

Chief Minister



19-21 Broad Street | St Helier

Jersey | JE2 4WE

Deputy Moz Scott

Chair

Economic and International Affairs Scrutiny Panel

***Sent by email***

7<sup>th</sup> August 2023

Dear Deputy Scott

**Re: P.54/2023 Draft Financial Services (Amendment of Law) (No.6) (Jersey) Regulations 202-**

Thank you for your letter dated 2<sup>nd</sup> August 2023 regarding P.54/2023 Draft Financial Services (Amendment of Law) (No. 6) (Jersey) Regulations 202-. Responses to the questions raised are as follows:

**1. Your role as Assistant Chief Minister in formation and proposal of the Draft Amendments.**

The proposed Draft Amendments were part of a package of amendments proposed by the Regulator to align Jersey's investment business regime with international rules following IOSCO's review of its regime in 2017 and the EU's introduction of MiFID II in 2018 (the framework for regulating investment markets and delivering better protections and transparency to investors). The same rules have been adopted by the UK, Jersey's key market and conduit market for financial services. My predecessor as Minister for Financial Services and External Relations, Deputy Gorst, approved in principle the package of amendments, subject to the Regulator resolving certain issues raised by industry in response to the consultations issued by the Regulator in December 2019 and November 2020. This expressly included further work being undertaken by the Regulator with industry in relation to its proposed regulation of the activity of "arranging".

The first part of the package of amendments was approved by Deputy Gorst, as Minister, with the changes made to the Client Asset Order in April 2022. These were to give effect to the IOSCO recommendations, which the Minister treated as a priority.

The other amendments which formed part of this package were postponed until the new Government was in place to allow the Regulator time to work with industry to resolve those issues identified by the feedback it received to its consultations. The Regulator led this work but policy officials from the Financial Services Team were included in the discussions the

Regulator undertook with the Jersey Funds Association about the scope and justification for the proposed regulation of the activity of arranging. The JFA's members were potentially most likely to be affected by the proposals. Upon the Regulator finalising its proposals in late 2022, having had industry's approval to its last consultation issued in September 2022, the Draft Amendments were considered anew by me and conditionally approved in February this year.

There was some additional work, which I required. This was for the Draft Amendments to be reviewed again to ensure that no issues arose in consequence of the very recent changes made to Schedule 2 of the Financial Services (Jersey) Law 1998 as part of the MoneyVal exemption project. I requested this as a sensible precaution as the Draft Amendments were drafted before the exemption project was finalised. It was confirmed by both the Regulator and the Financial Crime Unit that the Draft Amendments did not require further amendment and were capable of being adopted in their current format.

It should be noted that while I, as Assistant Chief Minister, on behalf of the Chief Minister have primary responsibility for the Financial Services (Jersey) Law 1998 and the amendments made to it by the States Assembly under Article 4(2), I exercise this responsibility by working closely with the Regulator as well as with industry. Where amendments relate to Jersey's alignment with international standards which are relevant to Jersey's market, the Regulator not only has the relevant expertise but also the experience and understanding of Jersey's market to guide me, as the Minister responsible for Financial Services, as to what is needed. In this case I have accepted the recommendation of the Regulator after having tested the rationale for the Draft Amendments with the assistance of my policy team and ensuring that they align to the strategic priorities set out in the Financial Services Policy Framework (published December 2021), notably, to maintain strong adherence to international standards while maintaining the four pillars of Jersey financial services industry.

I am satisfied that all relevant issues raised by industry have been appropriately addressed and the Draft Amendments are consistent with what is appropriate to Jersey and its role in the international financial markets.

**2. The Panel is seeking reassurance that the Financial Services industry is now fully supportive of the Draft Amendments as indicated in the accompanying report to P.54/2023, and would appreciate if any comment could be made on this matter.**

As set out above, prolonged and iterative consultation was undertaken by the Regulator with industry about the Draft Amendments. Specifically, in relation to the proposed regulation of arranging, Government policy officials undertook direct engagement with the Jersey Funds Association and worked together with the Regulator to ensure the final proposals were in principle acceptable to the JFA and its Technical Sub Committee as well as addressing the market harms the Regulator had identified.

The Feedback reports on the consultation published by the Regulator show that the Draft Amendments in their final form were approved by industry. If and to the extent any individual industry participants did not agree with the Draft Amendments they were given opportunity to share their alternative views, which they chose not to do. There were no objections raised to the final Draft Amendments as part of the consultation process. Neither my ministerial office nor my policy officials have been contacted by any individual industry participant with any

further concerns or issues about the Draft Amendments. There has been considerable time and opportunity for such concerns to be raised, and I am satisfied in any event that the Draft Proposals are fit for purpose and appropriate for Jersey.

**3. Reasoning of exemptions for arranging in respect of sophisticated and high net worth investors.**

The rationale for regulating the activity of arranging is to protect vulnerable and financially unsophisticated investors from being inappropriately guided into making bad and unsuitable investments by a person acting as introducer or arranger. Cold calling and offering free investment reviews is part and parcel of the tools that arrangers, who operate on the retail platform, use to encourage consumers to buy or sell investments managed by third parties. Such consumers commonly do not appreciate the arranger is on a retainer and receives some form of commission or remuneration from the third-party investment business or platform. In this way they are encouraged to act on the 'free' advice or introductions made by the arranger without realising it is not as independent as it might seem.

While the intent of the MiFID II rules on 'arranging' are good for consumer protection and avoid harmful practices arising in the retail investment market, they are not as necessary or appropriate for the private arrangements made between the financially sophisticated or expert investors or for the informal unpaid recommendations or introductions made by friends or business colleagues in the ordinary course of life and business.

Sophisticated and high net worth persons are more commercially sophisticated and capable of assessing for themselves or paying for advice to determine the appropriateness of such recommendations or introductions. As such, they are not as susceptible to the consumer harms, which arise from unregulated arranging. They are also able to bear the financial loss if the investment goes wrong. Jersey, as an international finance centre, primarily serves this type of investor. These investors use Jersey and particularly its JPF fund regime and capital markets products for the sophistication of its regulation, which matches the regulatory requirements to the key risks applicable to these types of investment vehicles. The MiFID II arranging rules are more suited to retail investments platforms. These platforms exist in the large financial centres, including those in Europe and the UK. Jersey has not adopted a wholesale adoption of these rules in consequence. Introducing regulation of arranging to Jersey's IFC product market would be perceived by these types of investors to be more of a barrier to using the jurisdiction than a benefit, and it risks being perceived as an unnecessary interference in commercial relationships between parties.

Furthermore, since the introduction of the regulation of arranging in the UK in 2018 there has been considerable concern raised as to its scope and the practical complexity of determining what activities and arrangements are in scope and when a person needs to be regulated for arranging and what is the position for a third party regulated investment provider if they are not dealing with a regulated person who makes an introduction. Jersey adopting a simpler and more targeted approach will avoid much of this while still ensuring that those investors who need protection are properly protected.

**4. The Draft Amendments are indicated to update definitions so they are consistent with the UK FCA and EU MiFID II definitions. What relevance do the Draft Amendments have to the upcoming MONEYVAL assessment?**

Chief Minister



The changes to the definitions to align with MiFID II definitions in the Draft Amendments have no direct relevance to MoneyVal. After consulting with the Regulator, however, I concluded it was preferable to postpone the lodging of the Draft Amendments until after the summer to allow industry time to prioritise its delivery of the additional registrations required by the AML/CFT exemptions project and its operational readiness for the MoneyVal inspection.

I trust that this response is useful, but please do not hesitate to contact me should I be of further assistance in this matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read "E. Millar".

**Deputy Elaine Millar**

**Assistant Chief Minister with responsibility for Financial Services**