

Industry Seminar – 21 November 2014

**Investment Supervision and Policy Division Presentation:
Guernsey – International and Interconnected**

Emma Bailey, Director

Good afternoon everybody. Continuing with the seminar's overall theme of "Guernsey-International and Interconnected" this afternoon Mark and I would like to talk to you about a range of topics which fall under 3 variations of that main theme; 1)International, 2)International and Interconnected, and 3)Interconnected.

What do I mean by that well to run through our agenda for this afternoon:

- 1) I will be starting with purely International matters focussing, unsurprisingly, on AIFMD and MiFID II and also answering the question "Where is Louise?" Louise is conspicuous by her absence from the stage today but more on where she is and what she is up to later. Any rumours suggesting that Louise is not here because she is camera shy or has yet to register her image rights are not true.
- 2) I'll then move to International and Interconnected talking about our involvement on international committees and the value it brings the jurisdiction and how we as a smaller jurisdiction can play a part on the global stage.
- 3) Finally Mark will cover our Interconnectedness from a domestic angle; that is being interconnected with our colleagues across the Commission, with Government, other local agencies and most importantly with you in the Industry. Just to expand on that slightly the investment slot today has been "sandwiched", sorry that's not the best phrase to use when many of you are probably starting to feel a bit peckish, but we have been sandwiched between the Conduct Unit and the Fiduciary & Innovations division for good reason. Mark will illustrate our interconnectedness, particularly with our colleagues in those divisions, by commenting briefly on the implementation of Guernsey Financial Advice Standards, and by describing some of the proposals we have seen in the innovations sphere and how we have been working with the Fiduciary & Innovations Division in our consideration of those proposals. But he start by picking up on some of the changes proposed to the Protection of Investors Law under the Revision of Laws project as detailed it the recently issued Discussion Paper.

Mark and I are intending that should all take approximately 30 minutes leaving us with roughly 10 minutes or so when we will be very happy to take any questions you may have. Nick Herquin one of my assistant directors is with us on stage to help answer any questions on AIFMD (or any other questions that you may wish to direct at him rather than at me).

Before I get started with the main thread of my talk this afternoon I wanted to just briefly reflect on the fact that this is the fifth year the Commission has run this seminar. Over the years we have received feedback that in Investment we are too funds focussed in our presentation. Running through our speaking notes for today it occurred to me that it has not

been necessary to make sure that we have the balance this year as the distinction between the funds industry and the asset managers/investment managers is becoming ever more blurred. Many of the topics we will speak to today touch on both sectors. For example MiFID II crosses over into both sectors and innovative proposals could be structured as funds or as we have seen are more often as not non fund structures. I hope you will agree but if you do not I am sure that despite there being no official feedback forms this year you will still let us know. And we would welcome it, after all feedback is a gift!

Moving to my first topic,

International

and to kick off with,

AIFMD

What is the current position?

Since its implementation in July 2013 Guernsey has been operating under the national private placement regimes largely without significant difficulty. The Commission has provided attestations to EU competent authorities aiming to ensure the applications by Guernsey funds progress as smoothly as possible.

We have continued to have dialogue with our EU counterparts seeking to influence their view of Guernsey funds. To that end you may have seen from our website that in September we were able to reach agreement with the competent authority of the Netherlands, the AMF, for them to accept an overarching statement from the Commission for applications, meaning individual attestations would no longer be required. The AMF still requires confirmation that Guernsey AIFMs are appropriately licensed by the Commission but the AMF has confirmed that a screen print from our website would satisfy this requirement.

In addition we have consulted on the guidance for depositaries under article 36 and the guidance together with a feedback statement was published on our website on 17 November 2014.

Next Steps:

However, for AIFMD the Next Steps are more important than the current position the main one being passporting.

ESMA is now reviewing the AIFM national private placement and passport regime. ESMA is required to issue its report including advice on whether the passporting regime should be extended to third countries to the European Commission by July 2015.

Some commentators are suggesting that ESMA might decide to defer issuing any advice or request an extended timeframe to its deadline for reporting by July 2015. ESMA however, in our discussions have indicated they are confident in completing their report on time.

Indeed ESMA issued on 7 November 2014 a “Call for Evidence” paper to gather input on the key issues that will determine the orientation of ESMA’s opinion. We will be responding however, it will form part of a wider response to a direct request from ESMA for the Commission to provide information on our experience to date on the National Private

Placement Regime and specific approaches adopted by EU Member States, together with a description and explanation of how the fund management model operates in the Bailiwick.

The Call for Evidence paper is aimed at non-EU fund managers and advisors, and their representatives, thus encompassing all relevant parties in the fund sector and we would encourage as many of you to respond as possible, to ensure that our perspective is heard. The deadline for responses is 8 January 2015. If you have got any questions about the Call for Evidence please do contact me or Nick Herquin.

MiFID II

Having covered AIFMD I will now turn to MiFID II.

And what is the current position there?

Which brings me back to my earlier question of where is Louise today? Louise is actually in Brussels attending a meeting arranged by CIBO at the EU Commission. The main purpose of the meeting is to discuss a bifurcated regime in respect of equivalence under MiFID II.

It is the view of the working group on MiFID II that a form of bifurcation would be the jurisdiction's preferred response to equivalence under MiFID II. CIBO have stated that the EU Commission is unlikely to accept partial implementation but may be receptive to a rule book with MiFID compliant chapters.

This proposal for a bifurcated regime together with a wider overview was proposed to industry at a town hall we held on MiFID II in September which many of you will have attended. Whilst Louise and the Investment Division are coordinating the jurisdiction's response to MiFID II it reaches wider than the investment world. I am hoping therefore in the audience today will also be representatives from the Fiduciary sector (again hence the reason for the running order) or at the very least even if you are not responsible for fiduciary activities in your organisation I would ask that you encourage your colleagues to watch this seminar once it is available on our website, together with referring to the overview of MiFID II and the FAQs on our website.

Apologies to those of you who attended the town hall as you will have seen the next couple of slides before. I am conscious that both slides are quite busy but even if you cannot take in all of the detail now they are very useful "take aways". They will be available on our website in the not too distant future or indeed those planning to attend Louise's forthcoming lunchtime presentation at the CISI on 16 December will I am sure have another opportunity to view them. Essentially they are a timeline for MiFID II. In 2014 we are now at the top of the slide in the box "November 2014" with the red text. All of the left hand side of the slide has already happened. The red text symbolises the work that is happening domestically with the revision of laws which Mark will touch on later, but picking up the overall theme this is a great example of international and interconnectedness in practice. We have to ensure as far as possible that our domestic changes are future proofed to allow us flexibility around MiFID II. The bottom right hand box refers to the ESMA public consultation to be published on the regulatory technical standards, and implementing standards, and we will keep you alerted to its publication. The timeframe moves on through 2015, 2016 to finally January 2017 when MiFID II will apply.

What next steps are we taking within that timeframe?

Well I have just referred to the consultation paper from ESMA and we will be reviewing that once published but in the meantime as well as the meeting Louise is attending today Louise met, together with colleagues from Jersey, with officials from ESMA on 8 October 2014.

This meeting covered a number of topics including a discussion on MiFID II with the islands advising that they were especially interested in third country equivalence. It was noted that the islands need to do further work on explaining the business model, i.e. that they can assist Europe in its capital raising objective, in particular in raising funds from outside Europe for investment into Europe and this is something that my team has already started to work on.

We are taking every opportunity to interact with counterparts in EU Authorities to discuss implementation of MiFID II.

Louise and I are due to meet with Stephen Hanks of the Markets Division at the FCA early next year to discuss MiFID II implementation the FCA's position on the significant issue of branches for retail investors.

Our aim with all this interaction is to get noticed without making a nuisance of ourselves, to proffer ourselves as friendly cooperative geographical neighbours.

Work on MiFID II will not be done in isolation and we will continue to have interaction with Government and Industry through the means of the working party.

Why is my team devoting so much time and resource to MiFID II and AIFMD – well in short market access? Far from being business prevention officers we are in fact endeavouring to ensure that the EU market (and yes that includes the UK) remains as open as possible for Guernsey Funds and financial service providers. Whilst we do not have a definitive figure a good estimate is between 60-80% of our business relies on the EU. This is why it is essential that we take the measures needed to ensure we retain our market access.

But we must also remember both AIFMD and MiFID II provide opportunities and we should explore all of these, as well as seeking to address the challenges.

The next topic is

International and Interconnected

IOSCO Committee 4

When Louise is not in Paris or Brussels talking to ESMA or the EU about MiFID II or AIFMD, she is more often than not attending IOSCO Standing Committee 4 on Enforcement and the Exchange of Information. Standing Committee 4 considers and reflects upon what is probably the most significant piece of international cooperation work that IOSCO undertakes. Experiences of enforcement cases are shared and improvements to the mechanisms for the exchange of information discussed. Earlier this year we were also invited to sit on the MMoU Screening Group. The MMoU Screening Group does essentially what is says on the tin, and screens the applications from those jurisdictions which are not yet signatories to the IOSCO MMoU.

The MMoU represents a common understanding among its signatories of how they should consult, cooperate, and exchange information for the purpose of regulatory enforcement regarding securities markets. Given her experience in obtaining the Commission's own signature to the MMoU and her wider international experience Louise was the obvious choice to represent us.

Both SC4 and the Screening group are Chaired by the FCA making it a good opportunity to further build our relationship with them as well as the 26 other regulators which make up the Screening Group.

But why is it important for us to be involved and what value as a smaller jurisdiction do we bring to such committees - can we really influence matters?

Well, the main advantage we have is we are not only high level policy people we are still close enough to the ground. As well as being involved in policy Louise is still a supervisor, and whilst she does not actually perform site visits (though we can never rule anything out when it comes to flexing our resource) she does review the site visit reports prepared by others in our team. We add value therefore by being able to comment on practical application of policy decisions.

The other advantage is, as William stated yesterday, if we contribute we are more likely to be listened to and from the list of the jurisdictions involved in the screening group and standing committee 4 you can probably identify a few with whom a better dialogue can only be a positive thing. It is an opportunity to inform, engage with and hopefully educate our neighbours in the EU, and counterparts globally, about our financial services business, who we are and what we do. Ultimately trying to dispel misconceptions about our jurisdiction.

IOSCO Annual Meeting.

The IOSCO Annual Meeting provides for another opportunity for international interconnectedness. I attended the IOSCO Annual Meeting in late September held this year in Rio. I know what you're thinking Rio, hard life and all that, but as many of you will know from your own experience business travel is never as glamorous as it may sound. This photo was actually the view from my hotel room window, (apologies it is a bit hard to make out, despite our shared surname David Bailey is definitely no relation, but that pink blob is actually an umbrella not my finger in front of the lens). I thought at least I might get a nice view in the morning before I had to disappear into a windowless, air conditioned basement dungeon of a corporate hotel but sadly no.

The IOSCO Annual Meeting is worthwhile for many of the same reasons as I outlined for the SC4 and screening group. The being seen, networking, talking to counterparts in meetings but also in the margins and continuing to explain the financial services we provide in the jurisdiction.

Often others help us with promoting our image for example at this year's Annual Meeting Mary Jo White, Chair of the United States Securities Exchange Commission, publically thanked Guernsey amongst a handful of other jurisdictions for its assistance in an enforcement case it had successfully brought against a brokerage firm. This slide shows an extract from the SEC's press release on that case and then even more recently another press release was issued in which we were thanked again for the assistance we provided in the case against Nikolai Battoo. Whilst it is the Commission that is specifically being thanked (largely due to the

efforts of Kevin Bown), it is actually a jurisdictional response in these cases. The Commission is able to assist other jurisdictions on these cases as a result of the good work our licensees undertake.

The remainder of this slide covers other events we attend; IOSCO European Regional Committee Meetings, the Enlarged Contact Group of collective investment scheme supervisors and seminars, none of which I intend to cover in detail here. Just to reiterate though the networking opportunities at these events are vital (not because we are looking for opportunities to develop our careers in warmer climes) but because it can bring about positive changes for us as a jurisdiction. The case of the new arrangements around the attestation with the Netherlands AMF which I mentioned earlier was made possible as a result of the networking Nick Herquin did at the Enlarged Contact Group in 2013 and at his suggestion was followed up by Louise at the same conference in 2014 resulting in the agreement we now have.

And on that note before I hand over to Mark to talk about being interconnected in the domestic sense, I would just like to take this opportunity to thank my team for their support and hard work over the past few months and also for their commitment to the Commission and indeed Guernsey.

I'll now hand over to Mark who will describe what else is occupying us, from a domestic angle. Thank you.