the rolling 12month period is that a person may find himself crossing in and out of the de minimus threshold, particularly where a person has a seasonal business in one or two months a year with an unusual level of activity. This might be difficult in practice to manage and monitor. Turnover can only be a historical figure, with the result that a person may inadvertently breach the turnover exemption but not know about it until after the fact. "measured in sterling" – what rate of exchange would be applied? Would this be the date of each transaction, which might be cumbersome and time consuming, or would an average rate of exchange be applied for a year or period in question?	It would be sensible to add in a "reasonable expectation" element to this section. In effect, a licence should be sought when the person could reasonably be expected to know he has crossed de minimus, to avoid inadvertency. This is being addressed. At this time it is not proposed to provide a definition – the appropriate measure is what the firm currently uses for the purposes of its accounts.