Guernsey Financial
Services Commission

Industry Presentations – 23 November 2012

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Last year I outlined for you some of the projects undertaken by the Commission in fulfilment of its commitment to industry towards greater transparency, consistency and effectiveness.

The Commission's work towards the fulfilment of this commitment in the area of enforcement has comprised of a number measures. These have included the creation of a new webpage devoted to enforcement matters, the publication of its enforcement policy and a summary of its various enforcement powers. The Commission, following a review and revision of its decision-making procedures, then published a copy of those procedures on its webpage.

Further to this commitment, I would like to talk to you today about an additional measure undertaken by the Commission in the area of enforcement and provide you with some feedback regarding the Commission's approach towards some of the measures undertaken by regulated individuals and entities who undertake measures in mitigation of regulatory breaches.

EXPLANATORY NOTES

First, let's talk about our latest project. In the 2.5 years I have been with the Commission, one question that has frequently arisen is, "How do I know whether the Commission is likely to recommend a sanction, and if so, what kind of sanction is it likely to be?"

A regulator's transparency about not only the powers available to it but its approach towards the use of those powers is an important means by which to provide regulated entities with a greater understanding as to regulatory non-compliance as against any sanctions the Commission recommends. Disclosure of the Commission's approach in relation to the sanctions it may elect to recommend also holds it as the regulator accountable for ensuring that it applies a consistent and proportionate approach.

At the beginning of 2013, the Commission will publish a number of explanatory notes on the Commission's website.

The Notes that will be published will describe some of the Commission's powers and existing approach towards the use of those powers. We have not developed Notes in relation to all of its powers, but have instead focused upon those sanction powers about which it is most frequently asked questions about in relation to their scope and its approach when considering whether to use them.

The topics which are covered in the Notes to be published in 2013 will be:

- Disqualification of Directors,
- Prohibition Orders,
- Public Statements,
- Appointment of Administrator and Administration Manager,
- Disqualification of Actuaries,
- Disqualification of Auditors,
- Discretionary Financial Penalties,
- Cancellation, Revocation or Suspension of Licences, Authorisations or Registrations,
- Dis-application of Directorship Exemption,
- Imposition of Licence Conditions,
- Directions to Licensees,
- Directions to Advertisers, and
- Private Reprimands under the Registered Businesses Law and the Prescribed Businesses Law.

It is anticipated that further Notes will be developed in 2013. One of these notes will explain the Commission's approach towards the assessment of fitness and propriety as it relates to individuals and the factors which may result in the Commission objecting to the proposed appointment or continued appointment of an individual in a specified position.

Going forward, the Commission also intends to publish further Notes relating to the Commission's supervisory functions.

The Directors of each of the Divisions have been asked to liaise with the various industry groups regarding this proposal. One of the comments fed back to me was a concern that the Notes indicated that further enforcement action was intended. The answer to this is a simple "No". The publication of the Explanatory Notes does not signal any change of approach by the Commission" or words to that effect. In case there is any confusion about this or to manage the risk of any embellishment added later about the purpose of these Notes, Let me be very clear that the Commission is not and does not intend to be an enforcement-led regulator. To that end, the Notes reiterate the concepts documented in the Commission's Enforcement Policy and should be read in conjunction with that document.

I would now like to talk to you about the Commission's approach towards measures undertaken by regulated individuals and entities who undertake measures in mitigation of regulatory breaches. These are factors which may alleviate, reduce or abate the imposition of a sanction or the nature of the regulatory response chosen to address non-compliance with regulatory requirements.

As part of its decision making process, the Commission takes into account factors in mitigation of the regulatory non-compliance in question. The weight afforded these measures is assessed on a case by case basis and broadly speaking, fall within the following 5 categories:

- Self-Enquiry – what steps were taken by the licensee to understand the circumstances of an identified regulatory breach? How much time has passed between when the breach was first suspected or identified and steps taken to enquire into its cause or reason for occurrence, the potential or actual impact and verification that the breach was not indicative of possible broader systemic failings. The Commission would expect that such enquiries would be documented and retained.

- Self-Remediation – what steps were taken by the licensee to reduce the risk of reoccurrence; training, changing procedures, reviewing similar activities to ensure that the problem is not systemic etc. A note which states, "staff have been reminded of the need to comply with procedures". This, when seen in isolation, is not remediation. Ideally, remediation should involve measures to address the immediate risk created by the breach to control any further or actual adverse impact from occurring and a demonstrable consideration of what measures might be required to ensure that the cause or hazard identified, is minimized going forward. This is reflective of the AML/CFT Regulation 15 requirements. The Commission encourages licensees to pro-actively conduct their own enquiries and remedial plans to address and reduce the risk of reoccurrence where regulatory non-compliance may be present.

- Self-Governance – are matters of regulatory non-compliance being reported upwards, and escalated as required to the Board? Is there demonstrable follow-up by the Board to verify that remedial measures identified by the licensee are undertaken and completed in a timely manner. One aspect we have noted in several cases is a screening or dilution of the information the matter is escalated to the Board; for Boards to conduct effective oversight of compliance arrangements, licensees must ensure that full and frank disclosure of identified regulatory breaches are reported upwards.

- Self-Reporting – this involves the timing of and extent of disclosure made by a licensee to the Commission regarding the breach in question. This year we have seen some excellent examples of licensees who have contacted the Commission and reported regulatory breaches and fully disclosed the reasons and measures taken to reduce the risk of reoccurrence. It should never be assumed that any breach is "not significant" and therefore not reported to the Commission. Fulsome reporting to the Commission assists in evidencing that a licensee's compliance arrangements are effective and reflects a licensee's fulfillment of its co-operation obligations under the minimum licensing criteria.

Those are my remarks for this morning. Thank you for your time.