



Jersey Financial Services Commission

To:
CEOs of Trust Company Businesses and
Fund Services Businesses

From the office of the Director General

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Your Ref.: -

Our Ref.: ALeB/P115-04

23 September 2008

Dear Chief Executive Officer

COBO-only funds & Schedule 2 to the Proceeds of Crime (Jersey) Law 1999

The purpose of this letter is to set out the Commission's view of the application of Part B paragraph 7(1)(h) of Schedule 2 to the Proceeds of Crime (Jersey) Law 1999 ("**Schedule 2 POCL**") to that form of non-public fund commonly referred to as a "COBO-only" fund. It does not consider what other business may be included under Part B paragraph 7(1)(h).

A business that falls within the scope of Schedule 2 POCL is, by virtue of Article 36 of the POCL, a "financial services business"¹. The significance of this is that a person is treated as a "relevant person" under Article 1 of the Money Laundering (Jersey) Order 2008 (the "**Money Laundering Order**") and required to comply with that Order where it carries on financial services business in, or from within, Jersey. In addition, the Money Laundering Order also defines a "relevant person" as a Jersey body corporate or a Jersey limited liability partnership that carries on financial services business in any part of the world.

The Commission's view is that the functionaries to a COBO-only fund would be amongst the types of businesses that fall within Part B paragraph 7(1)(h) of Schedule 2 POCL ["participation in securities issues and the provision of services related to such issues"].

The most significant practical implication of this, in the Commission's view, is that each functionary that carries on business in or from within Jersey in relation to a COBO-only fund would be a "relevant person" as defined in the Money Laundering Order and thus required to comply with that Order.

¹ Not to be confused with "financial service business" as defined in Article 2 of the Financial Services (Jersey) Law 1998.

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This will include the manager of a company issuing units, the trustee or manager of a unit trust, the general partner of a limited partnership, and the manager of a limited liability partnership. Articles 3 and 13 of the Money Laundering Order will require those parties to carry out 'customer due diligence' on the investors in the fund.

Notwithstanding this statement of the Commission's view of the applicability of Part B paragraph 7(1)(h) of Schedule 2 POCL to COBO-only funds, we acknowledge that - given the very general nature of paragraph 7(1)(h) - this view may not be one that is uniformly shared across the industry. For this reason, the Commission - after consultation with Jersey Finance Limited and the Jersey Funds Association - intends to seek an amendment to Schedule 2 POCL to make clear the application of Schedule 2 to COBO-only funds and their functionaries. So long as the Commission and Industry can agree a precise definition to insert into Schedule 2 POCL to cover COBO-only funds (and thus no longer rely upon Part B paragraph 7(1)(h) to cover such funds), the outcome of this will be that a functionary to a COBO-only fund which is administered by a trust company business or a fund services business will not be a "relevant person" for the purposes of the Money Laundering Order and so will not be required to comply with that Order. However, as is already the case for other types of Jersey fund product, a COBO-only fund will be required to comply with the Money Laundering Order.

Money Laundering Compliance Officer and Money Laundering Reporting Officer

Articles 7(6) and 8(4) of the Money Laundering Order require a "relevant person" to advise the Commission of the identity of its Money Laundering Compliance Officer ("MLCO") and its Money Laundering Reporting Officer ("MLRO"). However, by virtue of a notice issued by the Commission on 4 February 2008 under Article 10 of the Money Laundering Order the Commission has exempted a "relevant person" from these notification requirements except where they are a person who is:

- registered under the Banking Business (Jersey) Law 1991;
- holds a permit under the Collective Investment Funds (Jersey) Law 1988²;
- is registered under the Financial Services (Jersey) Law 1998; or
- is authorised by a permit under the Insurance Business (Jersey) Law 1991.
(each a "regulated person")

In practical terms this means that a functionary to a COBO-only fund would not need to advise the Commission of the identity of its MLCO or MLRO (although where the functionary is a

² The notice is to be amended so that a person that has been granted a certificate under Article 8B of the Collective Investment Funds (Jersey) Law 1988 comes within the definition of "regulated person". This will restore the position to that prevailing before the enactment of the Collective Investment Funds (Amendment No. 4) (Jersey) Law 2008.



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“regulated person” it should already have advised the Commission of the identity of its MLCO and MLRO, and would be required to notify any changes thereto on an ongoing basis).

In summary then, the Commission’s view is that:

- Functionaries to COBO-only funds fall within the scope of Schedule 2 POCL and are thus subject to the Money Laundering Order;
- Functionaries to COBO-only funds would need to appoint a MLCO and MLRO but, save where a “regulated person”, would not have an obligation to keep the Commission advised of the identity of its MLCO and MLRO.

I hope that this letter is helpful in clarifying the Commission’s position in relation to COBO-only funds.

I have also enclosed with this letter, for your information and reference, a matrix showing the interaction of Schedule 2 POCL, the Money Laundering Order and the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, for fund products.

If you require any further information either in relation to the content of this letter or the enclosed matrix please contact, in the first instance, Andrew Le Brun, Director – International & Policy Division. His telephone number is 822065 and his email address is a.lebrun@jerseyfsc.org.

Yours sincerely

John Harris
Director General

PROCEEDS OF CRIME (JERSEY) LAW 1999: SCHEDULE 2
 Interaction with Money Laundering Order (“MLO”) and
 the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (“SB Law”) for **fund products**

(Position following enactment of
Proceeds of Crime (Amendment of Schedule 2) (Jersey) Regulations 2008 and the
Proceeds of Crime (Supervisory Bodies) (Amendment of Law) (Jersey) Regulations 2008)

Schedule 2 category of fund product	Who has obligation to meet MLO for the fund?	Will that person have to register the fund under the SB Law?	Will that person be supervised under the SB Law for the fund’s compliance with the MLO?
the business of a recognized fund (Part A, para 3(1)b) <div style="border: 1px solid black; padding: 2px; display: inline-block;">Legal form of the fund</div>	<u>Jersey CIU:</u> The CIU <u>Jersey law trust:</u> The trustee	No No	Yes Yes

The policy for this column is that the person would have to register the fund except where:

- (i) the person is registered/holds a permit/certificate (as relevant) under the Financial Services (Jersey) Law 1998 (“FSJL”) or Collective Investments Funds (Jersey) Law 1988 (“CIFJL”) or the fund is already known to the Commission (e.g. COBO consent issued; unregulated fund notified to Registrar); or
- (ii) the person is provided with any service that falls within Articles 2(3) and (4) of the FSJL by a person registered under the FSJL to carry on TCB or is provided with any service within fund services business (“FundSB”) by a person who is registered under the FSJL to carry on FundSB.



Schedule 2 category of fund product	Who has obligation to meet MLO for the fund?	Will that person have to register the fund under the SB Law?	Will that person be supervised under the SB Law for the fund's compliance with the MLO?
the business of an unclassified fund (Part A, para 3(1)(c))	<u>Jersey CIU (carrying on business anywhere in world):</u> The CIU (wherever based)	No	Yes ¹
	<u>Non-Jersey CIU (with established place of business in Jersey):</u> The CIU	No	Yes
	<u>Jersey law trust (managed from within Jersey):</u> Jersey-based trustee (or Jersey manager where trust powers vested in the manager)	No	Yes
	<u>Non-Jersey trust (managed from within Jersey):</u> Jersey-based trustee (or Jersey-based manager where trust powers vested in the manager)	No	Yes

¹ In practical terms, where there was no activity being carried on in Jersey, it would be difficult to proactively monitor compliance with the MLO although reactive enforcement action could be taken.

Schedule 2 category of fund product	Who has obligation to meet MLO for the fund?	Will that person have to register the fund under the SB Law?	Will that person be supervised under the SB Law for the fund's compliance with the MLO?
the business of an unclassified fund (Part A, para 3(1)(c)) [continued]	<u>Jersey limited partnership (managed from within Jersey):</u> Jersey-based general partner	No	Yes
	<u>Non-Jersey limited partnership (managed from within Jersey):</u> Jersey-based general partner	No	Yes
	<u>Jersey limited liability partnership (carrying on business anywhere in world):</u> The LLP (wherever based)	No	Yes ²
	<u>Non-Jersey limited liability partnership (managed from within Jersey):</u> The LLP	No	Yes

² In practical terms, where there was no activity being carried on in Jersey, it would be difficult to proactively monitor compliance with the MLO although reactive enforcement action could be taken.

Schedule 2 category of fund product	Who has obligation to meet MLO for the fund?	Will that person have to register the fund under the SB Law?	Will that person be supervised under the SB Law for the fund's compliance with the MLO?
the business of a "COBO" fund (Part B, paragraph 7(1)(h))	<u>Jersey CIU or non-Jersey CIU with a Jersey based manager:</u> The manager	No ³	Yes
	<u>Jersey law trust (managed from within Jersey):</u> Jersey-based trustee (or Jersey-based manager where trust powers vested in the manager)	No ³	Yes
	<u>Non-Jersey trust (managed from within Jersey):</u> Jersey-based trustee (or Jersey-based manager where trust powers vested in the manager)	No ³	Yes
	<u>Jersey limited partnership (managed from within Jersey):</u> Jersey-based general partner	No ³	Yes

³ No - on the basis that the person would probably be: (a) a person registered under the FSJL to carry on TCB; or (b) is provided with any service that falls within Articles 2(3) and (4) of the FSJL by a person registered under the FSJL to carry on TCB or is provided with any service within FundSB by a person who is registered under the FSJL to carry on FundSB and has no established place of business in Jersey (other than that provided by a person registered under the FSJL to carry on TCB or FundSB). If either of those conditions were not met, the person would have to register the fund under the SB Law. (See the amendment made to the Schedule to the Proceeds of Crime (Supervisory Bodies) (Amendment of Law) (Jersey) Regulations 2008.)



Schedule 2 category of fund product	Who has obligation to meet MLO for the fund?	Will that person have to register the fund under the SB Law?	Will that person be supervised under the SB Law for the fund's compliance with the MLO?
the business of a "COBO" fund (Part B, paragraph 7(1)(h)) [continued]	<u>Non-Jersey limited partnership (managed from within Jersey):</u> Jersey-based general partner	No ³	Yes
	<u>Jersey limited liability partnership (managed from within Jersey):</u> Jersey-based manager	No ³	Yes
	<u>Non-Jersey limited liability partnership (managed from within Jersey):</u> Jersey-based manager	No ³	Yes

Schedule 2 category of fund product	Who has obligation to meet MLO for the fund?	Will that person have to register the fund under the SB Law?	Will that person be supervised under the SB Law for the fund's compliance with the MLO?
the business of an unregulated fund (Part B, para 6)	<u>Jersey CIU:</u> The CIU	No	Yes
	<u>Jersey LP:</u> Jersey incorporated GP	No ⁴	Yes
	<u>Trust (Jersey-law or otherwise):</u> Trustee (where a Jersey co.) otherwise Manager (where a Jersey co.)	No ⁵	Yes

⁴ Because under the Unregulated Funds regime the GP must be registered for FundSB or (where a special purpose GP) would be exempt from registration under FSJL for FundSB where, as a minimum, it is provided with a registered office by a person who is registered under FSJL to carry on FundSB.

⁵ Because under the Unregulated Funds regime the Trustee or Manager must be registered for FundSB or (where a special purpose trustee) would be exempt from registration under FSJL for FundSB where, as a minimum, it is provided with a registered office by a person who is registered under FSJL to carry on FundSB.

N.B. (1)

The following scenarios could also exist:

1. An unclassified fund that is a Jersey-law trust managed outside of Jersey:
 - Would require a fund certificate
 - Would be “financial services business” [as defined in the POCL] by virtue of falling within Schedule 2 POCL category of “the business of an unclassified fund”.
 - But the MLO would not apply (no “relevant person” [see Article 1 MLO]) because no financial services business being carried on in or from within Jersey)

2. An unclassified fund that is a Jersey-law LP managed outside of Jersey:
 - Would not require a fund certificate
 - Would be “financial services business” [as defined in the POCL] by virtue of falling within Schedule 2 POCL category of “the business of an unclassified fund”.
 - But the MLO would not apply (no “relevant person” [see Article 1 MLO]) because no financial services business being carried on in or from within Jersey)

N.B. (2)

3. Currently, COBO-only CIUs with no Jersey manager are considered by the Commission not to fall within Part B paragraph 7(1)(h) of Schedule 2 to the Proceeds of Crime (Jersey) Law 1999. The Commission intends to seek an amendment to Schedule 2 to remedy this.