



Jersey

## FINANCIAL REGULATION (DISCLOSURE OF INFORMATION) (AMENDMENTS) (JERSEY) REGULATIONS 2013

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## FINANCIAL REGULATION (DISCLOSURE OF INFORMATION) (AMENDMENTS) (JERSEY) REGULATIONS 2013

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*13th March 2013*

**THE STATES**, in pursuance of Articles 1(2), 20 and 30A of the Collective Investment Funds (Jersey) Law 1988<sup>1</sup>, Articles 5, 45A and 51 of the Banking Business (Jersey) Law 1991<sup>2</sup>, Articles 2, 32A and 41 of the Insurance Business (Jersey) Law 1996<sup>3</sup> and Articles 4(2), 38(3) and 42 of the Financial Services (Jersey) Law 1998<sup>4</sup>, have made the following Regulations –

### **PART 1**

#### AMENDMENTS TO THE COLLECTIVE INVESTMENT FUNDS (JERSEY) LAW 1988

##### **1 Interpretation**

In this Part, “principal Law” means the Collective Investment Funds (Jersey) Law 1988<sup>5</sup>.

##### **2 Article 1 amended**

In Article 1(1) of the principal Law –

(a) after the definition “court”, there are inserted the following definitions –

“‘ESAs’ means the European Supervisory Authorities comprising –

- (a) the European Banking Authority established by Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.12);
- (b) the European Insurance and Occupational Pensions Authority established by Regulation (EU) No. 1094/2010 of

- the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.48); and
- (c) the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.84);

‘ESRB’ means the European Systemic Risk Board established by Regulation (EU) No. 1092/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.1);”; and

- (b) after the definition “subsidiary”, there is inserted the following definition –
- “ ‘supervisor of a securities market’ has the meaning given in Article 1(1) of the Financial Services (Jersey) Law 1998<sup>6</sup>;”.

### 3 Article 28 amended

In Article 28 of the principal Law –

- (a) in paragraph (1)(b), for the words “the Commission; or” there are substituted the words “the Commission;”;
- (b) in paragraph (1)(c), for the words “the Commission has statutory functions.” there are substituted the words “the Commission has or had statutory functions; or”;
- (c) after paragraph (1)(c), there is added the following sub-paragraph –
- “(d) any person for the purpose of enabling or assisting that person to exercise that person’s statutory control functions in relation to any person or class of person in respect of whom the Commission does not have statutory functions.”; and
- (d) after paragraph (1)(d), there is inserted the following paragraph –
- “(1A) In paragraph (1)(d), ‘statutory control functions’ means functions conferred by or under an enactment on any person which requires or enables that person to issue a licence, register, or give consent or any other form of authorization or permission to or in respect of any person or class of persons, including any ancillary functions related thereto, for such purposes as may be prescribed or specified (as the case may be) under that enactment.”.

### 4 Article 29 amended

In Article 29 of the principal Law –

- (a) for paragraph (1)(d), there is substituted the following sub-paragraph –
- “(d) to a person by the Commission showing whether or not any person holds or formerly held a permit or certificate under this Law, including any conditions to which that permit or certificate is or was formerly subject under Article 7 or Article 8B as the case may be.”; and

- (b) after paragraph (6), there are added the following paragraphs –
- “(7) Subject to paragraphs (8) to (10), Article 26 does not preclude the disclosure of information by the Commission to any of the following organizations or persons –
    - (a) the ESAs;
    - (b) the ESRB; or
    - (c) a supervisor of a securities market.
  - (8) The Commission shall not disclose information under paragraph (7) unless satisfied that –
    - (a) the purpose of the disclosure is in order to assist the relevant organization or person to whom it is disclosed, in the exercise of any of its functions; and
    - (b) that organization or person will treat the disclosed information with appropriate confidentiality.
  - (9) In deciding whether to disclose information under paragraph (7), the Commission may take the following factors (among others) into account –
    - (a) whether corresponding disclosure of information would be given by the relevant organization or person, if such information were requested by the Commission;
    - (b) whether the case concerns the possible breach of a law, or other requirement, which has no close parallel in Jersey;
    - (c) the seriousness of the case and its importance in Jersey;
    - (d) whether the information could be obtained by other means; and
    - (e) whether it is otherwise appropriate in the public interest to disclose the information.
  - (10) The Commission may refuse to disclose information under paragraph (7) unless the relevant organization or person undertakes to make such contribution towards the costs of the disclosure as the Commission considers appropriate.”

**5 Article 30 amended**

In Article 30 of the principal Law, for the words “28(1)(b) or (c) or (2) or 29(5) or (6)” there are substituted the words “28(1)(b), (c) or (d), or (2) or 29(5), (6) or (7)”.

**6 Article 31 amended**

In Article 31 of the principal Law, after the words “relevant supervisory authority” there are inserted the words “, any of the ESAs, the ESRB or a supervisor of a securities market”.

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**PART 2****AMENDMENTS TO THE BANKING BUSINESS (JERSEY) LAW 1991****7 Interpretation**

In this Part, “principal Law” means the Banking Business (Jersey) Law 1991<sup>7</sup>.

**8 Article 1 amended**

In Article 1 of the principal Law –

- (a) after the definition “documents”, there are inserted the following definitions –

“‘ESAs’ means the European Supervisory Authorities comprising –

- (a) the European Banking Authority established by Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.12);
- (b) the European Insurance and Occupational Pensions Authority established by Regulation (EU) No. 1094/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.48); and
- (c) the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.84);

‘ESRB’ means the European Systemic Risk Board established by Regulation (EU) No. 1092/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.1);” and

- (b) after the definition “subsidiary company”, there is inserted the following definition –

“‘supervisor of a securities market’ has the meaning given in Article 1(1) of the Financial Services (Jersey) Law 1998<sup>8</sup>”.

**9 Article 43 amended**

After Article 43(2) of the principal Law, there are added the following paragraphs –

- “(3) Subject to paragraphs (4) to (6), Article 42 does not preclude the disclosure of information by the Commission to any of the following organizations or bodies –

- (a) the ESAs,
- (b) the ESRB, or
- (c) a supervisor of a securities market.

- 
- (4) The Commission shall not disclose information under paragraph (3) unless satisfied that –
    - (a) the purpose of the disclosure is in order to assist the relevant organization or person to whom it is disclosed, in the exercise of any of its functions; and
    - (b) that organization or person will treat the disclosed information with appropriate confidentiality.
  - (5) In deciding whether to disclose information under paragraph (3), the Commission may take the following factors (among others) into account –
    - (a) whether corresponding disclosure of information would be given by the relevant organization or person, if such information were requested by the Commission;
    - (b) whether the case concerns the possible breach of a law, or other requirement, which has no close parallel in Jersey;
    - (c) the seriousness of the case and its importance in Jersey;
    - (d) whether the information could be obtained by other means; and
    - (e) whether it is otherwise appropriate in the public interest to disclose the information.
  - (6) The Commission may refuse to disclose information under paragraph (3) unless the relevant organization or person undertakes to make such contribution towards the costs of the disclosure as the Commission considers appropriate.”.

**10 Article 44 amended**

In Article 44 of the principal Law –

- (a) in paragraph (1)(b), for the words “the Commission; or” there are substituted the words “the Commission;”;
- (b) in paragraph (1)(c), for the words “the Commission has statutory functions.” there are substituted the words “the Commission has or had statutory functions; or”;
- (c) after paragraph (1)(c), there is added the following sub-paragraph –
  - “(d) any person for the purpose of enabling or assisting that person to exercise that person’s statutory control functions in relation to any person or class of person in respect of whom the Commission does not have statutory functions.”; and
- (d) after paragraph (1)(d), there is inserted the following paragraph –
  - “(1A) In paragraph (1)(d), ‘statutory control functions’ means functions conferred by or under an enactment on any person which requires or enables that person to issue a licence, register, or give consent or any other form of authorization or permission to or in respect of any person or class of persons, including any ancillary functions

related thereto, for such purposes as may be prescribed or specified (as the case may be) under that enactment.”.

#### 11 Article 45 amended

In Article 45 of the principal Law –

- (a) in paragraph (1), for sub-paragraph (e) there is substituted the following sub-paragraph –
  - “(e) to a person by the Commission showing whether or not any person is registered or was formerly registered under this Law, including any conditions which are attached to the registration or were attached to the former registration of that person under Article 11(2).”; and
- (b) in paragraph (7) –
  - (i) for the words “or Article 43(1)(a)”, there are substituted the words “or Articles 43(1)(a) or (3)”; and
  - (ii) for the words “44(1)(b) or (c)” there are substituted the words “44(1)(b), (c) or (d)”.

#### 12 Article 46 amended

In Article 46 of the principal Law, after the words “relevant supervisory authority” there are inserted the words “, any of the ESAs, the ESRB or a supervisor of a securities market”.

### PART 3

#### AMENDMENTS TO THE INSURANCE BUSINESS (JERSEY) LAW 1996

#### 13 Interpretation

In this Part, “principal Law” means the Insurance Business (Jersey) Law 1996<sup>9</sup>.

#### 14 Article 1 amended

In Article 1(1) of the principal Law –

- (a) after the definition “Court”, there are inserted the following definitions –
  - “ ‘ESAs’ means the European Supervisory Authorities comprising –
    - (a) the European Banking Authority established by Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.12);
    - (b) the European Insurance and Occupational Pensions Authority established by Regulation (EU) No. 1094/2010 of



- the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.48); and
- (c) the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.84);

‘ESRB’ means the European Systemic Risk Board established by Regulation (EU) No. 1092/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.1);”; and

- (b) after the definition “subsidiary”, there is inserted the following definition –

“ ‘supervisor of a securities market’ has the meaning given in Article 1(1) of the Financial Services (Jersey) Law 1998<sup>10</sup>;”.

## 15 Article 31 amended

In Article 31 of the principal Law –

- (a) in paragraph (1) –
- (i) in sub-paragraph (b), for the words “the Commission; or” there are substituted the words “the Commission;”;
- (ii) in sub-paragraph (c), for the words “the Commission has statutory functions.” there are substituted the words “the Commission has or had statutory functions; or”, and
- (iii) after sub-paragraph (c), there is added the following sub-paragraph –
- “(d) any person for the purpose of enabling or assisting that person to exercise that person’s statutory control functions in relation to any person or class of person in respect of whom the Commission does not have statutory functions.”;
- (b) after paragraph (1), there is inserted the following paragraph –
- “(1A) In paragraph (1)(d), ‘statutory control functions’ means functions conferred by or under an enactment on any person which requires or enables that person to issue a licence, register, or give consent or any other form of authorization or permission to or in respect of any person or class of persons, including any ancillary functions related thereto, for such purposes as may be prescribed or specified (as the case may be) under that enactment.”; and
- (c) after paragraph (2), there are added the following paragraphs –
- “(3) Subject to paragraphs (4) to (6), Article 29 does not preclude the disclosure of information by the Commission to any of the following organizations or persons –
- (a) the ESAs;
- (b) the ESRB; or

- 
- (c) a supervisor of a securities market.
  - (4) The Commission shall not disclose information under paragraph (3) unless satisfied that –
    - (a) the purpose of the disclosure is in order to assist the relevant organization or person to whom it is disclosed, in the exercise of any of its functions; and
    - (b) that organization or person will treat the disclosed information with appropriate confidentiality.
  - (5) In deciding whether to disclose information under paragraph (3), the Commission may take the following factors (among others) into account –
    - (a) whether corresponding disclosure of information would be given by the relevant organization or person, if such information were requested by the Commission;
    - (b) whether the case concerns the possible breach of a law, or other requirement, which has no close parallel in Jersey;
    - (c) the seriousness of the case and its importance in Jersey;
    - (d) whether the information could be obtained by other means; and
    - (e) whether it is otherwise appropriate in the public interest to disclose the information.
  - (6) The Commission may refuse to disclose information under paragraph (3) unless the relevant organization or person undertakes to make such contribution towards the costs of the disclosure as the Commission considers appropriate.”.

## 16 Article 32 amended

In Article 32 of the principal Law –

- (a) in paragraph (1), for sub-paragraph (d) there is substituted the following sub-paragraph –
  - “(d) to a person by the Commission showing whether or not any person holds or formerly held a permit under this Law, including any conditions to which that permit is or was formerly subject under Article 7(1) or 7(5).”; and
- (b) in paragraph (5), for the words “31(1)(b) or (c) or (2)” there are substituted the words “31(1)(b), (c) or (d) or (2) or (3)”.

## 17 Article 34 amended

In Article 34 of the principal Law, after the words “relevant supervisory authority” there are inserted the words “, any of the ESAs, the ESRB or a supervisor of a securities market”.

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## PART 4

### AMENDMENTS TO THE FINANCIAL SERVICES (JERSEY) LAW 1998

#### 18 Interpretation

In this Part, “principal Law” means the Financial Services (Jersey) Law 1998<sup>11</sup>.

#### 19 Article 1 amended

In Article 1(1) of the principal Law the following definitions are inserted, each according to its alphabetical order –

“‘ESAs’ means the European Supervisory Authorities comprising –

- (a) the European Banking Authority established by Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.12);
- (b) the European Insurance and Occupational Pensions Authority established by Regulation (EU) No. 1094/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.48); and
- (c) the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.84);

‘ESRB’ means the European Systemic Risk Board established by Regulation (EU) No. 1092/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.1);

‘rules of a securities market’ means rules written and published in a manner that will bring them to the attention of anyone affected by them (whether contained in a legislative instrument or otherwise), of the country or territory, or part of the country or territory, that hosts the securities market that regulate or are recognized as regulating the conduct of the securities market;

‘securities market functions’ means any of the following functions –

- (a) the listing or admittance to trading of securities on a securities market;
- (b) the authorization or registration (as the case may be) and supervision of any person that –
  - (i) deals in securities,
  - (ii) is a professional intermediary, or
  - (iii) is a professional advisor to an issuer,

- in accordance with the rules of a securities market and recognized as so doing under those rules; and
- (c) the monitoring of trading activity on a securities market for the purposes of deterring or detecting one or more of the following activities –
- (i) market manipulation,
  - (ii) misleading information, and
  - (iii) insider dealing;

‘supervisor of a securities market’ means a person other than a relevant supervisory authority that is incorporated, constituted or otherwise established under a legislative instrument of a country or territory that hosts a securities market, and whose functions include (but are not limited to) securities market functions;”.

## 20 Article 38 amended

In Article 38 of the principal Law –

- (a) in paragraph (1)(a) –
- (i) in clause (ii), for the words “the Commission, or” there are substituted the words “the Commission,”,
  - (ii) in clause (iii), for the words “the Commission has statutory functions;” there are substituted the words “the Commission has or had statutory functions, or”, and
  - (iii) after clause (iii), there is added the following clause –
    - “(iv) to any person for the purpose of enabling or assisting that person to exercise that person’s statutory control functions in relation to any person or class of person in respect of whom the Commission does not have statutory functions;”;
- (b) for paragraph (1)(d), there is substituted the following sub-paragraph –
- “(d) to a person by the Commission showing whether or not any person is registered or was formerly registered under this Law, including any conditions which are or were formerly attached to the registration of that person under Article 10(2);”;
- (c) after paragraph (1)(l), there is added the following sub-paragraph –
- “(m) subject to paragraphs (1B) to (1D), by the Commission to any of the following organizations or persons –
    - (i) the ESAs,
    - (ii) the ESRB, or
    - (iii) a supervisor of a securities market.”;
- (d) after paragraph (1), there are added the following paragraphs –
- “(1A) In paragraph (1)(a)(iv), ‘statutory control functions’ means functions conferred by or under an enactment on any person which requires or enables that person to issue a licence, register, or give

consent or any other form of authorization or permission to or in respect of any person or class of persons, including any ancillary functions related thereto, for such purposes as may be prescribed or specified (as the case may be) under that enactment.

(1B) The Commission shall not disclose information under paragraph (1)(m) unless satisfied that –

- (a) the purpose of the disclosure is in order to assist the relevant organization or person to whom it is disclosed, in the exercise of any of its functions; and
- (b) that organization or person will treat the disclosed information with appropriate confidentiality.

(1C) In deciding whether to disclose information under paragraph (1)(m), the Commission may take the following factors (among others) into account –

- (a) whether corresponding disclosure of information would be given by the relevant organization or person, if such information were requested by the Commission;
- (b) whether the case concerns the possible breach of a law, or other requirement, which has no close parallel in Jersey;
- (c) the seriousness of the case and its importance in Jersey;
- (d) whether the information could be obtained by other means; and
- (e) whether it is otherwise appropriate in the public interest to disclose the information.

(1D) The Commission may refuse to disclose information under paragraph (1)(m) unless the relevant organization or person undertakes to make such contribution towards the costs of the disclosure as the Commission considers appropriate.”; and

- (e) in paragraph (2), for the words “paragraphs (1)(a)(ii), or (iii), or (b)(i) or (c), or (k) or (l)” there are substituted the words “paragraph (1)(a)(ii), (iii) or (iv), or (b)(i) or (c), or (k), (l) or (m).”.

## 21 Article 39 amended

In Article 39 of the principal Law, after the words “relevant supervisory authority” there are inserted the words “, any of the ESAs, the ESRB or a supervisor of a securities market”.

## 22 Article 39A amended

In Article 39A(1) of the principal Law, for the words “In this Part and in Schedule 6”, there are substituted the words “In this Part, in Schedule 6 and for the purposes of the definition ‘supervisor of a securities market’ ”.

**23 Citation and commencement**

These Regulations may be cited as the Financial Regulation (Disclosure of Information) (Amendments) (Jersey) Regulations 2013 and shall come into force 7 days after they are made.

**A.H. HARRIS**

*Deputy Greffier of the States*

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- 1* chapter 13.100
  - 2* chapter 13.075
  - 3* chapter 13.425
  - 4* chapter 13.225
  - 5* chapter 13.100
  - 6* chapter 13.225
  - 7* chapter 13.075
  - 8* chapter 13.225
  - 9* chapter 13.425
  - 10* chapter 13.225
  - 11* chapter 13.225