

Industry Seminar – 21 November 2014

**Financial Crime Supervision and Policy Division Presentation:
Guernsey – International and Interconnected**

Fiona Crocker, Director

Thank you Stephen and good morning ladies and gentlemen.

I was going to call this presentation life after MONEYVAL but as you will hear today MONEYVAL is here to stay.

Before I cover MONEYVAL, other international issues and our supervisory approach for 2015 I would like to introduce myself and explain the evolution of the Financial Crime Supervision and Policy Division.

Before my appointment as Director of this division at the beginning of this month I was assistant and then deputy director in the fiduciary division for 9 years and was previously in the then Investment Business Division for 5 years.

Of my 15 years at the Commission as a supervisor, 13 of them have been spent assessing financial services businesses against the AML/CFT requirements of the day.

That started with the guidance notes which some of us might know better as the Rainbow Book and through the introduction at end of 2007 of the Proceed of Crime regulations and Handbook rules which established the enforceable AML/CFT regime which we all work with today.

The Financial Crime Supervision and Policy Division is now a fully-fledged division with the same status as the other supervisory and policy divisions headed up by a director. This is also reflected in its name - previously it was called the AML unit.

It was initially a service centre for the other supervisory divisions to use to farm out the on-sites and enquiries aspects of AML/CFT supervision. In the early days the relevant sectorial divisions issued the reports and oversaw any follow up. Now as a fully established division we handle post visit reporting, oversee remediation and we can and do make direct referral to enforcement although in practice we include the relevant sector division in this process.

The same checks and balances are applied to our financial crime risk assessments as that of other divisions whereby all material onsite findings and any proposed remediation is quality assured through an internal governance panel made up of senior staff from across the Commission.

Like the other sectorial divisions we too have responsibilities to work on policy initiatives and it is with this area that I will start.

Slide: International

I will begin with MONEYVAL which has dominated our work for at least a year but roll it back to the start of Guernsey's involvement with MONEYVAL because we are often asked by firms when onsite who is MONEYVAL, what is its role and why did Guernsey join.

MONEYVAL is a committee of experts on the evaluation of measures to tackle money laundering and the financing of terrorism. It was formed by the Council of Europe and has the role of ensuring that its member states have effective AML/CFT measures in place to comply with the international standards issued by the Financial Action Task Force – FATF.

Slide: MONEYVAL - Jurisdictions

MONEYVAL consists of about 30 member states that are subject to its assessment.

It also follows up on progress made by a jurisdiction on meeting recommendations made as a result of an evaluation through follow up discussions at plenaries. Guernsey, Jersey and the Isle of Man, who were previously assessed by the IMF, joined MONEYVAL for this very reason because there was no means by which we could show those international bodies who scrutinize us how we had addressed recommendations that the IMF made.

Many of MONEYVAL's members are from the newer wider Europe and beyond. There are however a number of observer seats. These are held by Canada, Japan, Mexico and the US and organisations which include the FATF, IMF, UN bodies on drugs, crime and counter terrorism, the Commonwealth Secretariat and the World Bank.

This means that there is a large and influential audience when an evaluation of a jurisdiction is under the spotlight.

The Bailiwick joined in order to achieve international endorsement of our AML/CFT framework – without such assurance we would be left out on our own. I hope that has helped clarify why we joined and why these assessments are so important.

A MONEYVAL assessment of a jurisdiction is based upon peer review utilising self-assessment and mutual evaluation by member states in a process strikingly familiar to the AML/CFT visits we put you through.

In the case of Guernsey's evaluation the MONEYVAL team visited the Bailiwick between 6 and 11 October 2014. The eight evaluators had either legal, supervisory or law enforcement pedigrees.

They did spend some time with the Bailiwick authorities, including the Commission, but much of their visit focused on assessing the effectiveness of Guernsey's implementation of the FATF 2003 recommendations, and in order to assess this, they spent most of their time meeting, talking and very often challenging firms on a range of topics such as the financial crime risks they face, how they dealt with them and supervision by the regulator.

Given the spotlight currently on transparency of beneficial ownership of trusts and companies I don't think it will be a surprise to anyone here, that from the feedback we have had from firms

MONEYVAL met, the evaluators were extremely interested in exploring the depth and breadth of due diligence undertaken by firms to establish beneficial ownership.

Because of the focus on effectiveness of the Bailiwick's AML/CFT framework a lot of firms participated in the evaluation – 23 firms and two professional organisations agreed to meet the assessors. Their preparation and participation in the evaluation is much appreciated – so thank you – we very much mean that.

The Bailiwick received feedback on the initial findings on the morning of the 11th and the evaluators are now preparing their draft report for review and adoption at the MONEYVAL plenary in April 2015, after which it will be published. The Bailiwick authorities, including the Commission will have an opportunity to comment on the report whilst it is in draft form.

I would like to, but unfortunately I can't, give you feedback yet on their findings, as at this stage they are preliminary and have not been publicised and remain confidential. Indeed we are still in a period when actions taken by a jurisdiction can influence their findings. However I will address feedback on the evaluation later on.

Now MONEYVAL's evaluation of Guernsey was against the FATF 2003 recommendations, as was the IMF's assessment of us in 2010. The next time MONEYVAL visit, the evaluation will assess how the Bailiwick is implementing the FATF 2012 recommendations.

It is likely that we won't be visited before 2018 – but with the focus on effectiveness of jurisdictions' regimes, this 4 to 5 year gap isn't long in which to adapt the Bailiwick framework and show that it works.

I will also clarify that the European Union's 4th AML Directive does not apply to the Bailiwick – that directive is Europe's means of applying the FATF 2012 recommendations to member states.

Slide: FATF 2012 Recommendations

The 2012 recommendations introduce the development of a national risk assessment by jurisdictions. The emphasis is on national – so it is how a country or territory identifies and manages ML and TF risks.

I must stress that this is not an assessment by the financial regulator but we will be a participant in the process. As with a firm's business risk assessment being at the heart of its AML/CFT controls, so too is a national risk assessment the starting point from which everything else should evolve.

In FATF words "a risk assessment allows countries to identify, assess and understand its money laundering and terrorist financing risks. Once these are properly understood, countries can apply AML/CFT measures that correspond to the level of risk: in other words the risk based approach which is central to enabling countries to prioritise their resources and allocate them effectively".

Both the World Bank and the IMF have developed models to assist countries with this which rely heavily on the compilation and analysis of statistics. The Commission already collects

data to assist it with its supervision, but I must warn you that it is likely that further information will be required from firms and I hope that you will forbear with this.

As much as possible data requested will be streamlined with what you currently provide us – though this project will also dovetail in with work we want to do on establishing what sort of industry data can enhance our financial crime risk assessments, and how and when we collect it.

As you will have just heard from Tim on the online submissions project, the ability to submit data online will make such requests easier for us both to manage.

In order to bring our supervision into line with the 2012 recommendations we have commenced a project to revise the Handbooks. This initiative was announced at last year's seminar when we asked for participants – we were inundated with volunteers from whom we have enlisted the services of compliance officers from about 15 firms across the industry. We are grateful for their support and valuable input.

We are also using this opportunity to re-vamp the structure of the Handbook to make it more user friendly and future-proof. We hope that the finished product will make it easier to reference a particular section, that guidance on a subject will be in one easy to access place, that it will help the emerging Fintech sector comply and that changes or amendments to the Handbook can be introduced with minimal changes to its structure.

We emphasize to firms that policies and procedures need to be drafted in such a way that all staff can readily understand them. It's only right that we apply the same logic to the revision of the Handbook.

There are also benefits to be had on working with Jersey to align both islands requirements in areas where it appears feasible to do so. I can give you an example.

Jersey has a list of countries and territories identified as presenting higher risks – there seem to be benefits to adopting something similar here and we are presently considering if this could be a pan Channel Islands' list.

However, I would not want you to construe my comments here that we are heading towards a common Handbook and would re-iterate that we are seeking alignments where it is beneficial to do so. Such benefits could relate to reducing the cost to pan Channel Islands firms of having to tailor controls in each individual island operation and to reduce regulatory arbitrage between us.

Work on the Handbook was temporarily on hold in the run up to MONEYVAL but it has now been restarted. We aim to issue a draft Handbook in the summer but well in advance of that we will be talking to the various representative groups on its development and ways to headline that launch.

Lastly we are also revising our onsite questionnaire to meet the FATF recommendations as well as to pick up on where we have had feedback from firms.

Slide: Communication and Engagement

I will now move to supervision – which I've labelled as communication and engagement because I want to show you how much this has changed.

The division's prime responsibility is to assess financial crime risk which is undertaken for all firms irrespective of their size or impact. As a result we actively assess about 1300 licensees.

Our assessment of financial crime risk is undertaken through a number of means including full scope and themed on-sites, desk-top reviews whereby we analyse returns we might seek such as a business risk assessment, or policies and procedures, or data coming into the Commission from returns or surveys.

For any firm as soon as it is licensed we undertake an assessment utilising the draft business risk assessment submitted in support of its licence or registration application.

However our resources are finite – there are 9 of us and we therefore apply a risk based approach to our supervision concentrating our time on the higher risk sectors much as you devote more time on your higher risk relationships and we utilise various means to reach out to lower risk sectors to ensure that our analysis of the financial crime risks remains accurate.

I would also like to stress that while your key relationship with the Commission is maintained through the relevant sectorial division we do communicate with each other. Prism enables the other divisions to alert us to a potential financial crime risk through issues you take to them.

Through a process the Commission terms Triage we determine whether a matter you have notified us is going to be escalated or not. The system also enables us to assess whether a particular issue is systemic at a firm or sector level.

Other means through which we reach out to firms could be through themed on-sites or thematic reviews. A thematic review might be over a sector or sub-sector or by topic such as politically exposed person relationships, introduced relationships, recruitment and training or outsourced activities.

Themed work can help us ascertain the level of financial crime risk a sector or sub-sector poses and also provide a secondary benefit insofar as giving us greater insight of any operational issues a sector or sub sector might face which helps in the development of the guidance we periodically issue.

The Division's themed work this year focused on accountants, lawyers and estate agents in the prescribed business sector soon after supervisory responsibility for them transferred from the Fiduciary Division to Financial Crime.

This themed work consisted of a survey and questionnaire, analysis of the results from that and request of additional information from a select number of firms for some further scrutiny and focused visits. Results from that were fed back to the sectors as well as case by case to each firm.

Slide: Outreach

We seek to engage widely with industry through outreach to convey certain messages. This has been through seminars, workshops, dear CEO letters, publishing guidance and frequently asked questions. We utilise not only findings from our on-sites and themed work for the topics but also international developments to keep you abreast of emerging issues.

I cannot over emphasise how much we want you to take advantage of what we offer here. We want to see you at seminars, we want you to participate in workshops and we want you to take note of what we say in guidance and dear CEO letters.

That is because firstly queries raised at these events help us to identify where further guidance might be required; secondly we follow up when we undertake our supervisory work such as an onsite visit or periodic assessment of a licensee, the issues we talked about at seminars or wrote about in letters and guidance.

Therefore, if we find a firm with deficiencies in areas we have spoken and written about you really cannot expect to us to show much sympathy – we undertake approximately 50 visits a year – we just do not have the resource to nurse and nurture firms who do not listen. What we talk about and publish really are clues of what we will be looking at when we are onsite.

Finally, the Commission's enforcement notices give very clear messages on what regulatory risks are run.

The current notices set out what could happen if firms do not take full responsibility for any compliance activities they have outsourced, if they have failed to assess the effectiveness of their compliance arrangements, if they have failed to advise the Commission of significant breaches or material failings in their policies, procedures and controls and if they have failed to identify and address any shortcomings in their controls.

Those public statements also indicate where we might be focusing some of our themed work next year

We publish speeches, guidance, feedback, FAQs, dear CEO letters and enforcement notices – this is all available on our website.

I will talk through what could be a potential subject for themed work – suspicious activity reporting. We co-hosted a seminar this year with the FIU in which we set out our expectations relating to firms' compliance arrangements on suspicious activity reporting.

This is an area we focus on during a full scope onsite but we could pick this as an area for a themed onsite or thematic review next year to see how effective that work was.

However, we determine to explore this area we will be examining what triggers the report and what enquiries a Money Laundering Reporting Officer made in advance of making a disclosure and how relationships are managed after you have raised a suspicion. This would include how you deal with the issue of declining or obtaining consent for requested acts and transactions.

Clearly at grass roots level AML/CFT supervision focuses on compliance with the regulations and rules but what we are actually looking at and considering in many areas are your judgments. That is because exercising sound judgment is a key requirement in the minimum licensing criteria across all the regulatory laws which must be met on an ongoing basis.

The sorts of judgments we are interested in seeing being made responsibly and wisely, range from a senior management decision over on boarding a new high risk client to an MLRO's decision to make a report or not.

Slide: Outreach (Continued)

Now this slide illustrates how much we have engaged with you through 2013 and 2014. Red represents last year, blue this year.

We have held more workshops and seminars, issued more guidance and in light of international events put out more warnings, sanctions and notices.

We hear frequently from MLROs that these sanction notices tell them what they already know because they heard it through their grapevine – Themis. We post the sanctions notices issued by the States on our website because it's open to all whereas Themis is the FIS system available only to MLROs. We also know our site gets a lot of hits.

The Division met a lot of people this year. The seminars on SARs and tax evasion drew a total of more than 500 people into our offices and the division hosted 7 workshops with industry representatives each attracting between 30 and 150 people.

We believe this engagement is helpful to both of us and going forward intend to hold workshops and seminars on relevant issues. I will run through a few topics we have in mind.

The division hosted successful sessions last year on the MONEYVAL evaluation of Cyprus. We think feedback on IMF and MONEYVAL evaluations is useful and there are 2 obvious evaluations to share with you in such a way next year – obviously the results from the MONEYVAL mutual evaluation of Guernsey and of Jersey whom MONEYVAL are evaluating early next year – 2015 is therefore looking like having a rather local theme.

It is likely that we will see some of the first assessments against FATF 2012 recommendations coming through so feedback on that will be something to look forward to from us.

Another obvious topic for an event will be on the Handbook – we will want to engage with you on why revisions are being made and to that end may adopt some of the engagement techniques deployed for the revision of laws project such as the recent open house drop in sessions.

And we want to continue with events which highlight the threats to the Bailiwick such as the seminar we organised on tax evasion which PwC kindly agreed to deliver.

Now there is an ulterior motive to all our outreach and that lies in a FATF 2012 recommendation for regulators to establish guidelines and provide feedback which assists you

in applying measures to combat money laundering and terrorist financing, and in particular in detecting and reporting suspicions.

Clearly we don't want to be the ones to mess up a MONEYVAL evaluation by not doing this!

Obviously the MONEYVAL evaluation was a driver in our increased level of engagement in the latter half of 2013 and this year. Clearly it will only be this time next year when you can look back and say whether you think we continued to actively engage with you.

I want to and so I hope that over the forthcoming year I get to meet and talk with as many of you as possible for the right reasons namely continuing to ensure effective supervision for good firms to do good business for the Bailiwick.

We have several minutes to take questions. I am joined on stage by Steve Chandler, our policy adviser whose remit includes revising the Handbook and Callum McVean our assistant director who runs our on-site programme.

Thank you