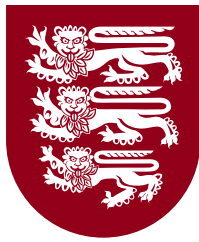


# STATES OF JERSEY



Jersey

## **DRAFT FINANCIAL SERVICES (AMENDMENT OF LAW) (No. 6) (JERSEY) REGULATIONS 202-**

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**Lodged au Greffe on 7th July 2023  
by the Chief Minister  
Earliest date for debate: 12th September 2023**

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**STATES GREFFE**

## REPORT

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### Enhancements to Jersey's Investment Business regime

*Incorporating amendments to:*

- I. *Draft Financial Services (Amendment of Law) (No. 6) (Jersey) Regulations 202-; and*
- II. *Draft Financial Services (Amendment of Schedules to the Law) (No. 3) (Jersey) Order 202- (attached in the Appendix to this report), (together the “Draft Amendments”).*

#### **To note:**

The Draft Order (which requires only a Ministerial approval) is scheduled as an attachment to the Draft Regulations. It works together with the Draft Regulations as a legislative package for delivering the Draft Amendments.

### **1. Background and purpose of the Draft Amendments**

The Government of Jersey following the recommendation of the Jersey Financial Services Commission (the “JFSC”) wishes to amend the [Financial Services \(Jersey\) Law 1998](#) (the “FS Law”).

The Draft Amendments fall into three categories:

- Introducing as a new form of regulated financial service business, the activity of arranging for another person to deal in investments but limited only to the retail market (“Arranging Amendments”).
- Introducing as a new form of financial service business, the activity of operating an investment exchange (“Exchange Business Amendments”).
- Clarifying and updating and aligning the definitions used in Schedule 1 of the Financial Services Law so that they are consistent with the UK FCA MiFID II definitions (“Schedule 1 Definition Amendments”).

The purpose of the Draft Amendments is to:

- Modernise and align Jersey's investment business regulatory regime with international standards.
- Provide additional consumer protections by introducing arranging as a new category of regulated investment activity.
- Facilitate in the future Jersey's adoption of a regulatory framework for investment exchange business as a new form of regulated investment activity.

The Draft Amendments will ensure Jersey's investment regime remains aligned to its key markets and gives retail consumers of Jersey's investment market equivalent protections.

### **2. Consultation**

The JFSC has undertaken consultations on the Draft Amendments, among other wider legislative proposals it wished to make to Jersey's Investment Business regime, in December 2019 with a further consultation issued on 23 November 2020. A final consultation specific to the adoption of arranging as a new regulated investment activity was issued by the JFSC on 12 September 2022.

The JFSC has published the industry feedback it received. In respect of the Exchange Business Amendments and Schedule 1 Definition Amendments industry broadly supported the policy behind the proposed changes to the FS Law, but with some additional clarification of scope and application sought by industry. These were resolved.

In respect of the original Arranging Amendments proposed, industry raised certain concerns about the scope of the proposed legislative changes. Industry was concerned there was a risk that certain activities and persons might unintentionally fall into the new regulated activity of arranging despite them being private transactions between financially sophisticated investors and not part of any retail offer or arrangement. The JFSC worked closely with industry to develop and clarify the Arranging Amendments. The final version of the Arranging Amendments shared in the final consultation issued in September last year has the approval of industry.

It is understood industry is now fully supportive of the Draft Amendments as a suite of legislative amendments to the FS Law.

The Regulator is content that it is adequately resourced to take on this additional activity. Presently, it does not consider additional guidance or changes to the Investment Codes of Business are required.

### 3. Details of Draft Amendments

The Draft Amendments will enhance Jersey’s investment business regime by introducing two new categories of regulated investment activities and clarify and align the definitions of investments used in Schedule 1 of the FS Law with the equivalent definitions adopted by UK FCA and EU MiFID.

The Draft Amendments will amend the FS Law (and Orders made under it) and its Schedules and are to be made by way of Regulations and Order.

Outlined below is a summary of the amendments made to the FS Law, its Schedules and the [Financial Services \(Investment Business \(Restricted Investment Business – Exemption\)\) \(Jersey\) Order 2001](#) (the “**PIRS Order**”) and the [Financial Services \(Investment Business \(Special Purpose Investment Business – Exemption\)\) \(Jersey\) Order 2001](#) (the “**SPV Order**”).

Article 2 insertion of “arranging” as a new form of financial service business	The investment activity of dealing in paragraph 2(a) of the law has been expanded to include where a person makes arrangements for another person to buy, sell, subscribe or underwrite investments.
Article 2 insertion of “operating an investment exchange” as a new form of financial service business	This incorporates a new paragraph 2(d) into the law for a person operating an investment exchange.
Amendment to Schedule 1 by amending the definition of “futures”	The changes to Note 2 of paragraph (7) are to align the meaning of what constitutes “commercial purposes” for the definition of what (if not caught as made for investment purposes under Note 1) will not be construed as a future, with the meaning given in the UK MiFID II framework.
Amendment to Schedule 1 by amending the definition of “contract for difference”	The definition of a contract for difference has been substituted with a new definition which is aligned to the equivalent definition used in the UK MiFID II framework.

Insertion of financial derivatives as investment under Schedule 1	A new sub-paragraph (8A) has been added to include financial derivatives as a new standalone category of investment under Schedule 1 of the law. The definition has been taken from the UK MiFID II framework.
Insertion of new Schedule 2 exemption for arranging in respect of professional investment clients	A new sub-paragraph (5A) has been added which excludes the activity of arranging from being treated as within the class of financial service business under the law provided it is undertaken in relation to a professional investment client as defined under that sub-paragraph. This captures persons who either would ordinarily carry on investment business or who reasonably could be expected to ordinarily carry on investment business or who could undertake the dealing activity with or without the involvement of the person arranging it.
Insertion of new Schedule 2 exemption for arranging in respect of sophisticated and high net worth investors	A new sub-paragraph (5B) has been added which excludes the activity of arranging from being treated as within the class of financial service business under the law provided it is undertaken in relation to a sophisticated or high net worth investor as defined under that sub-paragraph and the definitions of which have been adopted from Jersey's fund regime.
Insertion of new Schedule 2 "other exemptions" for the activity of "arranging"	The insertion of a new sub-paragraph (5C) operates together with inclusion of the new paragraph (1)(aa) added by Regulation 4 to Article 2 of the PIRS Order and 1(aa) of the SPV Order, to exclude the activity of arranging from being treated as within the class of financial service business under the law provided it is undertaken in relation to professional investment regulated schemes and special purpose regulated schemes. It also includes other exclusions where the person undertaking the arranging activity is not remunerated or is simply making an introduction or if advice, the person is registered for investment business already.
Transitional provisions	A new sub-paragraph (4) has been added to Schedule 5's transitional provisions allowing for a 6-month transition period from when the Arranging Amendments and the Exchange Business Amendments come into force before a person undertaking these activities would be taken to have committed an offence under Article 7(4) for any action or omission in respect of those activities made during that period or alternatively, the period up to the date the person's application for registration has been processed and determined.

Amendment to definition of “contract for differences” under Schedule 6	The definition of “contracts for difference” under sub-paragraph (7) has been replaced in its entirety to update it in accordance with the changes made to Schedule 1.
Insertion of “financial derivatives” as an additional security under Schedule 6	A new sub-paragraph (8) has been added to the list of securities under Schedule 6 “financial derivatives” so as to update Schedule 6 so that it is consistent with the changes made to Schedule 1.

#### **4. Date proposals effective**

The Draft Amendments made by way of the No. 6 Regulations will come into force by way of a Commencement Order to be approved and signed thereafter by the Minister and those made by the No. 3 Order seven days after they are approved and signed by the Minister.

#### **5. Impact of Draft Amendments on Industry participants**

The Draft Amendments will only impact those persons who are registered for investment business and those persons who undertake the activity of arranging (as defined above) but who are not registered for investment business.

#### **6. Financial and manpower implications**

There are no financial or manpower issues that would arise for the States or the Regulator from the adoption of the Draft Amendments.

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#### **Re-issue Note**

This Project is re-issued because the departmental report omitted the Draft Order which it referred to.

## APPENDIX

Financial Services (Amendment of Schedules to Law) (No. 3) (Jersey) Order  
202-

Explanatory Note

## EXPLANATORY NOTE

The Financial Services (Amendment of Schedules to Law) (No. 3) (Jersey) Order 202- amends Schedules 1 (investments), 2 (exemptions), 5 (transitional provisions) and 6 (securities) to the Financial Services (Jersey) Law 1998 (the “1998 Law”).

*Article 2* provides that in Schedule 1 to the 1998 Law, Note (2) to paragraph 7 is amended to provide additional situations in which a contract not falling within Note (1) of that paragraph is to be regarded as made for commercial purposes. *Article 2* further amends the definition of contracts for difference under paragraph 8, and inserts a new paragraph 8A providing that financial derivatives are to be an investment under Schedule 1.

*Article 3* amends Schedule 2 (exemptions) to the 1998 Law to provide various exemptions from the activity of making arrangements for another person to deal in investments. The exemptions apply to professional investment clients, sophisticated and high net worth investors, persons who are not remunerated, persons acting as introducers only, persons acting in relation to professional investor regulated schemes or special purpose regulated schemes, and persons providing advice who are registered to carry on investment business under the 1998 Law.

*Article 4* amends Schedule 5 (transitional provisions) to the 1998 Law to provide that a person who has (in the 6 months before the commencement of the relevant Regulation of the Financial Services (Amendment of Law) (No. 6) (Jersey) Regulations 202-) made arrangements with a view to another person dealing in investments, or operated an investment exchange, does not commit an offence by any action taken in the course of that business during the transition period. The transition period is the 6 months after the commencement date, or the period up to the date that the person’s application to carry on investment business in relation to that arranging dealing in investments or operation of an investment exchange is determined.

*Article 5* amends the definition of “contracts for difference” in paragraph 7 of Schedule 6 (securities) to the 1998 Law and inserts a new paragraph 8A to insert “financial derivatives” as a category of security.

*Article 6* gives the citation and provides that the Order comes into force 7 days after it is made.



Jersey

## FINANCIAL SERVICES (AMENDMENT OF SCHEDULES TO LAW) (No. 3) (JERSEY) ORDER 202-

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Jersey

## FINANCIAL SERVICES (AMENDMENT OF SCHEDULES TO LAW) (No. 3) (JERSEY) ORDER 202-

Made

[date to be inserted]

Coming into force

[date to be inserted]

**THE CHIEF MINISTER** makes this Order under Article 4(1)(b) and 4(5) of the Financial Services (Jersey) Law 1998 –

### 1 Financial Services (Jersey) Law 1998 amended

This Order amends the Financial Services (Jersey) Law 1998.

### 2 Schedule 1 (investments) amended

(1) This Article amends Schedule 1.

(2) For Note (2) to paragraph 7 (futures) there is substituted –

“(2) A contract not falling within Note (1) is to be regarded as made for commercial purposes if –

(a) under the terms of the contract delivery is to be made within 7 days of the contract being made, unless it can be shown that there existed an understanding that (despite the terms of the contract) delivery would not be made within 7 days;

(b) it is a commodities future and the parties intend that the profit is to be obtained or the loss avoided by taking delivery of any property to which the contract relates; or

(c) it is a foreign exchange future, and –

(i) the parties intend that the profit is to be obtained or the loss avoided by taking delivery of the currencies to which the contract relates, and

(ii) the purpose of the trade is to facilitate a means of payment for identifiable goods and services.”.

(3) For paragraph 8 (contracts for differences, etc.) there is substituted –

#### “8 Contracts for differences

Rights under a contract for differences.



**Note:** This paragraph shall not apply to rights under any contract under which money is received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank or in respect of money raised under the National Loans Act 1968 of the United Kingdom under the auspices of the Director of Savings or under which money raised is treated as having been so raised by virtue of section 11(3) of the National Debt Act 1972 of the United Kingdom.”

- (4) After paragraph 8 there is inserted –

**“8A Financial derivatives**

Rights under any contract, except an option, future or contract for differences, the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for that purpose in the contract.

**Notes:**

- (1) This paragraph includes any contract made or traded on an investment exchange, or made otherwise but expressed to be as traded on such an exchange or on the same terms as those on which an equivalent contract would be made on such an exchange.
- (2) This paragraph does not apply to a contract not falling within Note (1) where the parties intend that the profit is to be obtained or the loss avoided by taking delivery of any property to which the contract relates.
- (3) This paragraph does not apply to rights under any contract under which money is received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank or in respect of money raised under the National Loans Act 1968 of the United Kingdom under the auspices of the Director of Savings or under which money raised is treated as having been so raised by virtue of section 11(3) of the National Debt Act 1972 of the United Kingdom.”

**3 Schedule 2 (exemptions) amended**

In Schedule 2 after paragraph 5 there is inserted –

**“5A Arranging: professional investment clients**

Making arrangements for another person (person A) (whether as principal or agent) to buy, sell, subscribe for or underwrite investments, if –

- (a) person A –
  - (i) is a person whose ordinary activities involve the carrying on of investment business, or who it is reasonable to expect will carry on investment business for the purposes of the person’s business,
  - (ii) is an employee, director or partner of a person referred to in sub-clause (i),
  - (iii) is a body corporate that is wholly owned by a person referred to in sub-clause (i),

- (iv) is a limited partnership whose limited partners are all persons referred to in sub-clause (i), or
- (v) is a trust established for the benefit of a person referred to in sub-clause (i); or
- (b) person A's buying, selling, subscription or underwriting of the investments in question could reasonably occur without the involvement of the person arranging that buying, selling, subscription or underwriting.

#### **5B Arranging: sophisticated and high net worth investors**

Making arrangements for another person (person A) (whether as principal or agent) to buy, sell, subscribe for or underwrite investments, if –

- (a) person A is buying, selling, subscribing for or underwriting –
  - (i) investments valued at no less than £250,000 in aggregate,
  - (ii) units in a collective investment fund in relation to which a certificate has been granted under Article 8B of the Collective Investment Funds (Jersey) Law 1988, or
  - (iii) units in a collective investment fund in relation to which a recognized fund certificate has been granted under the Collective Investment Funds (Recognized Funds) (General Provisions) (Jersey) Order 1988 or the Collective Investment Funds (Recognized Funds) (Rules) (Jersey) Order 2003; or
- (b) person A has an individual wealth or market value of no less than US\$10,000,000 or the equivalent in another currency.

#### **5C Arranging: other exemptions**

Making arrangements for another person (person A) (whether as principal or agent) to buy, sell, subscribe for or underwrite investments, if –

- (a) the person arranging that buying, selling, subscription or underwriting (person B) is not remunerated for doing so;
- (b) person B's activities are limited to introducing person A to another person;
- (c) person B is acting in relation to a professional investor regulated scheme (as defined in the Financial Services (Investment Business (Restricted Investment Business – Exemption)) (Jersey) Order 2001) or a special purpose regulated scheme (as defined in the Financial Services (Investment Business (Special Purpose Investment Business – Exemption)) (Jersey) Order 2001); or
- (d) advice in relation to person A's buying, selling, subscription for or underwriting of the investments is provided by a person who is registered to carry on investment business under this Law."

#### **4 Schedule 5 (transitional provisions) amended**

In Schedule 5 after paragraph 3 there is inserted –

**"4 Certain types of investment business**

- (1) Despite anything in this Law, a person who carried on investment business in relation to the matters in sub-paragraph (2) at any time during the 6 months immediately before the commencement day is not to be taken to have committed an offence under Article 7(4) by virtue of any action that is taken, or not taken, by the person in the course of carrying on that business during the period –
  - (a) on and from the commencement day until the day 6 months after the commencement day or, if a later day is specified under sub-paragraph (5) in relation to the person, until that day; or
  - (b) if the person applies, before 6 months after the commencement day, for registration under this Law as a person entitled to carry on investment business, on and from the commencement day until the day the application is finally determined (including as a result of an appeal to the Court under Article 11) or is withdrawn.
- (2) The matters are –
  - (a) making arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite investments; or
  - (b) operating an investment exchange.
- (3) In relation to the period for which, in accordance with sub-paragraph (1), a person is taken not to have committed an offence under Article 7(4), the provisions of this Law apply (with the necessary modifications) to and in relation to the person as they apply to and in relation to a person registered under the Law to carry on investment business.
- (4) Without prejudice to the generality of sub-paragraph (3), the following modifications to the provisions of this Law apply to and in relation to a person to whom sub-paragraph (1) applies and who has applied for registration under this Law as a person entitled to carry on investment business –
  - (a) a reference in this Law to the period during which a person is registered is taken to be a reference to the period between –
    - (i) the date of the application, and
    - (ii) the date on which the application is granted or refused by the Commission is finally determined (including as a result of an appeal to the Court under Article 11) or is withdrawn;
  - (b) a reference in this Law to the terms of a registration is taken to be a reference to the terms of the application; and
  - (c) a reference in Article 11 to the Commission, acting under Article 9, revoking a registration is taken to be a reference to the Commission refusing an application under Article 9.
- (5) On the application of a person, the Commission may, by notice in writing, specify a day in relation to the person for the purposes of sub-paragraph (1)(a).
- (6) The Commission must not specify a day under paragraph (5) unless –
  - (a) the Commission is satisfied that there are exceptional circumstances that justify the extension of the period during which the person will not be taken to have committed an offence under Article 7(4) by reason only of carrying on investment business; and
  - (b) the day is not later than 12 months after the commencement day.

- (7) In this paragraph, “commencement day” means –
- (a) for making arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite investments, the day on which Regulation 2 of the Financial Services (Amendment of Law) (No. 6) (Jersey) Regulations 202- comes into force; and
  - (b) for operating an investment exchange, the day on which Regulation 3 of the Financial Services (Amendment of Law) (No. 6) (Jersey) Regulations 202- comes into force.”.

## 5 Schedule 6 (securities) amended

In Schedule 6 to the Financial Services (Jersey) Law 1998 –

- (a) for paragraph 7 (contracts for differences), there is substituted –

### “7 Contracts for differences

Rights under a contract which does not provide for the delivery of securities.”;

- (b) after paragraph 8, there is inserted –

### “8A Financial derivatives

Rights under any contract, except an option, future or contract for differences, the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for that purpose in the contract.”.

## 6 Citation and commencement

This Order may be cited as the Financial Services (Amendment of Schedules to Law) (No. 3) (Jersey) Order 202- and comes into force 7 days after it is made.

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## EXPLANATORY NOTE

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The Financial Services (Amendment of Law) (No. 6) (Jersey) Regulations 202- amend Article 2 of the Financial Services (Jersey) Law 1998 (the “1998 Law”) to provide that arranging for another person to deal in investments, and operating an investment exchange, will fall under the definition of financial service businesses. In particular –

*Regulation 1* provides that *Regulations 2 and 3* amend Article 2 (“financial service business” defined) of the 1998 Law.

*Regulation 2* replaces Article 2(2)(a) of the 1998 Law, in order to provide that a person carries on financial service business if they make arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite investments.

*Regulation 3* inserts new sub-paragraph (d) into Article 2(2) of the 1998 Law, which provides that operating an investment exchange falls under the definition of financial service business.

*Regulation 4* makes consequential amendments to the Financial Services (Investment Business (Restricted Investment Business – Exemption)) (Jersey) Order 2001 and Financial Services (Investment Business (Special Purpose Investment Business – Exemption)) (Jersey) Order 2001.

*Regulation 5* gives the citation and provides that the Regulations will come into force on a day to be specified by the Minister by Order.



Jersey

## DRAFT FINANCIAL SERVICES (AMENDMENT OF LAW) (No. 6) (JERSEY) REGULATIONS 202-

Made [date to be inserted]

Coming into force [date to be inserted]

**THE STATES** make these Regulations under Article 4(2) of the [Financial Services \(Jersey\) Law 1998](#) –

### 1 Article 2 of the [Financial Services \(Jersey\) Law 1998](#) amended

Regulations 2 and 3 amend Article 2 (“financial service business” defined) of the [Financial Services \(Jersey\) Law 1998](#).

### 2 “Arranging” inserted as a financial service business

For paragraph (2)(a) there is substituted –

- “(a) deals in investments, that is, the person –
  - (i) buys, sells, subscribes for or underwrites investments, either as principal or agent, or
  - (ii) makes arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite investments;”.

### 3 “Operating an investment exchange” inserted as a financial service business

After paragraph (2)(c) there is inserted –

- “(d) operates an investment exchange, that is, the person provides a facility (whether by electronic means or otherwise) for the trading of investments, or the listing of investments for trading, by members of the investment exchange.”.

### 4 Consequential amendments

(1) In Article 2 of the [Financial Services \(Investment Business \(Restricted Investment Business – Exemption\)\) \(Jersey\) Order 2001](#), after paragraph (1)(a), there is inserted –

- “(aa) making arrangements in relation to a professional investor regulated scheme for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite investments;”.

- (2) In Article 2 of the [Financial Services \(Investment Business \(Special Purpose Investment Business – Exemption\)\) \(Jersey\) Order 2001](#), after paragraph (1)(a), there is inserted –

“(aa) making arrangements in relation to a special purpose regulated scheme for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite investments;”.

## 5 Citation and commencement

These Regulations may be cited as the Financial Services (Amendment of Law) (No. 6) (Jersey) Regulations 202- and come into force on a day to be specified by the Minister by Order.