

# Response ID ANON-F412-SQ9S-D

Submitted to **Consultation Paper on the proposed replacement of the current Fiduciary Rules, 2020 by the new Fiduciary Rules, 2021**  
Submitted on **2021-06-11 12:14:03**

## Introduction

### 1 What is your name?

**Name:**  
Stephen Trevor

### 2 What is your email address?

**Email:**  
trevor@lmrr.gg

### 3 What is your organisation?

**Organisation:**  
Guernsey Association of Trustees

## PART 1 Categorisation of Fiduciary Licensees

### Q1 Do you have any comments on the proposed definition of “actively trade” and the associated guidance?

**Q1:**

- This definition is based on receipt of a fee, commission or other income, which is very similar wording to the “by way of business” test in Fiduciary Law s58(3) (or new Law s59(3)). We are concerned that forcing secondary licensees to ensure they can show they are not actively trading could open up an argument we assume is not intended, that they do not need a licence at all because they are not acting by way of business. Conversely some firms or advisers might argue that the grant of a licence to a secondary licensee does authorise it to act by way of business and therefore to receive fees and that being in primary legislation this takes precedence over the Rules.
- The guidance to Rule 1A.2 means that the invoice could be raised by the primary licensee or another group entity, but for clarity could it not also come from the secondary licensee? The revised definition of “actively trade” prevents the secondary licensee from receiving income but not from invoicing. Some firms might take the view that the invoice should come from the entity providing the service, but with the primary licensee’s bank details.
- The definition should refer to “regulated fiduciary activities” rather than “fiduciary regulated activities”.
- Rule 2.4A(2) should end “primary fiduciary licensee”.

### PART 1 Categorisation of Fiduciary Licensees (cont.)

### Q2 Do you have any comments on the proposed requirement for a Secondary Licensee to nominate a designated Primary Licensee with whom it is associated?

**Q2:**

- Draft Rules use “licence holder” in various places (in new and current text) but the Law uses “licensed fiduciary” – it would be clearer to stick to licensed fiduciary.
- Draft Rules use both “primary fiduciary licensee” and “primary licensee”, and the equivalents for secondary – we suggest consistent use of “primary fiduciary licensee” etc. These drafting points may appear pedantic but we know that lawyers outside Guernsey notice such issues and see them as detracting from the quality of Guernsey’s framework.
- The relationship between specific primary and secondary licensees currently involves both “associated” and “designated”. “Associated” is in Rule 1A.2(1), does not appear elsewhere and risks confusion with “associated company” in Fiduciary Law s23(5)(a) which is an unrelated concept. The associate concept seems unnecessary in these Rules - 1A.2(1) could omit it and say “each secondary licensee must designate a primary fiduciary licensee .....”.
- The August 2020 Discussion Paper had a useful table on p5 highlighting that the existing requirement for secondary licensees to have common staff, procedures and clients with the primary licensee would continue to apply through the Fees Regulations. We assume this is still the intention but the draft Rules do not refer to this requirement so it may not be understood. We suggest that guidance after Rule 1A.2 should refer not only to actively trading but to the ownership requirement in Fiduciary Law 2020 s4(3)(a) and to the commonality test in the Fees Regulations. This would make the overall requirements and restrictions on secondary licensees clearer.

### PART 1 Categorisation of Fiduciary Licensees (cont.)

### Q3 Do you have any comments on the provisions in the proposed new rules for the future re-categorisation of a Primary Licensees into a Secondary Licensee?

**Q3:**

No

**PART 1 Categorisation of Fiduciary Licensees (cont.)**

**Q4 Do you have any comments on the Commission's proposals regarding the "one-off" automatic re-categorisation of Joint Licensees into Secondary Licensees on enactment of the 2020 Fiduciaries Law?**

**Q4:**

No, seems efficient thanks.

**PART 2 Provisions for Annual Returns**

**Q5 Do you have any comments on the proposed provisions relating to annual returns?**

**Q5:**

No

**PART 3 Removal of restrictions on advertising by Personal Fiduciary Licensees ("PFLs")**

**Q6 Do you have any comments on the proposed removal of restrictions on advertising by PFLs?**

**Q6:**

No

**PART 4 Other changes proposed in the new Fiduciary Rules, 2021**

**Q7 Do you have any comments on the other changes proposed in the new Fiduciary Rules 2021?**

**Q7:**

No

**PART 5 The draft new Fiduciary Rules, 2021**

**Q8 Do you have any other comments on the consolidated version of the proposed new Fiduciary Rules, 2021 which incorporate Commission Guidance, which are not already covered in your responses to previous questions?**

**Q8:**

No