

## **Industry Seminar – 20 October 2011**

### **Corporate Governance Cross-Divisional Presentation**

#### **Fiona Crocker – Deputy Director, Fiduciary Services Division**

Thank you Emma. Good morning and welcome to what must be one of the largest board meetings of Guernsey plc.

We are just over 2 months away from the Finance Sector Code of Corporate Governance coming into effect. So does a new code and a new year spell a new approach from us to assessing Corporate Governance? The short answer to this is no. Tempting as it is to take that as my cue to sit back down again I want to instead explain the reasons why we are taking this approach, why so many of you will see little change to how we already assess corporate governance and how we will be using the Code.

I will cover how we will consider corporate governance issues within our routine monitoring and on onsite visits and what a licensee can expect when things go wrong.

Richard Walker, the Director of Policy and International Affairs, wrote to all FSBs in April this year setting out that those in the fiduciary, insurance and investment sectors would see little change in our approach to assessing corporate governance. This remains the case and the 3 Divisions will continue to look at corporate governance as they always have done, principally through the review of board minutes.

For banks – although a different process – the message remains the same – the Division will continue with the methods it currently employs to assess corporate governance – namely through review of annual returns made under section 36C of the Banking Supervision Law and through review of banks' ICAAPs.

To put it simply because we are already considering corporate governance standards you will not see any change from next year in how we will routinely assess corporate governance

Why are we taking this approach? After all it is frequently reported that corporate governance failings were central to events triggering the economic crisis and at a Bailiwick level evident in a number of situations we have dealt with. The introductory section of the code even states this.

Firstly the code is not mandatory. The introduction expresses that it is not intended to be prescriptive but a framework for FSBs to draw upon when developing their own approach to governance. The principles are expressed in terms of what should be done rather than what must be done. The Code recognises the differing nature, scale and complexity of the finance sector – a term which is frequently used to reflect that some finer points of the code will not

apply in certain cases. In addition it will not apply to some FSBs in the fund and insurance sectors which are subject to other codes.

We have also seen that most of you already subscribe to the Code's principles and where corporate governance might have been poor, the very visible and vocal development of a corporate governance code for the Bailiwick over the last couple of years has helped get the message through that for some standards needed raising.

The decision to take this approach is also based upon our experience from reviewing licensees' corporate governance under the existing regulatory requirements in this area. The mandatory and enforceable regime set out under the Criminal Justice Proceeds of Crime Regulations required licensees to think about corporate governance in a way that the 2004 guidance on corporate governance did not. Those Proceeds of Crime Regulations are very prescriptive – i.e. the board must establish effective policies, procedures and controls, must review compliance with requirements of the regulations, must discuss those reviews and minute that discussion. We found that when licensees were told that they were breaching Regulation 15 - most took it upon themselves to look more widely than the scope of the AML/CFT regime requires them to review their corporate governance structure and how they ran their business as a whole.

Therefore we feel that there is no need to add to how we already assess your corporate governance. Now the code does introduce one new aspect – a requirement to file an annual assurance statement from FSBs confirming that their directors have considered the effectiveness of their corporate governance practices and are satisfied with their degree of compliance with the code's principles or the alternative codes if those apply.

These assurance statements will fall under our routine monitoring. The Commission will be liaising with industry groups on how these can be made for each sector and it is the intention to have this in place for 2012. It is likely that current annual returns to the Commission will be expanded to cover this starting from next year. As most returns will be made between April to July for the 2012 returns only the assurance to be given will only relate to the period between 1 January and the date of the return for 2012.

This assurance statement is based upon the self-certification tools already used across the Commission – for example the annual return from fiduciaries requires certification that the licensee has operated in accordance with the relevant legislation. In the Commission's experience such self-certification methods work well because they focus the minds of those signing those undertakings on the FSB's compliance record. I would add that there have been occasions when we have questioned declarations that have been made because of subsequent adverse events coming to light. Should circumstances require it we will refer back to assurances a board has given.

So what if the assurance statement highlights significant non-compliance with the Code? No sanction or penalty applies to non-compliance with the code alone and there is flexibility in the Code but we cannot ignore an assurance statement which indicates that corporate governance is poor. FSBs in that position will find themselves subject to heightened scrutiny from us.

The assurance statement will be a new aspect in our routine monitoring. Within our onsite programmes, with the exception of Banking, we will continue to assess corporate

governance standards principally through reviews of board minutes and board packs. Bearing in mind size, nature and complexity of the business of that licensee we are looking for evidence of regular full board meetings – generally quarterly – with the directors attending a majority of meetings in person or remotely. We look at what meetings cover to establish that the board do know what is going on – eg financial position, new business developments, operational issues, breaches, complaints, staffing, training and level of compliance with the regulatory regimes under which they operate. The introduction of the code refers to the preparation of a self assessment and we will also look to your minutes to establish if that was done and whether going forward the Board is periodically assessing adherence to the Code – not least to see how an FSB signed off the annual assurance statement.

Clearly what will change is where significant and or endemic regulatory breaches are identified our scrutiny of an FSB’s compliance with the Code will intensify as we try to find out what went wrong. The code does not supplant any obligation that exists under any of the regulatory laws or regulations which licensees operate under. So for example if the problems relate to a significant breach or breaches of the Proceeds of Crime regulations, sanctions may apply.

We have to take into account a licensee’s record of compliance with the minimum licensing criteria in the regulatory laws which includes a licensee’s record of compliance with codes and guidance we issue, so if it is established that the breach was partly or wholly due to a failing to comply with the corporate governance code that would be an aggravating feature which will affect the level of sanction sought. This is because the code provides a measure for corporate governance which we will use when breaches and problems emerge.

Part of the agenda of the meeting here today is about how we will use the code. I have set out how we will assess corporate governance and use the code to establish whether corporate governance has been poor only where there are adverse circumstances. We believe that if the code is effectively applied there will be less need for enforcement. We hope you will put the code on your agendas and use it as a guide.

I will now pass you to David who is covering enforcement of the code. Thank you.