Guernsey Financial Services Commission

Industry Seminar – 20 October 2011

Corporate Governance Cross-Divisional Presentation

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Thank you Neville. Good morning everybody and welcome to the part of today's seminar which is covering Corporate Governance and as you would probably expect in particular the Code of Corporate Governance.

I would like to begin by asking you to cast your minds back to 19 January 2010, as you may recall this was the day that Code of Corporate Governance was released for public consultation, for the first time. In actual fact the process began earlier than that in October 2009 when the Commission representatives first met with Carol Goodwin and her practitioner working party. Now let's fast forward to 30 September 2011 being the date that I am pleased to say the Code was released with an effective date of 1 January 2012. October 2009 to 30 September 2011 that's practically two years to the day. Two years of successful collaborative hard work between the industry, the practitioner working party and the Commission.

So what happened in that time? Well to paraphrase the Director General in his letter of 30 September accompanying the issued Code, the Code has been on a "Journey" and whilst now perhaps considered an overused term favoured by contestants on reality TV shows, in this context Nik is right, the Code has indeed been on a journey. I do not intend to rake over the history of the Code but it is worth reflecting on the fact that the Code was issued twice for Industry wide consultation and in between those the consultations the Commission asked the relevant industry associations to consider a revised version of the Code. Why did the Code go through these iterations? Well as I alluded to earlier mainly as a result of your hard work, and the high level of feedback that we received to the first public consultation. The response was probably the most significant that the Commission has received to any consultation that is has ever run, so much so that it is now used internally at the Commission as the benchmark against which any future consultation responses are measured (and it has not been beaten yet). I along with my colleagues would therefore like to take this opportunity to thank all of you who took the time and trouble to participate and make the consultation as worthwhile as it was. As Carol Goodwin was quoted as saying in her recent interview with the Guernsey Press "It has been, arguably, the most collaborative consultation process the GFSC has ever undertaken".

In hindsight it should not have been surprising that there was such a high level of response to the Code. In my view this is a reflection of the recognition of the importance of the subject and the importance you place on it. Whilst preparing for this presentation I wondered to myself how on earth would I be able to impart any passion into a subject from which, quite frankly after two years I was starting to suffer project fatigue, but I reminded myself of the your initial reaction and the heartfelt passion that you relayed through your responses. Now you might think that I've been at the sherry a little early this morning by referring to it as passion. But if as we say Corporate Governance is all about behaviour, then surely passion is a key behaviour and therefore one of the driving forces behind good Corporate Governance. I think we would all agree that regardless of our standpoints over the first Consultation it did provoke a response and got everyone talking about Corporate Governance in Guernsey.

The publication of the Code is not however, the end of the story. Which brings us back to the purpose of today's presentation namely; what happens now the Code has been published? what are the next steps?

We are not intending to go through the Code principle by principle but instead we will focus on what we consider to be more important, and more helpful to you.

In a moment, I will talk about Appendix 1 to the Code and how this evolved.

Fiona will then explain how we are proposing to monitor the application of the Code consistently across the Commission.

We will then continue with David, who by way of an example scenario will describe how the code will be enforced.

Finally Audrey will cover our expectations for the development of the Code.

Through our discussion of these topics I hope we will convey the following:

1. The Code is a living document;
2. The nature, scale and complexity (a phrase you will be hearing more than once today) of a licensee's business will influence their application of the Code; and
3. There will be no change in the Commission's approach and that approach will be consistent as far as is possible.

The Code is a living document and will evolve. Corporate Governance itself, the way in which companies govern themselves is not a static beast, methods and approaches change and Corporate Governance behaviours will inevitably evolve too. In much the same way, it is only correct that we at the Commission and you the Industry should be open to the Code evolving. The Code has already evolved through the consultation process. Key to this was the assistance we had from the industry bodies and the practitioner working party in refining the Code. We hope that the Industry bodies and any other respondents to both the original and the later April 2011 consultation feel that we have listened to their view points. Arguably the clearest demonstration of us having done so is the reduction of the Code in length from 23 to 15 pages (6 pages if you do not count the introduction and appendices). Another change following feedback from consultation was the removal of the requirement for the assurance statement to appear in the Director's report in the financial statements. The assurance statements will now form part of routine notifications between the entities and the Commission.

The Code consists of Principles and Guidance, and as the introduction to the Code states it is not intended to be prescriptive, each business's approach to corporate governance should reflect its legal and operating structure, as well as the nature, scale and complexity of the business. It is not suggested that one size fits all. We recognise that differing nature scale and complexity of businesses will lead to different approaches to meeting the Code. One difference in particular led to the inclusion of Appendix 1 to the Code which I will come to shortly.

Before doing so I will expand on the third point of No change in approach and consistency as far as is possible in approach. The Commission has been consistent in its approach to the drafting of the Code. This consistency will continue through the Code's implementation and in our approach to assessment of compliance with the Code. Each division was represented on the Commission's working party. We discussed between us every consultation response, agreeing and disagreeing amongst ourselves as to the merit of each response. Those of us that you see on the panel in front of you here have not just been working together for the purpose of today's presentation but we have been and will continue to work on the co-ordination of the implementation of the Code across the Commission to ensure consistency as far as is possible. So whilst you may hear from each of us on different aspects of the Code please try not to associate what we say individually with the particular division that we represent but take our comments in the whole as they will apply across the industry and not just to one sector. The Code is a Commission wide code which impacts on all sectors of the finance industry.

So to Appendix 1; Appendix 1 was introduced as an extension to the nature, scale and complexity approach ingrained in the Code but specifically in relation to certain entities operating in the fund sector. For many of you Appendix 1 may not be directly relevant however, it does provide a real example of how my mantra of "nature, scale and complexity" will work in practice which you may be able to transfer over into other sectors. The Commission's approach in applying the Code would always have been to acknowledge that Principal Managers, Closed Ended Managers and Collective Investment Schemes are different in nature, scale and complexity to other entities in the Finance Sector however, Appendix 1 does provide some clarity. By way of an example; whilst responsibility and four eyes remains firmly with the Boards of principal managers it is unlikely that these entities would have senior management or senior executives of their own and they delegate significant functions to third party service providers, namely fund administrators. So there are sections of the Code referring to senior management which may not be relevant.

As well as appendix 1 it is also important not to forget that certain entities may be deemed to meet the Code if they report against the UK Corporate Governance Code or the Association of Investment Companies Code of Corporate Governance.

My time is nearly up and I was going to finish by reiterating some of my points one final time in order to encourage us to build on the collaboration to ensure a successful implementation of the Code. However, I think I've mentioned them enough and so I will end on a slightly different tack but still on the theme of Corporate Governance.

Coincidentally on the same day that Carol Goodwin's interview was published in the Guernsey Press, Lucy Kellaway wrote in the Financial Times about SOBs - are you a SOB? As I am in polite company I cannot actually say what the S of SOB stands for but it is a four letter word for which I will substitute "So and So" in its stead. <u>S</u>o and Sos <u>O</u>n <u>B</u>oards, SOBs.

Kellaway describes SOBs as being positive additions to boards in a number of ways, they stir things up and prevent boards from becoming too cosy, she also describes them as being difficult, dislikeable and potentially plain nasty but they should not be confused with EGOs. The EGO has no place on any board as he is only interested in himself she writes. A SOB is quite different, they couldn't care less what others think of him and so are low maintenance whereas an ego demands endless admiration and attention.

I did not agree with all of Kellaway's article but I do agree that those EGOs should definitely be left at the board room door, and if you are having trouble identifying the SOB on you board then that may mean it is you.

I will now hand over to Fiona to comment in more detail as to our approach to monitoring the application of the Code.

Thank you.