

**Industry Seminar – 18 November 2015**

**Investment Supervision and Policy Division Presentation**

**Louise Bougourd, Deputy Director**

Thank you Emma. It's now for to me to discuss our international policy.

**Slide: International**

I thought I would start with a quote that describes the international activities of the division throughout 2015:

“I live my life in widening circles that reach out across the world” poet Rainer Maria Rilke.

AIFMD – ESMA issued its advice on the Extension of AIFMD Passport to non-EU AIFMs and AIFs on 30 July 2015. The Advice relates to the possible extension of the passport, currently only available to EU entities, to non-EU AIFMs and AIFs which are currently subject to EU NPPRs. ESMA conducted a country-by-country assessment, as this allowed it flexibility to take into account the different circumstances of each non-EU jurisdiction regarding the regulatory issues to be considered i.e. investor protection, competition, potential market disruption and the monitoring of systemic risk.

ESMA assessed six jurisdictions – Guernsey, Hong Kong, Jersey, Singapore, Switzerland and the United States of America (USA) – who were selected based on a number of factors including the amount of activity already being carried out by entities from these countries under the NPPRs, EU national authorities' knowledge and experience of dealing with their counterparts and the efforts by stakeholders from these countries to engage with ESMA's process.

The Advice concludes that no obstacles exist to the extension of the passport to Guernsey and Jersey, while Switzerland will remove any remaining obstacles with the enactment of pending legislation. No definitive view has been reached on the other three jurisdictions due to concerns related to competition, regulatory issues and a lack of sufficient evidence to properly assess the relevant criteria.

So how did we achieve this positive outcome? By a major effort made by the jurisdiction but not just Commission staff. By, for example, responding to ESMA's Call for evidence and pounding the streets of Paris and Brussels, together with colleagues from Government and CIBO, talking to ESMA and the EU Commission about passporting.

**Next Steps**

The Advice and Opinion have been sent to the Commission, Parliament and Council for their consideration on whether to activate the relevant provision in the AIFMD extending the passport through a Delegated Act.

However, the institutions may wish to consider waiting until ESMA has delivered positive advice on a sufficient number of non-EU countries, before introducing the passport in order to avoid

any adverse market impact that a decision to extend the passport to only a few non-EU countries might have.

On 13 October the European Parliament's ECON committee had a scrutiny meeting with Steven Maijor, chair of ESMA and Sven Gentner, head of unit C4 in DG FISMA as well as the EP team of rapporteurs. It provided the greatest clarity to date on the development of a delegated act on the extension of the AIFMD passport to third countries.

In summary:

- The Commission has given ESMA until March 2016 to complete the assessment of Hong Kong, Singapore and the US and also assess a 2nd wave of third countries (Japan, Canada, Australia, Isle of Man, the Cayman Islands and Bermuda).
- A 2nd opinion on the functioning of the (inter EU) passport will be conducted in the 2nd half of 2016.
- Wider criteria such as fiscal, AML and CFT will be taken into consideration by the Commission.
- The end of NPPR three years after the issuing of the passport will not be automatic.

And of course, our AIFMD regimes are in place and being enforced demonstrating the substance to our regime.

MIFID II – “it's not a who darling it's a what”. My eldest daughter, Charlotte, asked me recently who MiFID was as when we are in Waitrose or in the High Street at the weekend, I'm stopped to ask how MiFID is going. So here goes:

2015 has seen some clarity but some uncertainty remains and MiFID II remains a moving target. 2015 has seen a number of public consultations coming out from ESMA and HMT consulted in first half of the year. We acknowledge the pressure of ESMA's workload, which has resulted in a number of delays to level 2 and level 3 – draft technical standards, implementing measures and delegated acts. The most significant of these was a delay of three months to the final submission of regulatory technical standards to the European Commission, resulting in the publication in September 2015 rather than July.

### **Slide: MiFID II Implementation Timetable**

In terms of timing, 3 January 2017 is written in the legislation and is when the obligation takes effect in the EU, which means that national law/rules have to be in place by July 2016. The delays in finalising level 2 and 3 could result in the endorsement by the EU Commission and scrutiny by Parliament being finalised as late as first quarter 2016. Steven Maijor, Chairman of ESMA, in his speech to ECON last week talked about the implementation challenges in the run-up to the implementation date of MiFID II. He didn't intend to surprise anybody in the room when he said that the timing for stakeholders and regulators alike to implement the rules and build the necessary IT systems is extremely tight. Steven Maijor has formally written to European Commission setting out the reasons for such a delay. As of yesterday, it is available on ESMA's website.

So as we remain on tenterhooks, the timing of an announcement from the European Commission will be key. If the delay were to be granted in mid-2016 this would be too late for most. Until the European Commission officially announce a delay and details of what is delayed, we should continue to work towards the 3 January 2017 implementation date. So the target keeps moving.

Uncertainty has to what the third country equivalency process looks like and when such assessments will commence remain. Though the pain of MiFID implementation may be delayed, it still cannot be denied.

We continue to work closely with our counterparts in Jersey and have been aligning our responses to ensure an appropriate response to the challenge of MiFID II to maintain competitiveness of both islands.

Our engagement goes beyond Europe, so when in the neighbourhood, we have discussed MiFID II with SFC Hong Kong and ASIC in Australia.

The Revisions of Law work stream and our response to MiFID II are interconnected and due to the uncertainty of timings, we have adopted a flexible approach. We anticipate that any changes required to our regime can be achieved at the rule level rather than primary legislation but have anticipated any primary legislative changes in our Revision of Laws consultations.

### Next steps

We are aware that the FCA intend to consult in December of this year and early next 2016, and we will look with interest at the changes they propose to make to their regime. We will continue to engage with FCA, HMT and ESMA.

Any substantial updates will be tweeted by the Commission so I urge you to subscribe.

But don't worry you'll be hearing from me and other colleagues again as we will be holding further presentations to highlight proposed changes to our regime.

### Slide: International

I sit on both Screening Group for MMoU and Committee 4 on Enforcement and the Exchange of information

Committee 4 Enforcement and the Exchange of information -Credible Deterrence.

In June of this year IOSCO published its report on Credible Deterrence, which identifies key enforcement factors that may deter misconduct in international securities and investment markets.

The report draws on the collective experience and expertise of IOSCO members and was produced by IOSCO's Committee 4. It identifies the key elements in the prevention of misconduct and financial crime from a range of international regulatory authorities and encourages regulators to consider how they might integrate credible deterrence into new or existing enforcement strategies.

Credible Deterrence should be a key component of any effective enforcement strategy. Deterrence is credible when would-be wrongdoers perceive that the risks of engaging in misconduct outweigh the rewards and when non-compliant attitudes and behaviors are discouraged. I'm sure Simon Gaudion would agree.

The report includes real examples of effective approaches to achieve deterrence, including timeliness of enforcement intervention, individual accountability and robust sanctions and is available on IOSCO's website.

So what next for Committee 4:

We are considering a number of new mandates including:

Mutual Recognition of Securities Regulators' decisions – exploring the capacity for mutual recognition of regulatory decisions.

Guidance on compelled testimony – considering the practical benefits of better understanding the ability of regulators to compel testimony in response to a request for assistance for an overseas regulator.

I also sit on Screening Group responsible for the screening of applications to sign the IOSCO Multilateral Memorandum of Understanding. Resulted in 2 jurisdictions being able to sign at 2015 Annual IOSCO conference.

Enhanced MMoU: has been the main focus of Screening Group in addition to the consideration of applications to sign the MMoU.

The current IOSCO MMOU, to which some 105 jurisdictions are now signatories, was established in 2002 to create an international benchmark for cross- border cooperation between securities regulators on the investigation and deterrence of financial misconduct and fraud that can weaken global markets and undermine investor confidence.

The MMOU is the centre piece for IOSCO's effectiveness and it has been the experience of the signatory jurisdictions in meeting the challenges of globalisation and rapid advances in technology that has identified the need to 'lift the bar' and implement an enhanced MMOU that encourages securities regulators to adopt a broader and more 'future proof' range of powers to support international enforcement cooperation and assistance.

In the intervening 13 years, there has been significant change in the complexity, sophistication and size of global financial markets and in the technology that both facilitates and potentially disrupts them. There has also been significant change in regulatory structures, legislation and tools to combat misconduct. So it's now time for an enhanced MMOU to ensure that international co-operation at a high level is maintained and as the name suggests enhanced.

So I suppose the question that you may be asking is why do we bother with IOSCO? By participating in, and contributing to various bodies, including IOSCO, that cover the financial services regulatory landscape, our aim is punch above our weight, thereby ensuring that we protect and enhance the Bailiwick's reputation and influence, resulting in being seen as a credible international jurisdiction. I cannot underestimate the networking opportunities, thereby giving us the leverage to get in front of policy people. Ultimately it shows us as a good neighbour.

**Slide: Before handing over to Mark**

We would like to share a photo of our international travel ...

Unfortunately William vetoed our suggestion to emulate the Australian Regulator's coffee break entertainment...

Thank you.