

## **Summary of responses received on the consultation on the review of Financial Services Legislation – Draft Financial Services Rule Book 2009**

Thirty-nine sets of comments were received during the consultation process. A summary of the responses and the Commission's comments is detailed below.

Some changes have been made to the draft Rule Book following the consultation period. Most of these were as a result of the consultation comments and so are detailed in the response to the comment provided in the table although there has been some minor rewording of some rules which are not detailed in the table as there is no material impact on the meaning of the rule.

In general, the Rule Book numbering has not been changed as this would require a full check of all cross referencing in legislation, guidance and other documents that have been published by the Commission as well as for licenceholders who have created compliance programmes based on the current numbering. However, it has not been possible to keep all of the numbering the same in Part 3 due to the major changes made to this part.

The result of the changes to Part 3 was to reduce the main types of client bank account to two – a general client bank account which will always be pooled in the event of a bank default and a specified client bank account, at a bank selected either by the client or the licenceholder which will always be outside the pooling arrangements in the event of a bank default. Positive comments were received in support of this simplification. However, representation was received requesting that rules be included for two further types of client bank account specific to stockbroking - client free money and settlement money accounts. This is to ensure that free money and settlement form two separate pools in the event of a default of the bank (see rules 3.4, 3.10, 3.16B, 3.16C and 3.18). These have been included but will only be applicable to stockbrokers.

9<sup>th</sup> October 2009

## Summary of comments

Rule	Industry comment	FSC's Response
General	Our business will be a mixture of Class 6 and Class 8 and therefore segregating certain information such as financial results in terms of FSC reporting requirements may not be practical.	Information will not need to be segregated out for different classes of regulated activity. Financial statements should be for the company as a whole and so include all business activities.
2.5 Responsibility for returns	It is not clear as to the reason for the change of wording. Directors are responsible for all actions carried out by the licenceholder and defining who deals with financial returns means that a certain amount of responsibility would rest with the staff member who may not be a director.	The reason for this rule in the first place was to facilitate electronic signing of interim returns for the FRS system in cases where the directors or resident officers were unable to do so in the normal course of business. It has now been decided that any such issues can be dealt with by guidance. Therefore the rule has been reworded to clarify that returns are the responsibility of the directors/resident officers rather than the staff member who makes the return if that staff member is not a director/resident officer.
2.10 Accounting standards	Should the accounting standards include SORP (the IOM adopted standard)?	Yes - it is based on issued UK accounting standards. Change made to Rule 2.10 and Note 1 to Schedule 2.3
2.15 Accounts of subsidiary and associated companies	Auditors' confirmation on non-trading subsidiaries should be reworded to "satisfied" which could then mean by the directors confirmation.	Agreed – change made.
2.26(c) and 2.29(c) Publication of annual financial statements	These rules assume that all licenceholders have access to a website, which may not be the case.  No issue with the proposal to publish financial statements on our respective websites and are already implementing it.	It is considered that all Class 1 licenceholders to which these rules apply do have access to at least a group website.  Positive comment – no response required.
2.42 (1) Interim Financial Returns	The addition of "as at its annual reporting date" makes it sound as if you don't have to submit a financial return until the annual reporting date so it is a little unclear as to whether you have to submit returns in the first year. Could this be reworded to make it clearer?	Agreed, the rule has been reworded to clarify that returns must also be submitted in the first year.
2.42 (4)(b) Interim Financial Returns	It makes a lot more sense to have quarterly cumulative results as business activities are generally reported on a monthly & cumulative basis.  The change would not cause us any problems.  The proposed amendment to cumulative accounting makes much more sense and is far easier to comply with. I have found it very difficult to record discrete period records because as a business owner I am always focussed on my cumulative figure and the run rate at which I am presently working. The reconciliation of discrete periods is also sometime problematic due to things like moving exchange rates and correction of mis-posts and errors (for which amendments can simply be passed on the current date under a cumulative system). The cumulative system also more readily reflects the reality of the way in which most if not all businesses are operated.  It depends whether the FSC have time to read the cumulative accounts. Most computer packages	The majority of responses considered that including a cumulative profit and loss account in the interim financial returns would be an improvement. This is more consistent with the way that businesses are run and would also remove or simplify the annual reconciliation process of the 4 quarters. As a result the Commission will be amending this requirement.

	calculate them anyway; otherwise we are happy to continue with the rule as it is but the FSC should note that cumulative accounts are available on demand.	
2.46 Monitoring of financial resources requirements	Refers to “quarter” and this is defined as “quarter-end” which is defined as March, June, September and December. The definition should be amended.	Agreed - change made
Part 3 - Specified Client Bank Accounts for Class 4 and 5	<p>Currently accounts are opened in the name of the regulated entity and existing documentation would be used for additional accounts in this format. If this change was implemented it would require additional documentation for every new trust and company account opened. Therefore we do not believe that allowing specified client bank accounts would be a beneficial change for class 4 and 5 licenceholders.</p> <p>Specified client bank accounts would not be worthwhile for Class 4 and 5 licenceholders</p> <p>The nature of our business means that it is necessary for us to have the option to open a specified client account. These accounts are for payment of dividends and clearly it would not be appropriate to do this through any general client account. The accounts we maintain are similar to subscription/redemption accounts for Collective Investment Schemes. We would not expect that such accounts would be subject to any pooling arrangements in the even of a bank default.</p> <p>Businesses in Jersey and Guernsey do not have the constraint proposed and are able to operate client accounts as required. Without the ability to open individual client bank accounts we will be unable to provide a complete service to our clients.</p> <p>We consider that specified client bank accounts would be useful for Class 4 and 5 licenceholders. The most obvious example is where we transfer funds to a client account as a final distribution as part of the process of winding up a company. Usually we would use a general client bank account for this purpose, but the client might want to use a specified client bank account, especially if the sum involved is substantial. To not allow clients this facility would potentially be damaging to their interests.</p> <p>There are occasions when we would want to hold client money in a separate client money account (for one client only). We don't pay interest on our general client account therefore we open separate accounts where we will be holding over £10,000 for over a month so that we can pay interest. There are a variety of reasons why these are not kept in an account in a client's own name including –</p> <ol style="list-style-type: none"> <li>1) Liquidations - the company bank accounts will be closed and we may need to hold funds to cover our fees in a client account.</li> <li>2) Trusts – may be fully distributed but we have been unable to make a payment to a beneficiary. The trust bank account would be closed so we would hold the funds in a client account</li> <li>3) security deposits – for one of our property owning</li> </ol>	<p>The Commission received varying comments and differing opinions on this point. Some Class 4 and Class 5 licenceholders considered that specified client bank accounts would be worthwhile for their clients and their business and were able to specify situations when they would be necessary; therefore, the Rules will allow Class 4 and 5 licenceholders to use specified client bank accounts if the licenceholder wishes to do so. There will be no mandatory requirement that specified client bank accounts <u>have</u> to be operated as in most cases the Commission still considers that it would be preferable for Class 4 and 5 licenceholders to open individual company accounts / trust accounts.</p> <p>Where licenceholders do not operate specified client accounts (or settlement/free money accounts) the client information (under Rule 3.7) need only make reference to the types of client account offered.</p>

	<p>client companies we act as agent for the landlord and hold a security deposit from a tenant. These funds are kept in a client account.</p> <p>Placing inflexible restrictions may lead the licenceholder into conflict with its obligations under trust law by actually preventing it from acting in the best interests of its clients. In the banking crisis it was necessary, as best practice, to split and move many clients' funds as quickly as possible to spread risk. The work load for all concerned was considerable and too many restrictions may in the future prevent a licenceholder from acting in its clients best interests, simply due to time constraints imposed on it by the FSC. The ability to move money in the banking crisis is a key example, but I can think of many other potential situations e.g. failure/suspensions of an agent, broker etc acting for a client.</p> <p>Whilst we agree best practice is that money is held in the name of the client company or trust, the delays in banks opening such accounts, mainly due to KYC checks, means that there is a necessity for CSPs and TSPs to have the ability to open Specified Client Bank Accounts to protect their clients funds in certain situations.</p> <p>It would be better to give guidance not rigid regulation e.g.</p> <ul style="list-style-type: none"> <li>i) that licenceholders should where and as soon as practicable notify clients the bank where funds are held and that the account is a Specified Clients Bank Account and</li> <li>ii) licenceholders should as soon as and where possible move funds from a Specified Clients Bank Account into a clients named account.</li> </ul>	<p>In the current climate it is felt that guidance would be considered inappropriate and the issues should be addressed by way of Rules.</p>
<p>Part 3 - Types of client bank accounts</p>	<p>As a provider of client bank accounts we welcome the clarity being introduced in relation to this matter</p> <p>I agree with the proposal to reduce the type of client accounts to two.</p>	<p>Positive comment – no response required.</p> <p>Positive comment – no response required.</p>
<p>3.1 Interpretation</p>	<p>This now states that "references to a client were references to a collective investment scheme, or to a participant in such a scheme, as the case may require". It would be unusual to be holding client money for a scheme (as the scheme has its own bank accounts) so it is not clear why "client" would include a scheme for Part 3. Any additional guidance on this area would be appreciated.</p> <p>This rule could be interpreted as only applying to Class 3 licenceholders. In order to clarify we suggest inserting "where" at the beginning of the sentence, and "as it applies..." prior to "...with any necessary modifications".</p> <p>The Client Money interpretation of recognised bank is a little unclear "b) ...outside the Island - whose government has signified acceptance of the principles of the International Concordat on Banking Supervision ... Etc"</p> <p>When you try and evidence this it is nearly impossible - no other jurisdiction seems to refer to the above principles, they may instead indicate that they follow Basel II or similar. It isn't that we believe the</p>	<p>This was included to be consistent with the wording in Part 4 and to cover every eventuality. However, no such situations can be envisaged and as it may cause confusion the references to treating a scheme as a client will be removed.</p> <p>Agreed that the application of the Part should be clarified. Change made</p> <p>The definition of recognised bank has been amended to make this clearer.</p>

	<p>jurisdictions we deal with have any problem but it is the problem of providing suitable evidence that they meet the requirements of the Rule Book.</p> <p>Is there another phrase or term that could be used to explain what is a suitably recognised bank in another jurisdiction, is it particular to the jurisdiction or is it specific to the bank which has adopted Basel principles?</p> <p>Shouldn't the definition of "specified client bank accounts" include the paragraph regarding the funds not being pooled in the event of a bank failure?</p> <p>The definition of "client" is not very clear. Why does it only include trustee of a trust, this could lead to problems with other things it should include. A trustee is no different than any other client.</p> <p>The number of characters allowed in the name of a bank account will make it very difficult to include the words "specified client account" in the title. The requirement should be more flexible, everyone understands what is meant by entity re client or examples could be given of what would be acceptable e.g. specified, spec., re of ref.</p>	<p>This is now included at rule 3.16A.</p> <p>This definition was included to ensure that a corporate trustee of a licenceholder would be treated as a client so that any money held for the trusts would be client money. The definition has been amended to clarify the position.</p> <p>Agreed – change made.</p>
<p>3.2 Meaning of "client money" and "trust money"</p>	<p>It is not clear from this definition that trust money which is held in a client bank account is client money</p>	<p>An extra sub-paragraph has been added to address this issue.</p>
<p>3.3 (1) (a) (ii) Meaning of "client bank account"</p>	<p>There may be instances where it may not be suitable to notify clients of the details of a bank account, particularly in a trust capacity, where funds may be held for a minor or in the case of a discretionary trust.</p> <p>Where the recognised bank account is chosen by the client or the licenceholder on behalf of the client this should be documented in writing.</p>	<p>A specified client bank account could not be used in this situation, however a trust bank account may be more appropriate in any case. In any event, a beneficiary of a trust would not be the client in the relationship, merely an interested party. The client would be either the settlor of the trust or the trustees (which may also be the licenceholder.)</p> <p>Agreed, this has been added to the Rule.</p>
<p>3.7 Client money information sheet and Schedule 3.1</p>	<p>Many clients will find the style and content of the information sheet to be unclear and difficult to understand. Whilst we appreciate that it has been drafted as part of the Rule Book, given that its intended audience is not the licenceholder but instead the client of the licenceholder we believe the content should be revised with this in mind.</p> <p>As a Class 5 licenceholder we would have to provide information to our clients about specified client bank accounts, which we would not be permitted to establish for them. We suggest that rule 3.7 should be amended to apply only when specified client bank accounts are an option available to the licenceholder concerned.</p> <p>If a licenceholder only operates a general client account, rather than both general and specified client bank accounts would they still need to provide the client information sheet?</p>	<p>The Commission will not be limiting the establishment of specified client bank accounts to only Class 2 and 3 licenceholders; therefore, Class 4 and 5 licenceholders will be permitted to open such accounts if necessary. However the Commission understands that not all Class 4 and 5 licenceholders will wish to open such client accounts for their clients. The information sheet has been reworked so that it is no longer a proforma. It will contain specific information that must be provided depending on the type of client accounts offered by the licenceholder. The information has been simplified further for clients.</p> <p>The information sheet is required to be provided to clients before any client money is initially received not for each transaction; therefore, it would be acceptable if all clients were provided with the relevant information at</p>

	<p>We think that this is an onerous requirement. Would it be acceptable if all clients were provided with this sheet at the take on stage (included as a schedule to the terms of business letter)? This would be easier for licenceholders to control as they would not have to record who had/had not received them and would help to avoid breaches when client money is received unexpectedly.</p> <p>Alternatively could the rule be amended to say that the licenceholder must state in their terms of business how clients can obtain a copy of the sheet? Then it would not need to be included in full in the terms of business and the licenceholder could refer the client to their website for the full information sheet or offer to send a hard copy on request.</p> <p>The requirement to supply a copy of this sheet before client money is received will not be practical in all cases e.g. if the sheet were to be incorporated into a client agreement, client money might be received before this agreement is passed to the client e.g. money to be held for future fees.</p> <p>CSPs and TSPs often collect funds to cover disbursements such as company taxes or filing fees by including them as disbursements on invoices. When the invoice is paid we are required to treat the disbursement element of the funds received as client money. Having reviewed the year to June 2009 we had about 5,000 of these. While it might be reasonable and not too onerous to provide an information sheet in advance of 'proper' client money transactions, it is impractical for this sort of 'disbursement' client money. Could the rules either explicitly exempt receipts to cover disbursements, or perhaps include a de minimus amount below which the Information sheet would not be required?</p> <p>Would it be acceptable if all clients were provided with a client money information sheet once the requirements come into force and thereafter at take on stage? This would reduce administration and potential for breaches.</p> <p>Would the client information sheet need to be issued to existing clients or only clients engaged after implementation.</p> <p>In the Schedule, "client bank account" is defined, but does not cover accounts opened in the name of the client company/trust. It is suggested that by omitting these, it gives an impression to the client that the only way forward are the two types of accounts mentioned. If a client asks that an account be opened with the client's bank – would that be a "specified account" as the Schedule gives no indication to a client that he has to request the wording to be included.</p>	<p>the take on stage (e.g. included as a schedule to the terms of business letter) if this would be easier for licenceholders and help to avoid breaches when client money is received unexpectedly.</p> <p>The information should be included in full (but only for the types of account offered) because clients may not realise the importance of the information and therefore will not ask for the sheet if the licenceholder only states how a copy can be obtained.</p> <p>Bank details must be given to a client before any money could be received by a licenceholder and the information sheet could be given at the same time or included on the document giving the bank details. The Commission considers that if all clients were provided with this sheet at the take on stage, there should not be any issues with this requirement.</p> <p>There would have to be a record to evidence that clients had been given the sheet. This has been clarified in the Rule.</p> <p>The Commission considers that if all clients were provided with this sheet at the take on stage, there should not be any issues with this requirement.</p> <p>Yes</p> <p>It would need to be issued to new clients and when new amounts of client money are received following implementation. It may be simpler to send a copy out to all clients. Client company and trust banks accounts are not client accounts and are therefore were not included; however, it is agreed that this may cause confusion so a paragraph has been added to try to make the situation clear for clients.</p>
3.9 Account to be specified in cheques etc	It may be appropriate to add words along the lines of "unless it is known that the monies are not client account monies, they must be paid into [ ] until the position is clarified.	It is considered that the treatment of client monies is made clear in other rules in this part and therefore it does not need to be replicated.

3.10 Operation of client bank account	<p>I think 5 working days notification in 3.10(2) is at best too short and may be totally impracticable. If a client was travelling in China, heard of the banking crisis, phoned the licenceholder and said they had heard that Bank A was dodgy and it was agreed that the licenceholder move the funds to Bank B or a Bank of the licenceholder's choice, how can the licenceholder notify until the client phones back, it is not within its control?</p> <p>Rule 3.10(3) – would the acknowledgement from the bank be required in relation to existing accounts?</p>	<p>The licenceholder could either email or write to the client and as long as this was documented as having occurred within 5 days the licenceholder would be in compliance with the Rule.</p> <p>This is an existing requirement so licenceholders should already have acknowledgements.</p>
3.11 (4)(b) Records to be kept by licenceholder	<p>There is more than one meaning for the term "tracing" so I think that this needs to be clarified. Is it referring to the ability to follow an audit trail or is it referring to the process of legal recovery i.e. that I would have the legal right to trail and recover it?</p>	<p>It refers to the ability to follow an audit trail and this has been clarified in the Rule.</p>
3.13 Reconciliation	<p>For clarity could this rule be amended to say once a calendar month or once every 28 days?</p> <p>Why is the requirement to notify "immediately"? Could (7) and (8) be changed to within 5 days to be consistent with (9)?</p>	<p>Agreed – change made</p> <p>Agreed – changed to 5 business days</p>
3.14 Interest on client money	<p>The requirement should be extended to redemption payments awaiting payment e.g. such money might be held awaiting correct bank details, outstanding KYC etc.</p>	<p>Rule 3.14(2) does apply to redemption payments, guidance could be provided to clarify this position.</p>
3.20 Pooling	<p>We agree that the rule should be amended and note that subscription and redemption accounts will be "specified" accounts and therefore outside of pooling.</p> <p>It should not be the case that general client bank accounts are all pooled. A client that sends money to an account with bank A will not accept that they should contribute to the loss of another client with money in the client account at failed bank B. They will only understand that they have sent their funds to an account that is still secure, and they will consider that the funds still held on that account belong to them. We are concerned that the courts might take the same view. We think that the rule across the board should be as per rule 3.22 where the Rule Book says that "money held ...with that bank shall be pooled...to satisfy the claims of clients whose money was held...in a client bank account with that bank".</p> <p>Does the pooling requirement allow one mixed currency pool or separate currency pools? If one pool is maintained, clients may be subject to foreign exchange risk, reconciliation will be difficult and some requirement will be needed re profits and losses. However if separate currency pools are allowed, they will need to be balanced.</p> <p>The new requirement at (4) does not work because client money is held pari passu for the respective clients. It should not refer to the money being pooled and should be amended to refer to the DCS Regulations for the time being in force.</p>	<p>Positive comment – no response required.</p> <p>The Commission is confident that the Courts would not share this view. Clients send money to a licenceholder's general client bank account rather than to an account with a bank. General client bank accounts will be pooled and clients need to be made aware of this. Hence, the client information sheet which must be provided to all clients under Rule 3.7.</p> <p>The pooling requirement should only allow one mixed currency pool and this has been clarified in the Rule.</p> <p>Agreed – change made</p>
3.26 Duty to hold trust money	<p>If specified client bank accounts are to be restricted to Class 2 and 3 licenceholders only, should (b) say</p>	<p>On consideration of the consultation responses the Commission will not be restricting the</p>

separately	“ <i>general</i> client bank account”.	establishment of specified client bank accounts.
3.27 Operation of trust bank account	It would be wrong to use “in re” in this situation. The account should be titled so that it is clear that it is held in the capacity of trustee but must not be too specific i.e. trustees of XYZ trust / settlement / foundation / charity or if this is too long some acceptable abbreviation of this.	Agreed – the Rule has been amended.
3.29 Reconciliation	Why is the requirement to notify "immediately" when in Rule 3.13 it is "within 5 days"?	Amended to 5 business days for consistency.
4.8 (1)(b) Reconciliation of investments and title documents	I think it would be worth clarifying what is meant by ‘promptly correct any discrepancies which are revealed’. For the purpose of auditors reporting to the FSC we are working on the basis that discrepancies/reconciling items are resolved within one month of the date at which the reconciliation was performed.	Agreed - the Rule has been amended so that any discrepancies must be corrected <b>within 5 business days</b> (currently the rule just states promptly). In addition, it is considered that this should be consistent with the client money and trust money reconciliation requirements in Part 3; therefore, the rule has been further amended to read “the licenceholder must notify the Commission if it has not carried out or is not able to carry out the reconciliation or if it has completed the reconciliation but is not able to correct any discrepancy, or more than <b>3 months</b> (currently the time limit is 6 months) after completion, a discrepancy has not been corrected.”
5.8 Management letter and ISA 260	It is our understanding that ISA 260’s have replaced management letters so it would make sense to remove reference to management letters as they are no longer issued.	Further research appears to indicate that the management letter is coming in the form of an ISA 260. Suggest that generic wording of “a management letter” is retained but include “(or equivalent)” should be submitted – then if the accounting standards are changed the Rule will still be correct. Guidance can be issued that “or equivalent would be an ISA 260”.
6.3, 6.12, 6.37, 8.7 and 8.8 re conflicts of interest	Not all conflicts of interest are material – should these rules refer to only to material conflicts (including any borrowing from clients).	This comment was received late and so there has not been enough time to consider it fully. After a quick look through the rules mentioned it is considered that referring to “material conflicts” is not necessary. However, this will be considered more fully in the next review of the Rule Book.

<p>6.14 Reference to licensing</p>	<p><b>No preference</b>  A shorter version of the rubric should be utilised and there is no preference to which version. However, this is an opportunity to review the requirement to have a strapping at all. Has there been any public research of how effective the requirement is to refer to our licences on advertising material and why it is required?</p> <p>Changing stationery etc. to accommodate changes to the rubric is one of the most frustrating and time consuming things to do. It is economically much cheaper to buy a bulk order of stationery but presently we can only order a very small order at much higher unit prices because we now have another proposed wording change to consider. In the current economic climate I am looking to cut my costs, not increase them. I think that whatever rubric is finally determined this needs to be communicated quickly before many more businesses place orders for new stationery before the expiry of the present period of grace. In addition once we have a settled rubric this needs to remain constant for a reasonable period of time.</p> <p>We are happy with the current requirements but not averse to using a shortened rubric, provided the transition period is sufficient to use up existing supplies of stationery (approximately 2 years) and that no breaches are recorded using the existing supplies during the transition period</p> <p><b>Version A</b>  A shortened advertising rubric "<i>Licensed by the Isle of Man Financial Supervision Commission for financial services business</i>" would be welcomed providing a reprint of all stationary containing the lengthier version was not required. We would request that this more general rubric is permitted as an additional option for those conducting more than one regulated activity.</p> <p><b>Version B for all</b>  I would most strongly urge you to adopt a shorter rubric for all advertising (<i>Licensed by the Isle of Man Financial Supervision Commission</i>), and not limit the shorter version to broadcast advertisements. This would make life much easier for everyone, without reducing the risk in any way to the public.</p> <p>We do not think that the specific activities should be dropped from the regulated rubric. From a client protection point of view it is important that the services licenceholders are permitted to perform is clear to clients. We appreciate that the rubric is complicated for those with multiple licence Classes. The suggestion that it should state that licenceholders are licensed for 'financial services business' is potentially misleading as clients could assume that this means all areas of financial services. If it needs to change the "<i>Licensed by the IOM Financial Supervision Commission</i>" would be better as this would reduce</p>	<p>The Commission considers that it is important for the rubric to be included in advertising material for consumer protection.</p> <p>It is possible that the more generic wording (including for financial services activities) could cause some confusion, however, there are a number of licenceholders who undertake a number of different regulated activities and stating that they are "licensed by the Financial Supervision Commission for investment business and corporate and trust services" is too long. There are also groups who advertise their services together and this becomes quite complex. Therefore the Rule will be amended to allow the shortened version of the rubric "<i>Licensed by the Isle of Man Financial Supervision Commission</i>" to be used for all advertising.</p> <p>As current stationery will contain the longer, more descriptive rubric, there is no need to cease using it by a particular date, and therefore no additional imposed cost. The Rule will clarify the use of existing stocks.</p>
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	<p>the risk that anyone could claim they had been misled. If a client wanted further information they could ask the licenceholder.</p> <p>As a whole there would be merit in shortening the rubric.</p> <p><b>Version B just for radio</b> We feel very strongly that the requirements should not be changed yet again, so soon after the last change. We would opt for a short version (<i>Licensed by the Isle of Man Financial Supervision Commission</i>) just for radio or television broadcasting, retaining the current requirement for any other advertising or documents.</p> <p><i>“Licensed by the Isle of Man Financial Supervision Commission for financial services business”</i> for all advertising and the shortened version (<i>‘Licensed by the Isle of Man Financial Supervision Commission’</i>), for radio.</p> <p><b>Stay the same</b> At present I use the rubric 'Licensed by the Isle of Man Financial Supervision Commission for Investment Business' If I were to alter that to '.....Financial Services Business' it may give the impression to a client that I have more authority to do a wider range of activities than is actually the case? I would prefer to stay as I am. If nothing else it would save the cost of reprinting my stationery.</p> <p>We consider a further change is unnecessary so soon after the previous alteration. If the Commission decides to alter it, we ask that a non-breach period is allowed to give licenceholders time to make the necessary alterations.</p>	
6.14(2) Reference to licensing	Should amendments be made to this rule similar to those proposed for Rule 6.14(1)?	Agreed – change made
6.17A Reference to group ownership	<p>This rule gives no guidance on what degree of disclosure of group disclosure of group structure information or financial information is required, nor does it make clear to whom the reference to ‘its’ financial standing is. Is this the licenceholder, the ultimate parent etc?</p> <p>This is already being implemented in the light of the Guidance issued earlier this year.</p> <p>This new part of rubric will again make it long. This is an issue especially in newspaper adverts as the copy needs to be a size that is legible and thus the shorter the rubric, the larger the font that can be used. It would be better to keep it simple and use the license part of the rubric only for all print advertising. The reason for this is that by being licensed we already have to adhere to various requirements and thus our licence itself should provide reassurance to any customers or prospective customers. It might also be worthwhile investigating whether small print in advertising is generally studied in detail by the public –</p>	<p>There is guidance in place at the moment which was agreed with IOMBA and is being used by the majority of Class I licenceholders. This guidance will remain in place but will be linked to the Rule when it comes into operation. By keeping the descriptive elements in guidance the Commission will be able to provide a little more flexibility to the licenceholders to which the Rule will apply.</p> <p>The reference to “its” is to the licenceholder and the group – the wording has been clarified.</p>

	<p>I would have thought that this would be less the case in advertising than in product literature. From our perspective, should a customer be interested in a product, they would have the opportunity to review the information provided in our 'important notes' which covers the detail as well as a number of important issues (compensation, probate etc) prior to making a decision.</p>	
6.18A Execution only and limited advice	<p>From talking to some of my clients the question of investor protection causes confusion. Generally most of them who had specific requirements were happy to take responsibility for their own decisions. Similarly, those who were unwilling to make full disclosure for suitability assessment accepted that this reduced the investor protection. Is this section just a knee jerk reaction to problems elsewhere, from which we all want to distance ourselves?</p> <p>Consideration should be given where advice is provided to clients in remote locations and face to face interviews are not possible.</p> <p>We have already been adopting some of the proposals including client sign off regarding limited advice / execution only.</p>	<p>The definition of execution only was omitted from the original Rule Book in error and the Commission wishes to re-insert it. The opportunity has also been taken to include "limited advice" which was not covered in the original Regulatory Code, although we are aware that many financial advisers do provide limited advice.</p> <p>If many of your clients are in remote locations it may be worthwhile to include information in the terms of business advising that there will be a reduction in investor protection if the fact find sheet is not fully completed or if the client will not be relying upon you to advise him on the suitability of the transaction.</p>
6.38 General need for client agreement or terms of business	<p>The terms of business referred to in (1)(b) should be signed by the client not just notified to them.</p>	<p>This is currently recommended to financial advisers as a matter of best practice so it is agreed that it should be included as a rule.</p>
6.49 (2) Contract note	<p>Why can Class 2 licenceholder's clients opt out of getting contract notes when the same does not apply to Class 4 (Rule 6.60)?</p>	<p>Rule 6.60 only applies to Class 3 business. Class 2 clients can opt out of getting contract notes because they are sent a periodic statement at least twice a year. Class 3 licenceholders do not have this requirement therefore the contract note may be the only information the clients receive therefore they can not opt out of receiving it.</p>
6.59(2) Services for overseas schemes	<p>We suggest restricting this to notification of material changes only.</p>	<p>Agreed – change made</p>
6.60 Contract note	<p>Should be amended to include "if applicable" as not all CIS transactions have those details and therefore the contract notes cannot reflect all of the items listed.</p>	<p>Agreed - change made</p>

<p>6.61 Provision of statistical information</p>	<p>This requirement could be onerous in that there is no guidance on the nature or scope of the information that can be requested.</p> <p>For Class 3, I have assumed that the current forms will be used.</p> <p>The extent of the information envisaged to be provided in respect of closed ended investment companies does not seem appropriate to us and we are uncertain as to the relevance of some of the information to the task of the regulator, or the ability of a licenceholder to provide the same. In our opinion, if information is required, it should be limited to the basic incorporation details and the capitalisation of the vehicle at the relevant point in time.</p> <p>Without a suitable database, provision of the statistics required for Classes 2 and 3 will be onerous for some licenceholders</p>	<p>The Commission will issue a form to be used as is currently the case for the collective investment schemes statistics – the current forms will remain in place for Class 3 licenceholders.</p> <p>For Classes 2 and 3 the types of statistics to be provided will be –</p> <ul style="list-style-type: none"> <li>• assets under management or custody at period end,</li> <li>• split of business / assets under management or custody,</li> <li>• number of clients, and</li> <li>• split of clients into retail, non-retail and schemes by number and value, as appropriate.</li> </ul> <p>For Class 4 (administration services to closed ended investment companies) the types of statistics to be provided will be –</p> <ul style="list-style-type: none"> <li>• name, legal constitution, domicile, asset category, total and net assets of company,</li> <li>• number of share holders,</li> <li>• whether it is listed or unlisted, and</li> <li>• name of NOMAD and custodian/prime broker.</li> </ul> <p>For Class 6 (e-money issuers) the types of statistics to be provided will be –</p> <ul style="list-style-type: none"> <li>• value of the client accounts at the start and end of the period, and</li> <li>• turnover over the period.</li> </ul>
<p>6.66(4) Resignation of a licenceholder and 8.25(3)(b) Clients' records</p>	<p>The period of 18 years seems excessive (and expensive to comply with) and we consider that 13 years would be more appropriate. We would be interested to know the rationale behind the proposed 18 year period.</p> <p>This requirement is prohibitive and could lead to licenceholders not using 2006 Act companies. Presumably this only refers to original statutory records of the company and therefore if the licenceholder holds copy records it does not apply to them, perhaps this could be clarified?</p> <p>Also, whether the licenceholder can obtain copies of the records and retain such copies in electronic form.</p>	<p>The 18 year period comes from the 6 years after the company has been struck off before it is dissolved plus the 12 year period after dissolution in which the company can be restored.</p> <p>The objective of Rule 6.66 is that for a client company which has been removed from the register, the licenceholder should retain sufficient records to allow the company to be restored, for as long as the company is eligible to be restored (unless the documents have been handed over to that company or its beneficial owner under 6.66(2)).</p> <p>It is agreed that the retention period should not be so long for the ordinary run of CSP business (records to be kept under 8.25). 6.66 is a special case requirement to keep records for an extra period in case the company is restored.</p> <p>If the restoration period in CA 2006 is considered to be too long this would have to be a matter for the next company law review.</p>
<p>6.71 E-money limit</p>	<p>The proposed limit for any client is £ 1,000 – is there a specific reason why this amount has been used (e.g. to comply with AML)</p>	<p>It was taken from the UK FSA's e-money rules; however, on reflection it has been decided not to include this limit in the rules.</p>
<p>7.5(1)(d)</p>	<p>The expression "controlling interest" is not defined. Its</p>	<p>It is intended that "controlling interest" is</p>

Acquisition etc. of business	ordinary meaning would probably be an interest greater than 50% voting power, however the expression "controller" in FSA 2008 is defined by reference to 15% voting power. If it is intended that a "controlling interest" in rule 7.5(1)(d) be construed by reference to the definition of "controller" the FSA 2008, could that be stated?	construed by reference to the definition of "controller" in the FSA 2008 and this will be clarified.
7.7A Options over capital of company	We would observe that the licenceholder may not have knowledge of any pledge or option in respect of its shares.	The Rule has been amended to include the awareness of the licenceholder.
7.8 Subsidiaries	<p>I would appreciate further guidance regarding all types of subsidiaries e.g. how are nominee companies "trading", what about corporate trustee etc?</p> <p>Where a licenceholder uses individual companies to be trustees of individual trusts, should these be advised to the FSC within 20 days of the formation of such company.</p>	<p>Once the Rule has been amended to reflect the proposed changes, the guidance which states that "nominee companies are regarded as being trading companies" will be removed and nominee companies, corporate trustee etc will not be regarded as "trading companies". No further guidance should be required.</p> <p>Yes</p>
7.12 Service of notice	<p>Why is the extension just for Classes 4 and 5?</p> <p>Could there be a time limit on having to report these actions on ex-clients, for example 12 months after ceasing to provide services? Why does this only apply to Class 4 and 5 licenceholders?</p>	<p>The rule has been extended to also apply to Class 3. This is because Class 3, 4 and 5 licenceholders can become intrinsically linked to their clients (providing directors to companies etc.) and the service of notice could be linked to actions that the licenceholder should have taken in the past. It is agreed that there should be a time limit for this but 12 months is considered to be too short. The rule will include a 6 year time limit.</p> <p>The rule has also been amended to include warrants issued under s.169 of the Proceeds of Crime Act 2008.</p>
8.13 Delegation of function, outsourcing or inward outsourcing	This rule does not provide for inward outsourcing, which is only applicable to Class 3.	Paragraph (2) amended to relate to inward-outsourcing.
8.14 Breaches	<p>Amendment welcomed</p> <p>We agree with the modification outlined</p> <p>We note that only material breaches will need to be notified, will non-material breaches be recorded? Could the Commission please provide a definition of material?</p>	<p>Currently all breaches need to be notified, including very minor ones. This is not seen as good use of resources from the licenceholders' or the Commission's point of view, hence the change to "material". However, the downside to this is that it is difficult to define what is meant by material because what is considered material by one licenceholder may not be material to another. Therefore the best definition or guidance we can give is to say it is material if you consider it material to your business. This is not ideal and could potentially lead to licenceholders continuing to notify us of all breaches to ensure that they do not breach the Rule. We would suggest that, if in doubt about the materiality, then it should be notified but clearly there will be some that are clearly not material which need not be notified. It is possible that additional guidance will be given but not until the amended Rule has been in place for a while.</p>

8.17(2)(b) Matters to be notified	The added wording does not seem to bear any relation to the substantive element of the provision. "Suspension" does not have a clear meaning with no further information. If it means a suspension of transactions in unit it would be a good idea to make this clear, but would not necessarily involve a licenceholder becoming unable to comply with the Rules; nor would a liquidation of the scheme.	The added wording has been removed and a new rule has been created to require notification of suspension or liquidation of a scheme.
8.22 Absence of resident officers	The Commission should be informed when the resident officers are absent and the arrangements are implemented.	Agreed – rule has been amended so that the Commission is informed within 5 business days.
8.25 Clients' records	<p>This does not specify which records need to be kept. Keeping all client records for these time periods is not practical and will be prohibitive. As it only applies to Class 4 licenceholders should it be amended to refer to original statutory records? If so should it refer to maintaining the records for 13/18 years from the end of the relationship? In most cases these records will have been transferred to the beneficial owner anyway when the relationship ended. If it isn't intended to apply to statutory records then why does it only apply to Class 4 licenceholders?</p> <p>Given the potential cost of storage, can such records be kept electronically?</p>	<p>On further consideration it is agreed that the retention period should not be so long for the records relating to ordinary run of CSP business</p> <p>The acceptability of electronic records has never been tested in court; therefore, the Commission would advise licenceholders to take legal advice on the position before only holding records in an electronic format.</p>
8.29 Complaints	We do not need to have procedures for dealing with complaints if the complaint did not originate from a client as 8.29(2) only relates to clients. It would seem strange that we are not required to have procedures in place for "non-client" complaints and I am not sure if this is a deliberate omission from the Rulebook.	Agreed that the licenceholder should have procedures for dealing with any complaint that is deemed important enough to be entered in the complaints register. The reference to "client" has been removed from (2).
8.33 Corporate governance	<p>We note the proposal for the Commission, when considering the independence of a non-executive director, to have regard to the Combined Code on Corporate Governance.</p> <p>We have no disagreement with the proposal however could envisage some difficulty in the future given the number of local professionals, from whom we might ordinarily look to for a future non executive director appointment, who have had some form of business relationship with the bank.</p> <p>In addition we would seek the Commission's views on the possibility of the same non executive director acting in that capacity for more than one locally incorporated Class I licenceholder within the same Group.</p>	The Combined Code on Corporate Governance only refers to "material" business relationships when considering independence. It is considered that there shouldn't be a difficulty. In addition, there should be no problem with the same non executive director acting in that capacity for more than one locally incorporated Class I licenceholder within the same Group. The Commission will be constructing guidance around corporate governance and non executive directors in any case and this is something that will be looked into prior to revisions becoming operational.
8.54 PII cover	<p>PII cover should not be a requirement where a company is part of a major banking group Application of this rule would have a considerable financial impact on the licenceholders.</p> <p>The reference to "Extensions" seems vague, given that nowhere do the rules specify what the basic cover is. If the insurance is required to cover the listed matters, should this not simply be stated?</p> <p>"Cover to include libel or slander (to include former employees)" appears to be very difficult to obtain as my current cover does not include it and my present insurer refuses to include it. I understand that it is unlikely that others will allow it.</p>	<p>This rule has not been changed for Class I licenceholders. PII cover is not a requirement where a company holds a Class I licence.</p> <p>Agreed – this has been amended to simply state "the cover should include".</p> <p>The Commission is advised that libel and slander is generally part of PI policies but may not be expressly stated. In addition, this is an existing IPA requirement and is currently being met by jointly regulated companies.</p>

	<p>My current PI cover is £1.6m, which I was told is the requirement in the UK for my size of business. Are we a greater risk in the Isle of Man that we require £5m?</p> <p>The requirement for minimum cover for IFAs is far in excess of the UK requirement which is £1.6m or 10% of turnover up to £1.6m. The equivalent requirement would be £3m if these rules are brought in and we do not consider that the FSC should be asking for this extra cover.</p> <p>In our experience of dealing with regulations in a variety of jurisdictions there is not usually a prescribed upper limit – our current group policy has a limit above the maximum laid down here.</p> <p>We agree that turnover is not in itself an appropriate guide as to risk of a claim or the size of a claim. The consultation document makes reference to basing assessment on facts including claims history, the specific spread of business and risk, and the attitude of the organisation to compliance and risk mitigation – we agree with all of this although it then appears at odds with a proposal of an upper limit.</p> <p>I am very concerned at the high levels of PII that we are required to have in place. In the Consultation Paper at the top of page 13 all of my concerns are covered re turnover, spread of business, claims history etc but a ceiling of £5m on a 3x T/O basis is not representative of the risks involved.</p> <p>The original formula used in 1991 was no doubt based on market factors at that time but to assume that 17yrs later the same parameters are relevant has to be a flawed argument. During this time, simply due to inflation, T/O will have increased significantly as well as the environment we work in, market mix etc. I realise that you feel the UK levels of cover are too low but the minimum cover in the IOM is 16% of the UK, whereas at the upper end IOM cover is 30x that of the UK. Surely that level of disparity justifies a full overhaul of the system rather than using a 17yr old formula as a starting point.</p> <p>I am unsure of average claim levels but would argue that this must be the basis for calculating minimum levels. If it can be evidenced that IOM or similar offshore claims are 30x the level of UK claims then I accept we would have no argument.</p> <p>I do not have evidence of the turnover of Manx IFA's but would guess that of the 40 licences issued, maybe 30% are in excess of this £1.6m UK requirement on a 3x T/O basis and therefore 70% would be lower. Of that 70%, some of the smaller licences may only have cover of £300/£400k. Surely this is where the risk to the IOM lies, because as you rightly say, legal costs alone could swallow up quite a chunk of that. It is my opinion that raising the minimum but reducing the maximum would not be interpreted as a lowering of standards, but taken as an industry wide measure, would demonstrate an overall tightening of regulation.</p>	<p>The current requirement for PII is 3 x total turnover or £250,000, whichever is the greater. This level has been in existence (albeit in guidance) since 1991. It is therefore appropriate that the basic level is increased and it is considered that £1m is not unreasonable in the current climate. Therefore the proposed level is £1million or 3 x total turnover whichever is the greater. However, if your turnover requires PII of more than £5million, the proposal is that you can stop at the £5million level. Equally, if your turnover requires a lesser amount then you should obtain that and not the £5million.</p> <p>After considering the comments, the minimum level of PII for financial advisors who have a restriction on their financial services licence limiting the range of products on which the licenceholder can advise will be £500,000 rather than the £1,000,000 originally proposed.</p> <p>The levels of PII are comparable to those of Jersey, one of the Island's main competitors.</p> <p>Given the concerns raised by a few IFAs, the Commission has held individual meetings with those with detailed comments to try to address the points they raised.</p>
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8.54A Directors & Officers insurance	<p>You propose that it is not appropriate for professional officers to have their own PII, but rather have D&amp;O insurance. Are you saying that where they already have PII that they need D&amp;O as well?</p> <p>This does not take into account the scenario where directors and officers are provided to a non-licenceholder, such as a closed-ended investment company or collective investment scheme which is exempt from licensing, and that entity has directors and officers' insurance cover, as is very common. We suggest that a further exemption is included to take such circumstances into account.</p>	<p>Many professional officers have D&amp;O cover from the companies for which they act as director. Currently we have to deal with that by means of a modification to their licence. It therefore makes sense to include D&amp;O cover in the rule. If the licenceholder has appropriate D&amp;O cover there is no need for PII cover.</p> <p>It is accepted that the rule was not quite right as it stood for consultation and this has been addressed. Professional officers will now either need to be covered by D&amp;O insurance (by the company that it is providing services to) or its own PII.</p>
8.57(5) Pricing errors	<p>Should this new provision be qualified by awareness on the part of the licenceholder as per paragraph (2)?</p> <p>Amendment welcomed</p>	<p>It is considered that an awareness qualification is not required or appropriate for paragraph (2).</p> <p>Positive comment – no response required.</p>
Schedule 2.2	<p>The nature of the industry is that a huge amount of capital is generally invested in developing software. In the case of a start up operation the capital &amp; reserves requirement of £ 250,000 may well be excessive given the development cost and perhaps the FSC should consider a sliding scale approach tied in with turnover or client funds. The funds held on behalf of clients are held in designated client bank accounts and thus such funds are held outside the company's operating bank accounts.</p>	<p>The most recent draft EU directive on the prudential supervision of the business of e-money institutions states that "there is a need for a regime of initial capital...to ensure an appropriate level of consumer protection and the sound and prudent operation of e-money institutions" and the level is set at a minimum of EUR 350 000. The IOM is not part of the EU or subject to these requirements, although they are taken into account when applying to rules for Class 6. It is understood that the regime on the IOM will be different to that in the EU because the money will be held in clients' accounts rather than on balance sheet therefore it is proposed to reduce this to</p>

		£150,000.
Schedule 2.3 Part A	<p>The changes to Part A would not cause a problem.</p> <p>It is noted that 'the Commission may require a licenceholder to adjust its capital and reserves figure where there has been a significant change since the audited balance sheet was prepared'. We have seen that a number of our clients are in breach of the liquid capital requirements due to the fact that they have to use the prior year audited figures in parts of the calculation. If this is to change, how will the Commission decide what is significant and at what point in time will that decision be made? Will the client receive something in writing to confirm what adjustments have been approved by the Commission and from when they take effect? Without this it would make it very difficult for an auditor to check whether or not a client has been in breach of the requirements at specific points throughout the year.</p>	<p>A number of issues may arise (most of which would require either notification or FSC approval in any case) such as change in capital, repayment of subordinated loan etc. The Commission would therefore be aware of the circumstances and would liaise with the licenceholder, and confirm in writing its expectations in this regard so the auditor would be in a position to verify the requirements.</p>
Schedule 2.3 Part C Note 10	<p>There is an allowance for the operating expenses to be adjusted for commissions that are paid to third parties (including related companies) provided those fees are directly attributable. We suggest also allowing for fees that are paid to third parties (including related companies) but only where these fees are directly attributable to fees earned by the licenceholder and included in the turnover figure.</p>	<p>This has been reworded to clarify that where another regulated company (in the same group) provides client related services to the licenceholder under a formal agreement and the fees paid / payable to that group company are reasonable and directly attributable to the fees earned by the licenceholder; the fees paid / payable may be treated as a "cost of sale" rather than an overhead expense within the Profit and Loss or the Income and Expenditure Account.</p>
Schedule 2.3 Part D Note 18	<p>We have already been adopting some of the proposals raised including a 5% provision for clawback in our accounts.</p> <p>Liquid Capital requirement is already a large figure to be reserved from our profits and increasing it even more would appear to be a further imposition on IFA's. Have there been any failures of IFA's on the Island where this clause would have saved customers their money.</p> <p>We have no basic objection to the Liquid Capital requirements; however, in the UK they have introduced changes and allowed 3 years to comply whereas these changes will come in very quickly. Could we have more time to comply?</p> <p>How is a figure of 5% arrived at and can this be justified as realistic? Any material clawback required should be addressed within each company's annual audit upon which a formal opinion has already been provided and potentially an adjustment already made. If the auditors deem such a clawback to be unnecessary it would appear overly prudent to then require such a mandatory adjustment to be applied in calculating liquid capital.</p> <p>I am most concerned at the speed that the existing capital adequacy requirements have been implemented and to see them increased further is disappointing. Similar requirements in the UK are being phased in over a 3 year period up to 2011.</p> <p>Indemnity commission on all but protection business</p>	<p>As some licenceholders feel that the level of 5% is too high we propose to bring it down to 2.5%, which is the same level as the UK FSA currently has.</p> <p>In addition, some licenceholders feel that the Commission is bringing in changes regarding financial resources for IFAs too quickly when compared with the FSA. Although the Commission does not consider that the proposals put forward here are comparative to the RDR proposals in the UK it is aware that changes are being made relatively quickly at the same time as the RDR requirements are impacting; therefore, we propose to put this amendment off until the 2010 review. During this time licenceholders with Class 2(3) and (7) permissions will be requested to submit details of their clawback over the previous year to ascertain the actual experience.</p> <p>Again, given the concerns raised by a few IFAs, the Commission has held individual meetings with those with detailed comments and as a result the implementation of this proposal is deferred.</p>

	<p>will be outlawed under RDR by 2012 with providers likely to amend their products well in advance of this deadline.</p> <p>If the intention is to take account of protection indemnity and so increase our capital adequacy requirements I would welcome an overall review of the lead in time, particularly as we are trying to prepare for RDR which is going to have a negative impact on cashflow for a 2/3 year period.</p> <p>Whilst I understand why you would wish to consider this item (and indeed this is one factor that I keep under review) I think that it is very difficult to make this a fair requirement. For example our own clawback is less than 0.1% in the current year and is similar or less in previous years. In addition this is an item that is considered by our auditors and should it be determined that there is a regularity to the occurrence of clawback then there would be a provision raised in the accounts, which would then reflect in the Financial Returns.</p> <p>We have no objection to the amount being higher so as to encourage firms away from taking indemnity commission and comply with RDR (UK). In our view the situation where a clawback exists may call advisers' integrity into question.</p>	<p>Positive comment – no response required.</p>
<p>Interpretation - Professional Officer</p>	<p>The term “professional officer” is inappropriate as non executive directors are not normally officers of a company. An officer implies something of the nature of a Chairman, CEO or Secretary and non executive directors don't automatically hold such an office – nor can they said to be officers of the FSC. I consider that Professional director would be a more appropriate term as we are “directors” and “professional” seems quite reasonable for the world we live in today.</p>	<p>The Commission makes no distinction between executive and non-executive directors. It is considered that “officer” is an appropriate term when referring to directors as it is used in the Companies Acts 1931-2004 and the Company Officers (Disqualification) Act 2009 to include directors. In addition, the regulated activity under Class 4 is “acting as an officer of a company”.</p> <p>The term professional officer is used not only to refer to directors but also to individuals acting as trustee; therefore, the term “professional director” would not suitable.</p>