Guernsey Financial Services Commission

Industry Seminar – 6 December 2013

Fiduciary Supervision and Policy Division Presentation: Managing Risks at the Frontier

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I will endeavour to give an overview of some recent developments, some emerging issues and my "take" on the challenges facing the sector in 2014.

Fiduciary sector means the wider sector for which the Commission has responsibility: where the boundaries are not clear and the issues spill over into pension providers and other FSBs especially registered NRFSBs.

"Managing Risks at the Frontier" comes from that: my two colleagues will look at issues in those "spill over" areas. Audrey will address issues arising from the take on and establishment of NRFSBs and Fiona will address current and emerging issues among the pension providers.

No surprises – the common theme is managing risk throughout the wider sector.

Slide: What's New?

The Foundations Law means the administration of foundations both from Guernsey and elsewhere is now an explicitly regulated activity. A code of conduct for Foundation Service Providers has been published and the AML Handbook has been amended to reflect this.

Question: is the introduction of Foundations Law likely to set the Fiduciary world on fire? – well, probably no. But it represents a useful additional product in your product armory. So far only 15 Guernsey Foundations registered. It is unlikely to overtake trusts but it will be attractive to certain wealthy individuals and families.

Some developments in family office work: we have seen a structure using foundations as a vehicle for very wealthy families' assets; however no precedents there.

Consolidation within the sector – more private equity ownership.

The cost of doing business is creeping up – particular challenges for small fiduciaries in the provision of adequate compliance resources and also in the availability of bank accounts at a reasonable cost.

The Commission has now adopted a risk based approach – actually it is an impact based approach which generates classifications high, medium/high, medium/low, low.

We will categorise licensed firms across the whole sector as to the likely impact of their failure. This will recognise whether they are part of a wider financial group or whether they are owner managers – typical in this sector.

There are unlikely to be any fiduciary firms in the highest impact category but we can surmise there will be a distribution across medium high, medium low and low which will mean a different type of engagement and for some we will have regular, structured on-site meetings with them.

Those meetings will drive assessments which provide input into a risk governance panel which will be forward looking not just a snap shot.

Impact is not the same as risk: if a single fiduciary failed the impact is low, if the whole sector failed then ……… (imagine); but the sector is vulnerable to financial crime risk.

Lower impact licensees will be visited on a longer time cycle but we will also include them in thematic surveys.

Slide: Thematic Surveys

We have completed a thematic survey on data security which produced some encouraging results.

The methodology seems to have worked well with a questionnaire survey across the whole sector and a selected cross section of on-site visits to fiduciaries to validate the results received in the survey.

Where do we go from here? Developing some relevant focused themes which may include client money arrangements, management of conflicts of interests and arrangements for decision taking about the acquisition of client assets.

Other relevant themes could emerge - watch this space.

Slide: AML/CT issues going forward

A sector briefing was provided about Moneyval on 5-6 October. This was a heads up for the expected 2014 assessment but also drew out some trends coming out of recent AML visit findings.

We are trying to reduce the AML burden on PFLs.

Remember Moneyval will come with the presumption that all fiduciary business is inherently high risk.

The issues for Moneyval will be around how we evidence how we manage high risk business.

Slide: Towards an International Standard

The Group of International Finance Centre Supervisors (GIFCS) is reviewing its Statement of Best Practice for Trust and Company Service Providers. This is the nearest that we get to the sector having an international regulatory standard like Basel or IOSCO.

The document dates from 2003 when GIFCS was active as the Offshore Group of Banking Supervisors (OGBS). GIFCS is now considering whether the document could be refreshed and upgraded to act more as an international standard. In Panama recently, GIFCS committed to calling the Statement a 'Standard.'

What will any revised statement look like? I expect it to build on the previous document with sharper requirements about client monies, corporate governance and directors' duties. It should address technical issues about minimum ongoing capital and liquid assets requirements. If that sounds like the FRR (Financial Resources Requirement) – then it is.

Guernsey FRR is not very helpful and calls out for clarification. I would propose a working group with GAT on this so it can be easily and reliably calculated by licensees and potentially signed off by auditors.

However FRR is not the big issue – corporate governance is.

Slide: Developing Corporate Culture

Corporate Governance can be a woolly concept – it is not a rule book: it is about behaviours, good practice and judgment.

The Finance Sector Code of Corporate Governance from 2011 is a pretty comprehensive document; please read, digest and act upon it.

Corporate Culture is an elusive concept driven from the top but which takes a long time to shift.

Why bother? Goes to the heart of your organisation: it is about protecting your firm's reputation (Name and brand) and ultimately the reputation of the Bailiwick.

Slide: Marketing Corporate Governance

Protecting your reputation is not about buying a piece of software – it is about constantly demonstrating strong behaviour, good practice and sound judgement.

To help the judgement – go back to fundamentals: get smarter about risk.

Three RAs: Risk Appetite, Risk Assessment, Risk Awareness.

You can't be wholly risk averse but if you do high risk business you have to manage and mitigate those risks.

The key message: embed those RAs in the front line with the business developers – don't think risk is just for the compliance department.