



ISLE OF MAN  
FINANCIAL SERVICES AUTHORITY

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*Lught-Reill Shirveishyn Argidoil Ellan Vannin*

CONSULTATION PAPER CP18-01/T12

**INFORMATION ON CHANGES TO  
FITNESS AND PROPRIETY  
ASSESSMENTS FOR ALL REGULATED  
ENTITIES, INCLUDING A  
CONSULTATION ON RESULTING  
AMENDMENTS TO THE FINANCIAL  
SERVICES RULE BOOK 2016**

Issue Date: 5 March 2018

Closing Date: 13 April 2018

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## CONSULTATION PAPER – CP18-01/T12

This consultation paper is issued by the Isle of Man Financial Services Authority ('the Authority'), which is the regulatory body for financial services in the Isle of Man. ***The contents of this paper are of importance to all regulated entities, not only those subject to the Financial Services Rule Book.***

The purpose of this paper is to provide information on forthcoming changes to fitness and propriety assessments for all regulated entities. It also includes a consultation to obtain information, views and evidence regarding proposed amendments to the Financial Services Rule Book 2016 ('the Rule Book') which are required as a result of the changes to fitness and propriety assessments; as well as make miscellaneous minor amendments.

The forthcoming changes to fitness and propriety assessments have not resulted in a change in insurance and pensions legislation, but the changes themselves will apply, and are therefore of importance, to those regulated entities.

This paper therefore provides an overview of the changes and includes a number of related documents as Appendices, upon which comments are also welcomed.

The closing date for comments is **13 April 2018**.

Please send comments by email to [Policy@iomfsa.im](mailto:Policy@iomfsa.im) or alternatively by post to the following:

**Mr Dan Johnson – Senior Manager, Policy and Authorisations**  
**Isle of Man Financial Services Authority**  
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Bucks Road, Douglas  
Isle of Man, IM99 1DT

### ***Confidentiality***

*The information you send may be published in full or in a summary of responses.*

*All information in responses, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2015 and the Data Protection Act 2002). If you want your response to remain confidential, you should explain why confidentiality is necessary. Your request will be acceded to only if it is appropriate in the circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding.*

If you have a query in relation to how this consultation has been carried out, please contact the Authority's Policy and Authorisations Division by email at [Policy@iomfsa.im](mailto:Policy@iomfsa.im) or by telephone on +44 (0) 1624 646000.

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## GLOSSARY

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<b>Term</b>	<b>Meaning in this document</b>
<b>Authority</b>	Isle of Man Financial Services Authority
<b>Amendment Rule Book</b>	The draft Financial Services (Amendment) Rule Book 2018
<b>CISA2008</b>	Collective Investment Schemes Act 2008
<b>F&amp;P assessments</b>	Assessments of the fitness and propriety of certain persons in connection with regulated entities – often called ‘vetting’
<b>FSA2008</b>	Financial Services Act 2008
<b>IA2008</b>	Insurance Act 2008
<b>RBSA2000</b>	Retirement Benefits Schemes Act 2000
<b>Regulated entity</b>	A licenceholder under the FSA2008, persons authorised or registered under the IA2008, permit holders, other than EU permit holders, under the IA2008 and persons registered under the RBSA2000. The term also encompasses the governing bodies of certain collective investment schemes
<b>Rule Book</b>	Financial Services Rule Book 2016

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## **1 EXECUTIVE SUMMARY**

### **1.1 Overview**

The Authority's Annual Report for 2016/17 mentioned that the merger of the two predecessor organisations provided an excellent opportunity to consider change, including in the light of the reasonable expectations of stakeholders and how the merged Authority delivers its work. To this end analysis of existing processes and procedures is underway, to identify aspects that add value to the supervisory process as well as those which require refinement.

One of the process reviews has resulted in the Authority changing the way it conducts fitness and propriety assessments ('F&P assessments') for all regulated entities.

This necessitates a number of new documents and, in some cases, amendments to existing documents such as the fitness and propriety forms. These draft documents have been the subject of testing with a range of industry members who have kindly assisted the Authority and provided valuable feedback. Such draft documents, updated following feedback, are referred to in this paper and included in the Appendices, as further feedback on them is welcomed. Another point to note about the fitness and propriety forms is that there is a project underway to submit forms through a new electronic portal currently in development, and ultimately the new paper forms will become electronic.

Additionally, because some of the roles that require F&P assessment will be changing to post notification instead of advance notification, minor changes to the Rule Book are also required. Those changes do not need to be reflected in respect of the IA2008 because section 29 of that Act already permits a period other than 28 days' notice if agreed by the Authority in writing.

The Authority has also taken this opportunity to make some miscellaneous amendments to the Rule Book to address some errors and omissions in the current version.

### **1.2 What is the purpose of this Consultation Paper?**

The Authority invites affected parties to consider the draft documents set out in this paper. The draft Amendment Rule Book can be found at Appendix A, and the proposed changes resulting from the draft Amendment Rule Book are shown as tracked changes in a Keeling Schedule<sup>1</sup> in Appendix B. In order to minimise the length of this paper and enhance readability, the Keeling Schedule only shows those provisions which would be affected by the proposed amendments.

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<sup>1</sup> A Keeling Schedule is a document setting out the legislation as it will read when amended.

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The Authority is aware of the cost of regulation upon regulated entities and seeks to meet its regulatory objectives with minimum negative impact.

The Authority welcomes views in relation to the proposed amendments. Comments should be submitted to the Authority prior to the consultation's closing date (see page 2). Further feedback on the other documents is also welcomed.

### **1.3 Who may be affected by this Consultation Paper?**

This paper will be of particular interest to all entities regulated by the Authority under the CISA2008, FSA2008, IA2008, and RBSA2000.

## **2 CONSULTATION PROCESS**

### **2.1 The Authority's regulatory objectives**

The Authority's regulatory objectives are set out in section 2(2) of the FSA2008 as —

- (a) securing an appropriate degree of protection for policyholders, members of retirement benefits schemes and the customers of persons carrying on a regulated activity;
- (b) the reduction of financial crime; and
- (c) the maintenance of confidence in the Island's financial services, insurance and pensions industries through effective regulation, thereby supporting the Island's economy and its development as an international financial centre.

The proposals in this consultation paper are relevant to all three objectives. The assessment of the fitness and propriety of certain role holders helps to provide consumer protection, reduces financial crime and maintains confidence in the Island's financial services industry. Doing so across the Authority in a consistent manner, and focusing on the areas that the Authority can add most value can only improve this position.

The Authority is required to give consideration to certain factors when undertaking its role in accordance with paragraph 3 of Schedule 1 to the FSA008. The factors that are most relevant to this proposal are as follows:

<b>Factor</b>	<b>Information</b>
The need for the regulatory, supervisory and registration regimes to be effective, responsive to commercial developments and proportionate to the benefits which are expected to result	The proposed amendments to the Rule Book (and the F&P assessment changes) reduce the burden on regulated entities in relation to some roles – which will become subject to post notification only.

Factor	Information
from the imposition of any regulatory burden.	
The need to use resources in an efficient and economic way.	Focusing the actions of the regulator in connection with F&P assessments on the areas in which it can provide most value (such as inter-regulatory checks), and the roles which provide the most risk to the regulatory objectives, is a more efficient use of its resources.
The need to have regard to the responsibilities of those who manage the affairs of permitted persons, insurers and retirement benefits schemes.	Requiring regulated entities to confirm that they have conducted their own due diligence regarding appointments, and that they consider the individual to be fit and proper, places responsibility for these matters more appropriately and avoids the regulator duplicating referencing and other matters that ought to have been conducted as part of a regulated entity's recruitment process.

## 2.2 Responding to the Consultation Paper

The Authority considers open dialogue with stakeholders as essential in developing its proposals and greatly appreciates comments on the proposals in this document. The purpose of this consultation is to gather views and evidence from which an informed decision will be made on the content of proposed legislation. However, please note that your comments may not result in a change to the proposals.

The Authority wishes to encourage submission of views, but requests that comments are not submitted anonymously, as they will not be considered or included in the Consultation Response.

Professional bodies, trade associations and other representative groups are asked to provide a summary of the people and organisations that they represent when responding, as well as the methodology used to gain members' input.

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## **3 CHANGES TO THE PROCESS FOR FITNESS AND PROPRIETY ASSESSMENT**

### **3.1 Guidance on which roles require F&P assessment**

#### **3.1.1 Background**

F&P assessments are required under regulatory legislation and involve consideration of whether a particular individual, in a particular type of role in relation to a regulated entity, is fit and proper to undertake that role for that entity.

Fitness and propriety is made up of integrity, competence and solvency (see further 3.3).

The roles that are subject to F&P assessment are broadly set out in legislation – and known by various terms including connected persons and key persons.

It should be the nature of the role that determines whether it is subject to F&P assessment, not the ‘job title’, however over the years and across the former regulators (and separate legislation) it became apparent that 43 different role types were being considered by the Authority, and some based on job title rather than level within the regulated entity.

#### **3.1.2 New process**

The Authority has prepared a guidance document —*Regulatory Guidance – Fitness and Propriety* (see Appendix C)— that sets out 29 roles, described as ‘Controlled Functions’, which make up the roles that will become subject to F&P assessment. This change of focus may result in some individuals that have previously been subject to F&P assessments no longer being required to submit forms for assessment; and others that have not previously been subject to F&P assessments now being required to submit forms for assessment.

The descriptions of the Controlled Functions are in relation to the nature of the roles (for example, Controlled Function R15 – the Money Laundering Reporting Officer) and in some cases their seniority (for example, Controlled Function R18 – Senior Manager with significant influence), rather than job title.

Additionally, not all regulated entities are expected to have individuals in all of the Controlled Functions – some are specific to certain legislation only, for example Controlled Function R23 – Director (or equivalent) of a client entity of a corporate service provider. If a regulated entity does not currently have an individual fulfilling any one or more of the Controlled Functions, the new process does not create an obligation to appoint an individual to that role.

A key difference to the current process is that the Controlled Functions fall into two categories. One category is ‘notified and accepted Controlled Functions’ which are those requiring pre-notification, and the other is ‘notified only Controlled Functions’ which will no

longer require pre-notification. Please refer to Appendix 2 of the *Regulatory Guidance – Fitness and Propriety* (at Appendix C to this paper) for a breakdown of the Controlled Functions and which category each falls within.

## 3.2 The new forms for F&P assessment

### 3.2.1 Background

Currently, the Authority uses different forms for F&P assessment depending on which legislation an entity is regulated under. Additionally, if a regulated entity is regulated under the IA2008 and the FSA2008 it may have to complete two forms for one individual.

### 3.2.2 New form types

The new forms (accessible from Appendix D) have been tested with some industry participants, and have benefited from their feedback. They are designed to work for all regulated entities, regardless of legislation. They are paper-based but, in due course, these will be accessed through an online portal.

There are five forms:

Form Name	Form Number	Usage
Individual Questionnaire	F&P 1	To be completed when an individual is being proposed for a notified and accepted Controlled Function
Notification Only Form	F&P 2	To be completed when an individual has been appointed to a notified only Controlled Function
Controller Questionnaire	F&P 3	To be completed in respect of Controlled Functions R1 (controllers of the regulated entity and those of its immediate parent) and R2 (ultimate beneficial owners)
Intermediate Controller Notification Form	F&P 4	To be completed in respect of Controlled Function R3 (where a proposed acquisition of control will only result in a change of intermediate parent within the regulated entity's group structure, and will not result in a change to the controllers of the regulated entity, its immediate parent or ultimate beneficial owners)
Individual Controlled Function Cessation Form	F&P 5	To be completed in respect of any individual where a Controlled Function they hold ceases

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### **3.2.3 Declarations**

The new forms include declarations. One is a declaration by the regulated entity, and another is a declaration by the individual that is the subject of the forms (apart from in the case of form F&P 5 (cessation), which does not require an individual declaration).

The regulated entity declaration is a statement that the regulated entity has conducted due diligence relating to the individual (see 3.2.4), that the individual meets the requirements of the Authority's Training and Competence Framework (see 3.4) and that it is satisfied that the individual is appropriate for the Controlled Function, and is fit and proper. The regulated entity declarations can be signed by anyone in the regulated entity if they already fulfil one of the notified and accepted Controlled Functions (whether considered under the new process or the old).

Similarly, the individual declaration is a statement from the individual that they meet minimum competency requirements (if any), will maintain their fitness and propriety, will be open and honest in their dealings with the Authority, etc.

### **3.2.4 Due diligence**

As mentioned in 2.1, the Authority noted that it was conducting certain aspects of due diligence that did not add value, and which were not appropriate to a regulator's task. This included taking employers' references, checking qualifications held and querying gaps in employment history. This also duplicates the efforts of regulated entities' own staff take-on procedures and adds unnecessary delay.

Therefore, the Authority has determined to rely on the regulated entity's own due diligence (as confirmed in the declarations mentioned above) regarding these matters, and to focus its efforts on the areas in which it can add value, such as inter-regulatory discussions.

The Authority will also be considering the declarations made, and the appropriateness of explanations of any deviations from expectations (for example, rationales and mitigation provided if an individual does not meet requirements (if any) in the Training and Competence Framework).

The due diligence expected is discussed at sections 6 to 8, and set out in tabular format at Appendix 5, of the *Regulatory Guidance – Fitness and Propriety* (at Appendix C to this paper). Please note that the Authority does not require to be provided with the due diligence (such as employers' references / qualification checks etc.). The declarations within the F&P assessment forms confirming that the due diligence has been performed will suffice.

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### **3.3 Guidance on the concept of fitness and propriety**

#### **3.3.1 Background**

Regulatory legislation worldwide requires certain persons to be fit and proper. Fitness and propriety is a mainstay of regulatory legislation because it is vital to have these standards —

- (a) for the protection of the customers of regulated entities;
- (b) to ensure that regulated entities are not controlled or managed by persons engaged in financial or other crime; and
- (c) to protect the reputation of the Isle of Man.

Fitness and propriety is made up of integrity, competence and solvency.

#### **3.3.2 What is meant by integrity, competence and solvency?**

For entities regulated under the FSA2008, the meaning of integrity, competence and solvency has, to date, been set out within the Licensing Policy for regulated activities under the Financial Services Act 2008.

However, it is more appropriate to define those terms within the *Regulatory Guidance – Fitness and Propriety* (at Appendix C to this paper) and therefore the Licensing Policy for regulated activities under the Financial Services Act 2008 has been reworked to remove the detail from that document (see Appendix E).

Therefore, for all regulated entities, the components of fitness and propriety are set out and explained within Appendix 1 of the *Regulatory Guidance – Fitness and Propriety* (at Appendix C to this paper). Readers are asked to refer to that document for further information.

### **3.4 The Training and Competence Framework**

#### **3.4.1 Background**

The Training and Competence Framework sets out the Authority's expectations in terms of one element of fitness and propriety – competence.

It is a guidance document, which was first issued in 2006 and related only to regulated entities under the FSA2008 and CISA2008. It has now been updated to cover all regulated entities, and to reflect the Controlled Functions referred to above (see Appendix F).

The Authority issues guidance for various purposes, including to illustrate best practice, to assist relevant persons in complying with legislation and to provide examples or illustration.

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This Training and Competence Framework is issued under sections 6 and 12 of the FSA2008, section 34 of the IA2008 and section 42 of the RBSA2000. For the avoidance of doubt, it does not constitute binding guidance under the IA2008.

### **3.4.2 How the Training and Competence Framework is used in the assessment of fitness and propriety**

The Training and Competence Framework provides information on the Authority's expectations of the competence (including levels of experience and, in certain cases, qualifications) of individuals in various roles.

The Core Competency Table at 2.2.1 of the Training and Competence Framework sets out various roles (and now includes whether those roles are Controlled Functions, and if so which) and provides an indication of the level of experience or qualifications that an individual ought to have. These are categorised as **Guidance**, **Expectations** and **Requirements**.

In determining whether to appoint an individual to one of these roles, a regulated entity is expected to consider the contents of the Framework, and the declaration mentioned at 3.2.3 above includes a statement that the individual meets any requirements set out within it.

Where an individual does not meet those requirements, the regulated entity should use the continuation sheet in the assessment forms to set out its rationale why it is considered that, despite this, the individual is competent. In such cases the Authority will consider the rationale given and any planned training, support mechanisms etc. in determining whether to object to the individual's fitness and propriety for the particular Controlled Function.

The Training and Competence Framework has been extended to include the following roles that are specifically for regulated entities under the IA2008:

- Group Directors of a Managed Insurer (which would be part of Controlled Function R4 – Director of an Isle of Man incorporated regulated entity),
- Appointed actuary of an insurer (Controlled Function R11), and
- Principal Control Officer (Controlled Function R12).

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## 4 PROPOSALS IN RELATION TO THE DRAFT AMENDMENTS TO THE FINANCIAL SERVICES RULE BOOK 2016

### 4.1 Proposals directly related to changes to the F&P assessment process

#### 4.1.1 Post notification

The introduction of a simplified process and post notification for “notified only Controlled Functions” requires a change to rule 7.9 to allow post notification to take place. For ease, the draft Amendment Rule Book replaces the entire rule 7.9 with a new rule 7.9; however much of the text of rule 7.9 remains unchanged and the Keeling Schedule at Appendix B highlights the areas where change is made. Also, as the secretary is now a post notification role, reference to it has been removed from rule 7.9(2).

A similar change is unnecessary in insurance legislation, because section 29 of the IA2008 already permits a period other than 28 days’ notice, and the setting out of the concept of notified only Controlled Functions within the *Regulatory Guidance – Fitness and Propriety*, and the specification of a relaxed post notification period of 10 working days, should suffice.

#### 4.1.2 Head of compliance

The Controlled Function R13 refers to Head of compliance rather than compliance officer. This has resulted in the need to amend the term compliance officer to Head of compliance in relevant rules. There is no change to that role or the requirements of it, and the change in terminology results from the reality of the situation the Authority sees in some regulated entities (where they may have more than one compliance officer, but one individual that they all report to has specific responsibility for the regulated entity’s compliance).

To assist understanding, the Rule Book Guidance will be enhanced to include the following text:

*For Rule 8.21 and 8.23:*

*Previous iterations of the Rule Book used the term ‘compliance officer’. The Head of compliance is the individual responsible for ensuring or monitoring compliance with the licenceholder’s legal and regulatory obligations and required to provide objective assessment or objective reporting to the Board.*

*In many licenceholders there will only be one person with this responsibility, often known as the compliance officer, who will therefore be the Head of compliance for the purpose of this rule. In larger licenceholders there may be an individual with the responsibilities mentioned above to whom a number of other compliance officers report, and in such cases that individual will be the Head of compliance.*

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*The rule does not require a change in job title. The Regulatory Guidance – Fitness and Propriety explains that it is the nature of a function, not its title, which determines its categorisation.*

#### **4.1.3 Isle of Man Resident Officer**

In rule 7.9(1) the specific reference to Isle of Man Resident Officer has been removed as it now only applies to Isle of Man branches of licenceholders incorporated elsewhere, and that position is covered in the term “any other key person” at 7.9(1)(d) regardless.

#### **4.1.4 Removal of rule 8.26**

Rule 8.26 (which related to the company secretary’s qualification requirements) is being removed as it duplicates the provisions of company law and is therefore superfluous.

### **4.2 Proposals addressing errors and omissions in the Financial Services Rule Book 2016**

Following issuance of the Financial Services Rule Book 2016, some minor errors and omissions became apparent (which are unrelated to the changes to F&P assessments) and it is considered appropriate to rectify these at the same time as making the changes referred to in 4.1 above.

The changes are set out below, and can be seen within the Keeling Schedule at Appendix B to this document —

- (a) In rule 2.13 some text following 1(b) was missing and is being reinserted;
- (b) In column 2 of rule 6.37 text specifying disapplication of the provision “*when acting under a discretionary mandate*” was missing and is being reinserted;
- (c) Rule 8.25(1)(c) should refer to “business days” rather than “days”, and “business” is being inserted;
- (d) Rule 8.57(1) and (4)(a) refer to paragraph (2) instead of paragraph (3), which is being rectified; and
- (e) The definition of “interim financial return” in Appendix 1 to the Rule Book refers to rule 2.34 instead of 2.33, which is being rectified.

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## 5 QUESTIONS

### Question 1

Do you have any comments on the proposed amendments to the Financial Services Rule Book 2016 in general, and also specifically regarding the introduction of the ability to post-notify the Authority of the appointment of individuals to certain roles?

### Question 2

What are your views on the harmonisation of the processes and documentation regarding the assessment of fitness and propriety?

### Question 3

Do you consider that the changes in relation to conducting fitness and propriety assessments will achieve their aims of:

- (a) reduction of the burden on regulated entities in relation to post notification roles?
- (b) utilising regulatory resource in the areas of most value in relation to assessments?
- (c) avoiding duplication of matters that should have already been conducted by responsible regulated entities in their recruitment processes?

### Question 4

Do you have any feedback on the draft F&P forms and other draft documents within the Appendices to this paper?

## 6 NEXT STEPS

Following the closure of the consultation period, the Authority will publish a summary of the comments received, which will be accessible through the Authority's website and the Isle of Man Government's Consultation Hub.<sup>2</sup>

Subject to views expressed in response to the consultation, it is intended that the proposed legislative and procedural changes will come into effect mid-2018.

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<sup>2</sup> <https://consult.gov.im/>



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**APPENDIX A – DRAFT FINANCIAL SERVICES (AMENDMENT) RULE BOOK 2018**

Statutory Document No. 20XX/XXXX

**C***Financial Services Act 2008***FINANCIAL SERVICES (AMENDMENT) RULE BOOK 2018***Approved by Tynwald:**Coming into Operation:**1 August 2018*

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The Isle of Man Financial Services Authority makes the following Rule Book under section 18 of, and Schedule 3 to, the Financial Services Act 2008 after carrying out the consultations required by section 44(5) of that Act.

**1 Title**

This Rule Book is the Financial Services (Amendments) Rule Book 2018.

**2 Commencement**

If approved by Tynwald, this Rule Book comes into operation on 1 August 2018.

**3 Amendments to the Schedule to the Financial Services Rule Book 2016**

(1) The Schedule to the Financial Services Rule Book 2016 is amended as follows.

(2) In rule 2.13 for (1)(b) substitute —

«(b) any associated company of the licenceholder, which must be the most recently produced,

unless such a subsidiary or associated company has not traded in the financial year in question.».

(3) For column 2 of rule 6.37 substitute «*All Class 2 except those acting on an execution only basis in compliance with rule 6.17. But, paragraphs (3) and (4) do not apply to: Class 2(1) to (7) inclusive; Class 2(2) to (7) inclusive; or Class 2(3) to (7) inclusive when acting under a discretionary mandate.*».

(4) For column 1 of rule 7.9 substitute —

**«7.9 New appointments and departures from office**

(1) In relation to any licenceholder, this rule applies to the following offices and positions —

- 
- (a) Head of compliance;
  - (b) MLRO;
  - (c) DMLRO; and
  - (d) any other key person.
- (2) In relation to a licenceholder incorporated in the Island, this rule also applies to the following offices and positions —
- (a) a controller who is an individual; and
  - (b) a director.
- (3) Subject to (4) and rule 7.10, a licenceholder must notify the Authority at least 20 business days in advance of —
- (a) an appointment or intended appointment to any office or position to which this rule applies; and
  - (b) the title and responsibilities of the office or position.
- (4) Despite the notification period at (3), if the appointment is to an office or position which is a **“notified only”** appointment a licenceholder must notify the Authority within 10 business days following the date of the appointment.
- (5) A licenceholder must notify the Authority of any departure or intended departure from an office or position to which this rule applies, giving reason for departure, within 10 business days of the giving of notice or other event giving rise to the departure.
- (6) A reference in this rule to —
- (a) **“an appointment”** includes an appointment of an existing officer or employee of a licenceholder; and
  - (b) a **“notified only”** appointment, means any one or more of the appointments specified by the Authority as notified only (set out in the second column of the table at Appendix 2 of the Regulatory Guidance – Fitness and Propriety).».
- (5) In rules 8.21, 8.23 and paragraph 1 of Appendix 6 for “compliance officer” (wherever occurring) substitute «Head of compliance».
- (6) In rule 8.25(1)(c) after “20” insert «business».
- (7) In rule 8.26 —
- (a) for column 1 substitute «**8.26 This rule has been removed**»; and
  - (b) for column 2 substitute «*All Classes*».
- (8) In rule 8.57(1) and (4)(a) for “paragraph (2)” (wherever occurring) substitute «paragraph (3)».

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- (9) In Appendix 1 in the definition of “interim financial return” for “rule 2.34” substitute «rule 2.33».

**MADE**

**XXXXXXXXXX**

*Member of the Isle of Man Financial Services Authority*

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*Member of the Isle of Man Financial Services Authority*

***EXPLANATORY NOTE***

*(This note is not part of the Rule Book)*

This Rule Book amends the Financial Services Rule Book 2016, primarily to reflect changes to the periods of notification of certain appointments to licenceholders, as well as to correct some cross-referencing and similar errors found within the 2016 Rule Book.

*Disclaimer: This document was created by Authority to assist its readers. The Authority accepts no liability for the document's completeness and accuracy. Original legislation should always be consulted for legal purposes.*

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## **APPENDIX B – KEELING VERSION OF RELEVANT EXTRACTS FROM THE FINANCIAL SERVICES RULE BOOK 2016 INCLUDING THE CHANGES RESULTING FROM APPENDIX A**

### **2.13 Accounts of subsidiary and associated companies**

- (1) A licenceholder's annual financial return must include (in addition to the audited annual financial statements mentioned in rule 2.8(2)(a)) the latest audited annual financial statements of –
- (a) any subsidiary (apart from a shelf company) of the licenceholder, which must be as at the same date as those of the licenceholder; and
  - (b) any associated company of the licenceholder, which must be the most recently produced.
- unless such a subsidiary or associated company has not traded in the financial year in question.

### **Column 2 of rule 6.37 Accounts of subsidiary and associated companies**

*All Class 2 except those acting on an execution only basis in compliance with rule 6.17. But, paragraphs (3) and (4) do not apply to:*

*Class 2(1) to (7) inclusive;*

*Class 2(2) to (7) inclusive; or*

*Class 2(3) to (7) inclusive;*

*when acting under a discretionary mandate.*

### **7.9 New appointments and departures from office**

- (1) In relation to any licenceholder, this rule applies to the following offices and positions –
- ~~(a) Isle of Man resident officer;~~
  - (a) Head of compliance;
  - (b) MLRO;
  - (c) DMLRO; and
  - (d) any other key person.
- (2) In relation to a licenceholder incorporated in the Island, this rule also applies to the following offices and positions –
- (a) a controller who is an individual; and

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- (b) a director; ~~and~~  
~~(c) a secretary.~~
- (3) Subject to (4) and rule 7.10, a licenceholder must notify the Authority at least 20 business days in advance of –
- (a) an appointment or intended appointment to any office or position to which this rule applies; and
- (b) the title and responsibilities of the office or position.
- (4) Despite the notification period at (3), if the appointment is to an office or position which is a “notified only” appointment a licenceholder must notify the Authority within 10 business days following the date of the appointment.
- ~~(4)~~(5) A licenceholder must notify the Authority of any departure or intended departure from an office or position to which this rule applies, giving reason for departure, within 10 business days of the giving of notice or other event giving rise to the departure.
- ~~(5)~~(6) ~~For the avoidance of doubt, A~~ references in this rule to —
- (a) “an appointment” includes an appointment of an existing officer or employee of a licenceholder; ~~and~~
- (b) a “notified only” appointment, means any one or more of the appointments specified by the Authority as notified only (set out in the second column of the table at Appendix 2 of the Regulatory Guidance – Fitness and Propriety).

In Rules 8.21 and 8.23 all references to compliance officer are amended to Head of compliance.

#### **8.25 Isle of Man resident officers**

- (1) A licenceholder must appoint at least two, but no more than three, Isle of Man resident officers who are –
- (a) key persons;
- (b) resident in the Island; and
- (c) notified to the Authority as performing that role, not less than 20 business days in advance of appointment in that role.

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## APPENDICES C-F – ADDITIONAL DOCUMENTATION

The following appendices form part of this consultation document. The documents can be accessed on the Consultation Webpage on the Isle of Man Government Consultation Hub —

<https://consult.gov.im/financial-services-authority/changes-to-fitness-and-proprity-assessments>

- **Appendix C** – Draft Regulatory Guidance – Fitness and Propriety
- **Appendix D** – New Fitness and Propriety Forms:
  - F&P1 – Individual Questionnaire
  - F&P2 – Notification only form
  - F&P3 – Controller Questionnaire
  - F&P4 – Intermediate Controller Notification Form
  - F&P5 – Controlled Function Cessation Form
- **Appendix E** – Draft new Licensing Policy for regulated activities under the Financial Services Act 2008
- **Appendix F** – Draft new Training and Competence Framework