



Guernsey Financial
Services Commission

Industry Seminar – 20 October 2011

Enforcement Presentation

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1. Introduction

The last 12 month period has proven to be a very busy one for the Commission in relation to enforcement and enforcement-related projects. Today, I would like to briefly outline for you the status of some of those projects and their outcomes:

1. The Commission's Enforcement Policy & Decision-making procedures
2. Consolidation of Legislation
3. Revision and Update of the Personal Questionnaire Form (Form PQ), Personal Declaration Form (Form PD) and Guidance Notes
4. Enforcement Statistics for 2010; and
5. Notable Observations in 2011

2. Enforcement Policy and Decision-Making Procedures

Last year I outlined for you the broad principles behind the Commission's approach towards enforcement and the work being undertaken to make its enforcement policies and procedures more transparent, consistent and effective. Following on from then the Commission created a new webpage on its website devoted to enforcement matters. The Commission published its Enforcement Policy on this webpage, along with a detailed summary of its sanction and other enforcement related powers under the regulatory Laws. The Commission has reviewed and revised its enforcement decision-making procedures and processes. I am pleased to inform you that a copy of these procedures will be published on the Commission's enforcement webpage before the end of 2011.

3. Consolidation of Legislation

The Commission is currently undertaking a review of the legislation which it is responsible for supervising, with a view to developing a single consolidated Law. This Law will incorporate and standardize, where possible and where appropriate, regulatory requirements across all of the regulated industries, including provisions relating to sanctions and other enforcement powers. This work will be continuing into 2012.

4. Revision of Form PQ, PD and Guidance Notes

One of the projects completed this year has been the review and revision of the Forms PQ and PD (collectively, "the New Forms"), along with the development of New

Guidance Notes. All three documents will supersede the existing Forms (the “Old Forms”) and Guidance Notes currently located on the Commission’s website.

These new documents will be posted on the Commission’s website later this month, for your information. Industry will be provided with a 2 month period in which to familiarize and prepare itself for the transition from the use of the Old Forms to the New Forms. This therefore means that the New Forms and Guidance Notes will come into effect the 3rd of January 2012.

At this point, I thought it might be helpful to provide you with information in answer to some of the questions we anticipate will be raised about these documents:

a) Why change these documents in the first place?

It was assessed by the Commission that greater clarity was required in order to ensure that the Forms were completed (a) when required, (b) in full and (c) that the risk of inadvertent non-disclosure, due to confusion or misunderstanding, was minimized.

b) Do the Forms require that new information be disclosed?

For the most part, the same information that was requested in the Old Forms is requested in the New Forms. However, there have been some changes.

For example, in the case of the question concerning past private residence the Commission has actually reduced the period of information required from 10 years to 5 years.

The Commission has also clarified the wording used in section 6 of the Old Form PQ by varying, so that it to now invites the individual to explain or provide any additional information which demonstrates their competency to fulfil the role. Specifically, the question now asks:

“With reference to the Guidance Notes, please provide any additional information about your areas of expertise and/or experience that demonstrates your competence to fulfil the position or role you will be or have assumed.”

So, for example, if an individual is or has been appointed as a director, based on their particular set of skills, or is being appointed in order to add to the overall balance of experience on a Board, then this should be explained. In the latter’s case, the skills of the individual should be identified how that balance is to be achieved.

If an individual has no previous experience in the role, an explanation must be given as to why they believe that they are suitable for the position and a description of any preparation or training they have undertaken in order to do so.

We see the revision of this question as a win-win for both the Commission and Industry. Providing this information will assist the Commission in being able to fully assess an individual, and reduce the risk of needing to revert back for further

information, and thus potentially leading to delays in the assessment process. This question also assists the regulated entity by ensuring that it also receives disclosure of any matters relevant to the individual's competence that may not be readily apparent from the individual's personnel file or existing CV.

Finally, the Declaration and Consent section of the Forms has been elaborated upon. This has been done to ensure that individuals clearly understand that in signing the New Forms (a) they are acknowledging that they understand the role and their responsibilities under the applicable Law and (b) that they also understand that they are consenting to the Commission making enquiries about information in the New Forms, both at the time of submission and on a continuing basis, in order to verify their ongoing competence, integrity, fitness and propriety.

c) Will there be a change in the Commission's approach towards how it reviews the New Forms?

Yes, to a certain extent. The Commission has taken on industry's comments in the past concerning the perceived delay experienced between when a Form is sent to the Commission and when the Commission responds, indicating its approval or "no objection" to an appointment.

Having canvassed the reasons for delay, the Commission found that a common denominator related to Forms being submitted with incomplete or inaccurate information. As a result, steps would then have to be undertaken to ascertain the missing information and then correspondence would need to be exchanged requesting confirmation of the same. This inevitably delayed the assessment process.

Going forward, the Commission will return those Forms that it determines are missing material information or contain material inaccuracies and require that they be remedied. Where a Form is returned, notice will be given by the Commission that it will not consider the regulatory notification requirements to have been satisfied. Where a 60 day "no objection" period is in place, the Commission will reserve the right to take the position that that period has not commenced to run due to the incomplete nature of the Form submitted.

The Commission will only deal with a single point of contact, reserving, as always, the right to deal directly with the individual who is the subject of the Form.

This means that the Commission will no longer chase after missing information from assistants or employees of the individual or their legal representatives, but will place the onus upon the identified contact person to take responsibility to follow-up on further requests for information made by the Commission and any required amendments to the Forms. Again, this change of approach has been adopted in order to reduce the risk of undue delay of the assessment process.

Finally, the Commission recognizes that some instances may arise that may delay the execution of a Form by the individual. Therefore, in certain circumstances, the Commission will accept a copy of a completed, but unsigned, New Form, with attachments, in advance of the original signed New Form. The prior agreement of the Commission to do so must be obtained beforehand.

d) Have you expanded the scope of positions for which a Form will need to be submitted?

No. What the Commission has done is included language in the New Guidance Notes to make it clear for what positions a Form must be completed. To further assist, the Commission has also prepared a decision-tree for those holding a “manager” position, to allow them to more readily determine whether they are required to complete the New Forms, in the first place.

e) Will individuals have to fill out a new Form PQ if they have already filled one out using the old Form PQ prior to 3 January 2012?

No. The requirement to use the New Forms will not be retroactive. Individuals will not need to transfer information from their old Forms already submitted onto the New Form PQ and resubmit it to the Commission. The process will be very simple and operate similarly to the current process, as follows:

- i. If any information disclosed in an Old Form changes after the 3rd of January 2012, a New Form PD must be completed.
- ii. If an individual is being or has been appointed to a position on or after the 3rd of January 2012, and has never completed an Old Form PQ before, then the New Form PQ must be completed.
- iii. The New Forms must be completed, if so requested the Commission, at any time after the 3rd of January 2012.

f) Will industry be consulted on the New Forms?

The New Forms and Guidance Notes were prepared taking into account feedback received over the last several years regarding the Old Forms and usefulness. Therefore, a period of consultation prior to their introduction is not planned at this time.

At the end of the day, the New Forms and Guidance Note are designed not only to assist the Commission, but to also assist regulated entities in their own assessment of the suitability of individuals for the positions in question. The New Forms should be viewed not as a necessary inconvenience in order to operate within the regulated sphere, but as a tool with which regulated entities should satisfy themselves of an individual’s competence, integrity, fitness and propriety.

5. Enforcement Statistics

In 2010:

- Conditions Imposed – 20
- Conditions Rescinded – 8
- Financial Penalties – 3
- Appointment of Inspectors – 2
- Prohibition Orders – 2
- Voluntary Undertakings – 1

- Public Statements – 1
- Licence revocation - 1

In furthering its commitment towards transparency the Commission plans to publish figures on enforcement action it has taken in its future annual reports.

6. Notable Observations in 2011

Last but not least, I thought I would share with you some of the observations made concerning actual and prospective enforcement cases seen by the Commission in 2011, thus far.

The Commission has seen some positive results from regulated entities who have pro-actively investigated areas of non-compliance well before being notified of a scheduled Commission on-site visit.

This has proven to be a significant mitigating factor, particularly where the regulated entity could demonstrate that it began remedial work prior to the visit notification and produced, in effect, a project plan or time line for completion, with deadlines that reflected the importance of expediently remediated the breaches identified.

The Commission has also seen areas where improvement is required. There have been a handful of cases where a regulated entity has identified problems with their regulatory systems and controls, properly escalated them to their Board, the Board has acknowledged the deficiencies and the need for remediation. And then..... the problem is never heard of ever again.

That is, until the Commission showed up and conducted its scheduled on-site visit. When we asked why no follow-up had taken place, everyone seemed to think that someone else was supposed to be doing this. This then generally evolved into a “let’s blame someone else” game – the Compliance Officer? The MLRO? The COO? The executive manager who recently quit – always a popular choice, or the consultant was engaged to scope the extent of the problem?

Regulated entities must ensure that once areas requiring improvement have been identified they are tracked and that someone is responsible for ensuring they are remediated in a timely manner. And that someone, at the end of the day, is the Board.

The Commission has, in some cases, seen excellent examples of Board oversight and awareness of regulatory systems and controls. I am afraid that long gone are the days when a Director can simply rely exclusively upon the assurances given by others that all is running smoothly and that no further enquires need be made. As Donald Rumsfeld once, said:

“The absence of evidence is not evidence of absence. Simply because you do not have evidence that something exists does not mean that you have evidence that it doesn't”.

The cases reviewed disclosed that there is a direct correlation between those regulated entities' with Directors who actively engage, question and challenge information reported to the Board and the reduced likelihood of systemic and ongoing failures of systems and controls designed to ensure regulatory compliance.

Thank you for your time this afternoon.