

**Financial Services Act 2008 –Guidance on the
Financial Services Rule Book**

PART 2 – FINANCIAL RESOURCES

| Financial resources | Guidance |
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| <i>2.5 Responsibility for returns</i> | The persons designated under Rule 2.5(1)(a) and (b) need not themselves be the resident officers of the licenceholder. |
| <i>2.6 Misleading financial returns</i> | Materiality should be considered as an amount, disclosure or previous error which, if not disclosed to the Commission, would or may affect the Commission’s view of the licenceholder. The assessment of materiality is a matter of professional judgement on the part of the licenceholder. If, but for the error, a licenceholder would have made a notification under Rule 2.39 (Notification of actual or potential breach) then the error is material. |
| <i>2.7 Electronic reporting</i> | At present, only holders of Class 1, 2 and 3 licences need to file reports in electronic form. Class 4 and 5 licenceholders are required to calculate interim figures but not to submit them. |
| <i>2.11 Accounts of parent and holding companies</i> | If the parent of a licenceholder or the holding company is a public company which publishes its audited accounts in accordance with requirements for listing or quotation on a stock exchange, then a notification accompanied by a link to the published document would be regarded as providing a copy of the accounts under this rule. |
| <i>2.22 Charges over assets</i> | Charges over assets will only be acceptable where assets are collateralised by a deposit and the deposit taker has legal right of set off. Licenceholders should ensure that auditors provide the Commission with details of charges as well as an attestation that each charge has been notified. |
| <i>2.23 Capital resources</i> | The Commission has issued a guidance note for deposit takers titled Internal Capital Adequacy Assessment Process (ICAAP) which advises on what should be considered in establishing an ICAAP. The Commission sets a minimum risk asset ratio (“RAR”) and deposit takers are expected to have adequate procedures to monitor compliance with this. To assist in the monitoring process, deposit takers should observe a trigger ratio (which will normally be at least 1% above their minimum RAR). The trigger ratio is intended to provide an early warning signal of deterioration in a deposit taker’s capital adequacy. In the event of the RAR falling below this level, the Commission should be immediately notified. Although there is no prohibition on deposit takers operating below the trigger ratio, once a deposit taker’s actual RAR falls below the trigger ratio it will be a signal that remedial action may be necessary to ensure that sufficient capital is held for a deposit taker to operate above its minimum RAR. |
| <i>2.24 Deposit taking returns</i> | The contents of the deposit taking returns are listed in Schedule 2.1. The return form can be found at |

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| | http://www.gov.im/lib/docs/fsc/handbooks/guides/Banking/baseliibranchbankingreturns.pdf . Guidance for the completion of the deposit taking returns can be found at http://www.gov.im/lib/docs/fsc/CAROL/quarterlyprudentialreturns.pdf |
| <i>2.25 (1) (c) Contents of annual financial return</i> | A deposit taker is required to provide a reconciliation of all material differences between the deposit taking returns and the deposit taker's audited financial statements. There is no definition of materiality but an example would be a difference in the pre tax profit figures. Where there are no material differences, a deposit taker should confirm this fact to the Commission in writing. |
| <i>2.26 Publication of annual financial statements</i> | A deposit taker should publish its annual financial statements on its website, or if such a website is not in place, on the most appropriate website of the group. This publication may take the form of abridged financial statements in accordance with Rule 2.26(3). |
| <i>2.28 Deposit taking returns</i> | The contents of the deposit taking returns are listed in Schedule 2.1. The return form can be found at http://www.gov.im/lib/docs/fsc/handbooks/guides/Banking/baseliibranchbankingreturns.pdf Guidance for the completion of the deposit taking returns can be found at http://www.gov.im/lib/docs/fsc/CAROL/quarterlyprudentialreturns.pdf |
| <i>2.29 Publication of annual financial statements</i> | A deposit taker should publish its annual financial statements on its website, or if such a website is not in place, on the most appropriate website of the group. This publication may take the form of abridged financial statements in accordance with Rule 2.26(3). |

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| <i>2.37 Financial resources requirements</i> | In Schedule 2.3 made under this rule the cross-reference in Part B to rule “[3.41]” should read “2.44”. The cross-references in Part E to “Schedule I” should read “Schedule 2.2”. There is no requirement in rule 8.54 concerning the amount of the PII excess. However, the amount of the PII excess is deducted in the financial resources calculation; see Schedule 2.3 Part D and note 17. If a parental assurance has been accepted by the Commission, a zero may be input to the calculation. In respect of Schedule 2.3 Note 12, whilst netting-off is generally prohibited it may be exercised where a) a legally enforceable specific netting agreement is in place between the licenceholder and its counterparty or customer; or b) it is a government grant in relation to a specific expense |
| <i>2.42 Interim financial returns</i> | The rule should require a licenceholder to prepare an unaudited interim financial return as at its financial year end. In the meantime, licenceholders are requested to prepare interim figures as usual. |
| <i>2.45 Application</i> | The cross-reference in rule 2.45(2)(b) should be to paragraph (6) of Class 4 and paragraphs (2) or (5) of Class 5. |

PART 3 – CLIENTS’ MONEY

| Clients’ Money | Guidance |
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| <i>3.2 Meaning of “client money” and “trust money”</i> | Money invoiced and received by a licenceholder from a client as payment in advance for the provision of its services to the client (such as annual fees or standing charges) is not clients’ money if it is due and payable to the licenceholder at the time of receipt. However, money invoiced and received by a licenceholder from a client, whether as a disbursement or otherwise, which is or will be due to a third party who is a creditor of the client or a client company (such as taxes or registry fees) is clients’ money and should be held in a clients’ account until due and payable. |
| <i>3.3 Meaning of client bank account and related expressions</i> | See also Rule 3.2(5) which explains that money that has been paid away to the client is not “client money” under these Rules. “Designated client bank accounts” for clients’ money are an established practice relating to investment business and are covered by the arrangements in the event of bank default at Rule 3.21 (for Class 2 and Class 3 only). A client who consents to the use of banks A & B must have his money held in a different “designated client bank account” from a client who has consented to the use of banks B & C. A “separate” account differs from a “designated client bank account” in that the bank is selected by the licenceholder. Rule 3.21 does not apply to a “separate” account. |
| <i>3.6 Duty to hold client money separately</i> | Sub-paragraph (4)(b) makes allowance for an exceptional circumstance where it might not be practical to apply the clients’ money rules. The Commission would expect licenceholders to apply the protection of the clients’ money rules to their clients wherever possible. |
| <i>3.8 Notification of receipt of client money in certain cases</i> | This rule clarifies what steps a licenceholder should take if it inadvertently finds itself in a position of holding clients’ money when not authorised to do so. |
| <i>3.9 Account to be specified in cheques etc.</i> | This is an existing requirement for investment business which has been extended to fiduciaries. The Commission would regard the use of recognisable abbreviations such as “a/c” for account as representing compliance. |
| <i>3.10 Operation of client bank account</i> | This is an existing requirement for investment business which has been extended to fiduciaries. The Commission would regard the use of recognisable abbreviations such as “a/c” for account as representing compliance. Where multiple clients’ accounts or trust money accounts are established at the same bank the Commission will only require one letter from that bank confirming that all such accounts will be treated in the same manner provided that a detailed list of all of the accounts is provided. |
| <i>3.11 Records to be kept by licenceholders</i> | This rule relates to record keeping and does not require the implementation of real-time accounting systems. |
| <i>3.13 Reconciliation requirements</i> | The requirement at that all client bank accounts must be reconciled at least once a month and on the same date does not prevent the more active accounts from being reconciled more frequently than monthly. |

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| | <p>The requirement to reconcile on the same day is so that individual totals can be reconciled to overall total to ensure full reconciliation. Some licenceholders have commented that they may not be in a position to carry out a live reconciliation on a given date because of differences in bank statement dates. However, bank accounts should be reconciled at the same date regardless of whether interest has been credited.</p> <p>The rule does not prohibit the reconciliation being conducted as at an earlier date in the month, for which complete information is available.</p> <p>The growth of online banking should reduce any operational difficulties over time.</p> <p>Normal timing differences in 3.13(5) could include for example, lodgements recorded as receipts but not yet credited to the bank statement and outgoing cheques which have been recorded as payments but not yet presented and recorded in the bank statement.</p> |
| <i>3.15 Accounts for margined transactions</i> | Under 3.15 (2), only licenceholders that actually undertake margined transactions are subject to this rule. |
| <i>3.17 Subscription and redemption accounts</i> | The rule does not prohibit the “subscription account” and “redemption account” from being a single “subscription and redemption account” which is used for both the receipt of subscriptions and the payment of redemptions. |
| <i>3.20 Pooling</i> | In rule 3.20(1), the cross-reference should be to 3(19)(a). |
| <i>3.26 Duty to hold trust money separately</i> | This rule establishes a norm that trust money should be paid into a separate account for the trust. However, it does, by exception, allow the use of a clients’ money account. The use of a clients’ money account may be appropriate where, for example, a TSP holds several small amounts of money which form the assets of a number of trusts and opening a separate account for each such trust would incur disproportionate bank charges, which would rapidly erode the balances held. |

PART 4 – CLIENTS’ INVESTMENTS

| Clients’ Investments | Guidance |
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| <i>4.1 Application to Investment Business</i> | <p>This Part does not apply to activities of another Class conducted by a licenceholder, merely because that licenceholder is also authorised under Class 2. See also Rule 4.2 for the selective application of this Part to investment activities carried out as part of services to collective investment schemes (Class 3).</p> <p>This Part does not apply to any safe custody services which are not part of regulated activities under the Act. For the avoidance of doubt, if a licenceholder conducts unregulated safe-keeping, it should explain to clients that is providing services on an unregulated basis.</p> |
| <i>4.9 Periodical statements</i> | “Provide” includes information being made available on-line via a website. |

PART 5 - AUDIT

| Audit | Guidance |
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| <i>5.1 Application</i> | An appropriate standard will be applied to the remaining licensed partnerships and sole traders by licence conditions. |
| <i>5.1 Application</i> | Professional officers under Class 4 and Class 5 are not subject to audit under this Part. |
| <i>5.2(2)(c) Appointment of Auditors - PII</i> | It is expected that auditors of Class 1 licenceholders would have PII cover of £20 million, and auditors of Class 2 and 3 licenceholders (with the exception of financial advisers and promoters) would have PII cover of £10 million. |
| <i>5.8 Management letter</i> | A confirmation letter under rule 5.8(2) should also be provided within four months after the annual reporting date. |
| <i>5.10 Contents of audit reports</i> | <p>The standard wording of an audit report should be sufficient to meet the requirements of Rule 5.10, provided that it:</p> <ul style="list-style-type: none"> • Confirms that the accounts have been prepared in accordance with an appropriate set of accounting standards and cites the accounting standards used; • Gives a “true and fair” opinion on the financial statements; and • Reports by exception on any failure to keep proper accounting records. <p>The rules relevant to 5.10(1)(a) are rules 2.8 and 2.10.</p> <p>In respect of 5.10(1)(c), the Commission will accept reporting on an exception basis.</p> |
| <i>5.16 Auditor’s report on returns</i> | The Commission has issued a practice note to audit firms on this subject. |
| <i>5.18 Contents of audit reports (Class 1)</i> | The audit report prepared under Rule 5.18 should be addressed to the Commission but should be sent to the Commission by the licenceholder. |
| <i>5.20 Contents of audit report (Classes 2 to 5)</i> | <p>The audit report prepared under Rule 5.20 should be addressed to the Commission but should be sent to the Commission by the licenceholder.</p> <p>For the avoidance of doubt, the statements referred to in 5.20(b)(i) are the annual financial statements.</p> |

PART 6 – CONDUCT OF BUSINESS

| Conduct of Business | Guidance |
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| <i>6.3 Responsible behaviour in dealings by officers</i> | See also Rule 8.7 regarding the obligation to establish a conflicts of interest policy and to consider what constitutes a conflict of interest. |
| <i>6.8 Informed decisions</i> | Class 1 licenceholders should ensure that, in literature and advertising material that invites the making of deposits, the relationship between the licenceholder and its wider group (where applicable) is adequately disclosed. This should include (where applicable) reference to the ultimate bank ownership, place of incorporation of the parent / ultimate parent, and the responsible regulatory authority for the parent / ultimate parent / group. It should also include details of where the most recent audited financial statements for the licenceholder can be viewed or obtained (also see wording below). Consideration of the requirement of Rule 6.13(b) should also be made. |

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| | <p>Unless it can be otherwise demonstrated Class I licenceholders should also state the following in literature and advertising that invites the making of deposits:-</p> <p>“[name of licenceholder] places funds with other parts of its group and thus its financial standing is linked to that of the group. Depositors may wish to form their own view on the financial standing of [name of licenceholder] and the group based on publicly available information. The latest report and accounts are available at [insert website(s)]”</p> |
| <i>6.10 Gifts and other benefits</i> | <p>Licenceholders should set their own limits and procedures for compliance with this rule which should be covered in their internal policy.</p> <p>See also Rule 8.7 regarding the obligation to establish a conflicts of interest policy and to consider what constitutes a conflict of interest.</p> |
| <i>6.11 Remuneration</i> | <p>This rule does not prohibit cross-subsidisation between individual services provided to a client.</p> |
| <i>6.12 Conflict of interest</i> | <p>See also Rule 8.7 regarding the obligation to establish a conflicts of interest policy and to consider what constitutes a conflict of interest. Licenceholders might wish to consider whether simple buy-sell transactions as principal are or are not covered.</p> |
| <i>6.14 Reference to licensing</i> | <p>Until the end of 2009, a licenceholder would be regarded as complying if any pre-printed brochures (which were produced prior to 1 January 2009 and which used the old rubric) were accompanied by a business card, compliments slip or letter with the correct rubric.</p> <p>The rubric should be added to recruitment advertisements if they mention the regulated activity of the licenceholder.</p> <p>Combining the standard wording for two or three licenceholders into a single sentence or paragraph may still represent compliance with the rule.</p> |
| <i>6.15 Display of license</i> | <p>If a licenceholder is in doubt as to what is its “principal place of business”, for example because it has different principal offices for different regulated activities, then it can display the original at one location and photocopies at the others.</p> |
| <i>6.24 Distribution of transactions</i> | <p>This rule addresses late allocation of a principal trade, not principal trading per se.</p> |
| <i>6.26 Prompt and timely execution</i> | <p>Licenceholders will wish to consider where and when the use of discretion over timing is appropriate. For example, the rule would not prevent them from declining to trade outside normal market hours, if their normal terms and conditions prohibited this. The rule does not take precedence over anti-money laundering concerns.</p> |
| <i>6.27 Best execution</i> | <p>This rule applies to the terms of the transaction itself. It does not affect whether the licenceholder can apply a fee or commission in accordance with its terms of business.</p> |
| <i>6.47 Contracts to be on-exchange</i> | <p>In practice the regulation of financial services businesses is almost universal. However, in the event that an overseas person was not subject to a licensing regime in its home jurisdiction, a licenceholder could consider applying for a waiver of Rule 6.47(1)(b).</p> |

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| <p><i>6.51 Interests of scheme to be paramount</i></p> | <p>It would be for the governing body of the scheme to consider what disclosure if any should be made in scheme particulars.</p> |
| <p><i>6.52 Observance of terms of scheme particulars</i></p> | <p>See also Section 6 of the Collective Investment Schemes Act 2008.</p> |
| <p><i>6.53 Valuation of investments which are not marketable</i></p> | <p>The Commission endorses the IOSCO/AIMA principles on hedge fund valuation. However, in cases where the constitutional or offering documents stipulate other valuation procedures, these may prevail over the IOSCO/AIMA principles.</p> |
| <p><i>6.58 Provision of statistical information about schemes</i></p> | <p>The Commission sends out a pro forma as required, to assist compliance.</p> |
| <p><i>6.59 Services for overseas schemes</i></p> | <p>Licenceholders are asked to advise the Commission of any overseas schemes to which they have ceased to provide services, if possible within 10 days.</p> |
| <p><i>6.63 Client agreement or Terms of business</i></p> | <p>As the business relationship progresses, the client with whom the fiduciary contracts may change. For example, in respect of CSP regulated activities, a CSP's client may initially be the person for whose benefit the client company is to be established, who in due course will be the beneficial owner of the client company. After the client company has been established, a CSP's client may be the beneficial owner or the client company itself.</p> <p>In the case of a fiduciary engaging in the TSP regulated activity of providing "trust administration" only for a trust, the TSP's client would be the trustee of the trust. If the fiduciary itself is asked to act as trustee of a trust, its client would initially be the settlor of the trust. However, once the trust is established, the trustee's responsibilities and duties would be governed by the terms of the trust deed and the trust law of the relevant jurisdiction, and the requirement for a client agreement falls away.</p> <p>However, where a TSP is both the service provider and the trustee, it is considered best practice for the TSP to circulate its terms of business with the trust accounts to whoever is entitled to receive copies of those accounts in order to ensure that anyone with an interest in the accounts is aware of the terms on which the TSP is providing services.</p> |

PART 7 – ADMINISTRATION

| Administration | Guidance |
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| 7.8 <i>Subsidiaries etc.</i> | For the purpose of this rule “nominee” companies are regarded as being trading companies. “Shelf companies” as defined in Rule 2.15(4) are not trading companies. |
| 7.9 <i>New appointments and departures from office</i> | <p>Definitions of terms used in this Rule can be found as follows: <i>Isle of Man resident officer – Rule 8.21</i> <i>key person – Section 48 of the Act;</i> <i>Compliance officer - Rules 8.18 and 8.19</i> <i>MLRO and deputy MLRO – Rule 9.2</i> <i>Controller – Section 48 of the Act;</i> <i>Director – Section 48 of the Act.</i> <i>“Secretary” is not separately defined, but qualification requirements for a company secretary are cited at Rule 8.43.</i></p> <p>It is expected that the licenceholder will use its judgement to determine if there is a significant issue in relation to the departure of a member of staff which should be disclosed to the Commission.</p> <p>Guidance on sector-specific key person roles can be found in the Commission’s Training and Competence Framework. Examples include: Class 1 – Members of the senior management of a banking function; Class 2 – Investment manager, investment adviser or stockbroker; Class 3 – Fund accountant; Class 4 – Director or secretary of client companies (or director of a corporate director or secretary); Class 5 – Trustee of a client trust (or director of a corporate trustee).</p> |
| 7.10 <i>Staff disciplinary action</i> | <p>The purpose of this requirement is to inform the Commission at an early stage of any event that could potentially affect the licenceholder's reputation or financial soundness.</p> <p>The licenceholder should use its own human resources policy to determine what should be disclosed as "serious disciplinary action", but the Commission would expect it to include at least any action which could lead to suspension or termination of the person's employment and which involved dishonesty or contravened measures for the protection of customers.</p> <p>The notification should include the name if it is in respect of a key person, as these people are subject to a fit and proper person regime. The notification should be on a “no names” basis in respect of an individual who is not a key person.</p> |
| 7.12 <i>Service of notice etc</i> | The rule will apply to any equivalent Proceeds of Crime Act 2008 notifications, when that Act comes into operation, |
| 7.14 <i>Surrender of licence</i> | The Commission will not accept the surrender of a licence until the licenceholder has made satisfactory |

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| | arrangements for its clients' affairs to be handed over properly to another licenceholder or wound up to the satisfaction of those clients. For a Class 5 licenceholder this includes satisfactory arrangements in respect of any trust for which it undertakes any regulated activity. The licenceholder should explain its proposed arrangements for the retention of records, to comply with Rule 8.24, and with Part 9 and other AML/CFT requirements. |
| <i>7.15 Cessation of regulated activities</i> | If a licenceholder is proposing to cease a type of regulated activity (but not to surrender its licence under Rule 7.14) the Commission will expect the licenceholder to update its business plan to reflect the change. |
| <i>7.18 and 7.19 Legal proceedings</i> | The Commission acknowledges that the inclusion of "intended" involves a subjective assessment by the licenceholder of a third party's state of mind. Licenceholders may, however, prefer to err on the side of caution in deciding what should be disclosed, particularly as the rule already includes a materiality threshold. |

PART 8 - RISK MANAGEMENT AND INTERNAL CONTROL

| Risk Management and Internal Control | Guidance |
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| <i>8.4 Management Controls</i> | <p>Licenceholders should note the use of "appropriate" in 8.4(2). The responsible officers should take account of the scale and complexity of the business in determining which controls and procedures are relevant to the business.</p> <p>In setting internal standards under Rule 8.4(4), licenceholders should have regard to the Commission's Training and Competence Framework.</p> <p>Licenceholders should ensure that records are kept of the professional development of staff (CPD). See also rule 8.24.</p> |
| <i>8.5 Compliance with non-statutory obligation</i> | Examples of such guidance include the Banking Code issued by the British Bankers Association, the AIMA Offshore Alternative Fund Directors' Guide and any set of standards or good practice guidelines promulgated by a local association. |
| <i>8.7 Conflicts of interest policy</i> | The rule book does not define a conflict of interest as the Commission does not believe that it could usefully define the term in more detail than an ordinary dictionary definition such as " <i>a conflict between a person's private interests and public obligations</i> " (answers.com). Readers should also note Rule 6.12 which addresses borrowing from clients. |
| <i>8.10 Changes to activities, services or products</i> | <p>Deposit takers are advised as follows. The Commission expects to be notified of any new product or service or change to a product or service that impacts the licenceholder's risk profile for liquidity, credit, interest rate risk, foreign exchange risk or operational risk. This is for prudential supervisory purposes. As such the Commission expects to be notified of:</p> <ul style="list-style-type: none"> Completely new business activities e.g. diversifying into lending; New products e.g. new currency account, structured products where the bank is issuing structured |

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| | <p>products for the first time; and</p> <p>Any changes in product or service that impact the risk profile (see above).</p> <p>In addition, the Commission expects to be notified of any change to an existing structured product and to be provided with a copy of the marketing literature. The Commission's focus is to ensure that the product is being promoted in a way that is fair and accurate. The fact that the Commission has been notified and has raised no objections should not be regarded as an endorsement or approval of the product or service.</p> <p>Further guidance for deposit takers is provided in the Guidance Note on OTC Derivatives and Structured Products. The Commission has also issued a guidance note for deposit takers in relation to Fiduciary Deposits.</p> |
| <i>8.11 Business resumption and contingency arrangements</i> | The responsible officers should take account of the scale and complexity of the business in determining what arrangements are appropriate. The UK Government Business Continuity Management Toolkit at preparingforemergencies.gov.uk comments "The frequency of exercises will depend on your organisation, but should take into account the rate of change (to the organisation or risk profile), and outcomes of previous exercises (if particular weaknesses have been identified and changes made). As a minimum we would suggest plans are exercised annually." |
| <i>8.13 Delegation of function, inward outsourcing</i> | <p>The Commission has updated its Guidance Notes on Outsourcing/Delegation of Powers to reflect this rule.</p> <p>The Commission also issued guidance in 2006 on "inward outsourcing" which is applicable to Class 3 licenceholders.</p> |
| <i>8.18 Compliance officer and money laundering reporting officer</i> | The rule does not prevent the Compliance Officer having another job title such as "Compliance Manager" but does require that a person be appointed and identified as having that role. |
| <i>8.21 Isle of Man resident officer</i> | In this rule "day to day" means on a routine or daily basis. |
| <i>8.22 Absence of resident officer</i> | The plans referred to here could include, for example, the appointment of another licenceholder to act as a locum in the prolonged absence or incapacity of both resident officers. |
| <i>8.27 Relations with regulators</i> | <p>If a licenceholder receives a request for an employment reference from the Commission, the Insurance and Pensions Authority or from a financial services regulator in another jurisdiction, the licenceholder should:</p> <ol style="list-style-type: none"> 1) respond promptly; and 2) set out all disclosable matters which the licenceholder believes to be relevant and true, including details of any serious disciplinary action against the member of staff. <p>It is expected that a licenceholder will respond in the same way to requests for employment references from persons licensed or authorised under financial services legislation in the Island or other jurisdictions.</p> |
| <i>8.29 Complaints</i> | <p>Licenceholders should review the "Advice to suppliers on complaints handling and the Financial Services Ombudsman Scheme" published by the OFT and should consider in addition:</p> <ol style="list-style-type: none"> a. Providing the customer with the name of a person they can contact; |

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| | <ul style="list-style-type: none"> b. Setting a timeframe for letting the customer know how the complaint is being handled; c. Informing the customer in a timely manner of the results of any investigation (within a specified number of days after finishing it); d. If the complaint cannot be resolved within a specified time, informing the customer how much longer it will take. <p>The notification at 8.29(1)(f) should be in writing.</p> <p>“Where appropriate” is included in 8.29(3)(b) because not all licensed activities are covered by the Financial Services Ombudsman Scheme, for example Class 4 and Class 5 are not covered. In respect of Class 4 and Class 5 activities, despite the absence of an Ombudsman, the Commission will not seek to interfere in commercial disputes between a fiduciary and its client. The Commission may, however, review a register of complaints to satisfy itself that a fiduciary is dealing fairly with its clients; and will seek an explanation where the register of complaints indicates a possible failure to comply with the Act or rule book.</p> |
| <i>8.34 Credit Risk Policy</i> | The guidance note for deposit takers on credit risk, arrears & provisions management is attached |
| <i>8.35 Large exposures policy</i> | The guidance note for deposit takers on Large Exposures is attached |
| <i>8.36 Large exposure management</i> | The guidance note for deposit takers on Large Exposures is attached |
| <i>8.40 Liquidity policy</i> | The guidance note for deposit takers on Liquidity Risk Management is attached |
| <i>8.41 Liquidity management</i> | The guidance note for deposit takers on Liquidity Risk Management is attached |
| <i>8.42 Foreign exchange risk</i> | The guidance note for deposit takers on Foreign Exchange Risk Management is attached and will be updated |
| <i>8.43 Interest rate risk</i> | The guidance note for deposit takers on Interest Rate Risk Management is attached and will be updated |
| <i>8.47 Credit Risk Policy</i> | The guidance note for deposit takers on credit risk, arrears & provisions management is attached |
| <i>8.48 Large exposures policy</i> | The guidance note for deposit takers on Large Exposures is attached |
| <i>8.50 Liquidity policy</i> | The guidance note for deposit takers on Liquidity Risk Management is attached |
| <i>8.51 Liquidity management</i> | |
| <i>8.52 Foreign exchange risk</i> | The guidance note for deposit takers on Foreign Exchange Risk Management is attached and will be updated |
| <i>8.53 Interest rate risk</i> | The guidance note for deposit takers on Interest Rate Risk Management is attached and will be updated |
| <i>8.54 PII</i> | PII cover may be part of a group policy. |

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| | <p>Class 4 licenceholders who act only as directors of companies may apply for a modification to the PII requirements, in order to take out Directors & Officers' Insurance instead of PII.</p> <p>There is no requirement in the rule concerning the amount of the PII excess. However, the amount of the PII excess is deducted in the financial resources calculation; see Schedule 2.3 Part D and note 17. If a parental assurance has been accepted by the Commission, a zero may be input to the calculation.</p> <p>Where a professional officer is providing services to a corporate services or trust services licenceholder, he or she should clarify whether this is covered under their own or the other licenceholder's PII (and ensure that one applies).</p> |
| <p><i>8.57 Pricing errors</i></p> | <p>January 2002 guidance</p> |
| <p><i>8.58 Provision of officers</i></p> | <p>A CSP should ensure that its key persons, who act as directors of client companies, are aware of the duties and obligations of the office of director under the laws of the client company's jurisdiction of registration, and that they are aware that in performing the functions of such office, they have a personal responsibility. If necessary, legal advice should be sought.</p> <p>The Commission has issued "Guidance notes on the duties and responsibilities of directors under the laws of the Isle of Man" and there are other publications available giving guidance with regard to the duties and responsibilities of directors.</p> <p>With respect to the performance of the duties and responsibilities of the office of director, any one individual should not hold a greater number of directorships than he can competently undertake. In assessing the ability of an individual to fulfil his responsibilities as a director of a client company, the following factors should be taken into consideration:</p> <ul style="list-style-type: none"> (a) the procedures and control systems which are in place; (b) the competence of support staff available to those acting as directors for a number of client companies; and (c) the complexity of the business and the level of activity of each of the client companies for which the individual acts as director, as this may have an effect on the scope and extent of commitment required from that individual to fulfil his responsibilities. <p>However, even in the case of an experienced and well-qualified individual with strong support and a predominantly passive profile of company activity, the Commission will look carefully at a figure in excess of 250 directorships.</p> <p>The Commission would expect a figure much lower than 250 directorships if any of these factors was unfavourable (that is the director was inexperienced, the level of support was weak, the level of the activity of the companies in question was high or the nature of such activity was complex). The Commission would also expect a lower figure if the director was not working full time, or had other extensive commitments.</p> <p>Exceptionally, with reference to the particular circumstances of a case, for example, where several</p> |

directors have multiple overlapping directorships (that is, three or more persons hold office in each company administered by the CSP), the Commission might accept a higher figure if all of the factors above were favourable. However, even in the case of such an arrangement, the Commission would be mindful of the duties and responsibilities of those directors, which must be properly discharged, regardless of the circumstances. In assessing the number of directorships which he may competently undertake, account should also be taken of the number of corporate directorships held by a company of which the individual is a director.

It is acknowledged that under certain laws, including the laws of the Isle of Man, the board of directors may be authorised to delegate their powers to a third party. If the CSP provides the directors for, or arranges for others to be directors of, a client company, the directors so provided should not abrogate their overall responsibility for the matters delegated. The directors should remain responsible for the exercise of the powers they delegate and should monitor the exercise of the delegated powers. This applies to the issuing of powers of attorney, and control of bank accounts, financial transactions and assets belonging to the client company. In all circumstances the board should keep the delegated powers within such restricted parameters as may be appropriate and ensure that the directors do not relinquish ultimate control over the company's affairs. Notwithstanding that the directors are not the authorised signatories or are not the only persons authorised to sign on the client company's bank account(s), ultimate control thereof would be expected to remain with the directors.

Directors should not allow others to unduly influence them in such a way as to undermine the exercise in good faith of their powers in the manner which is in the best interests of the client company. It should be noted that there is no such entity under the laws of the Isle of Man as a "nominee" director.