

## **Industry Seminar 20 October 2011**

### **Presentation to Fund Service Providers**

#### **Mark Le Page – Assistant Director, Investment Business Division**

##### **On-site Process**

You are all familiar with that sinking feeling of receiving a letter notifying you of our visit. What you will not be familiar with is that our approach after the conclusion of the visit has changed. This is the result of a period of reflection over the summer, where we considered ways of ensuring you receive our report on a timely basis.

With effect from September 3 2011 IBD has set in place clear timeframes within which the On-site team must operate (the Divisional Director has discretion on any of these times):

- There will be no closing meeting while the team is on-site;
- The closing meeting, led by the Assistant Director responsible for on-sites, will occur within 10 working days of leaving the visit, at a mutually convenient time;
- The team will send a minute of this meeting no later than 2 working days subsequently;
- You, the licensee, will have 10 working days to respond – this will be the only chance to influence the findings of the report; as always, the debate will be on matters of fact;
- IBD has a further 10 working days, maximum, to send the final report to you, the licensee.

##### **The Financial Services Commission (Site Visits) (Bailiwick of Guernsey) Ordinance, 2008**

Finally on on-sites, a few points about the Ordinance. The Investment Business Division conducts its visits under this Ordinance. We would expect most visits to be conducted under section 1, ie by agreement. If there is a very good reason why you would prefer us not to come in on a particular date, anything from holidays to paternity leave, please pick up the telephone to me and we can discuss it.

##### **CLASS B RULES**

- The draft consultation pack will go to Commissioners with a proposal for consultation in the fourth quarter, overrunning Christmas. Therefore the consultation process will be longer than six weeks. We have learnt that lesson after giving an extension to the consultation on the Capital Adequacy Rules!

- The working party consists of practitioners from the designated manager, custodian, and legal sectors; my thanks goes to the working party for the robust and constructive discussions;
- Subject to Commissioners' approval, the main headlines I can tell you today are:
  - Where the Class A Rules contain less onerous requirements, the Rules have been simplified to that level
    - eg Distributions of income; title to units;
  - The Rules have been changed to reflect current industry practice – ie the designated custodian rarely takes responsibility for the register (the exception being unit trusts); therefore the registrar will not have to be the designated custodian;
  - the Rules should not include certain matters which the principal documents cover more effectively;
  - The language of the Rules now reflect that open-ended collective investment schemes are not only unit trusts;
  - After many industry enquiries and comments over the last couple of years, the Commission has sought to distinguish between the responsibilities of the Principal Manager and Designated Manager – the latter being an administrator rather than an investment decision-maker;

An interesting debate within the working party surrounded whether a permissive Rule should be introduced to give the designated manager, with the approval of the designated custodian, absolute discretion to suspend a fund; I understand there is considerable concern about gates after the events of a couple of years ago. The Commission has not got the access to investor sentiment that you, the industry have. This is why consultation is so important. You, the practitioners, are the real experts. We think the document will work. But what do you think? This debate is likely to form part of the consultation paper that will be appended to the draft Class B Rules.

## **NON-Guernsey Schemes Rules**

- Joint effort between GIFA and the Commission and my thanks go to the GIFA representatives;
- Current proposal is to utilise a fast-track process of two working days, with similar warranties and certifications to the Form REG;
- There will be separate forms which will need to be fully completed, otherwise immediate return;
- There will also be Guidance on THE TYPES of custody requiring a licensee to obtain approval under the Non-Guernsey Schemes Rules;
- There will be NO other route – fast-track alone;
- All of this is also subject to Commissioners' approval.

Consultation is also likely to commence in Q4 with a longer than six week consultation – one of the major questions there will be whether a fast-track licence application regime will also be required.

## **CONDUCT OF BUSINESS RULES/RDR**

I would like to take the opportunity to update you on the work our Division has been undertaking in respect of the FSA's Retail Distribution Review ("RDR"). I know this will be unlikely to directly affect many in the room, so this serves as a matter of interest.

The Commission, both IBD and Insurance have been keeping an eye on the developments re the FSA's Retail Distribution Review, which is a key part of the FSA's consumer protection strategy.

We issued a questionnaire as a fact find only and the headlines of the **preliminary** results are as follows:

### **Introducing professional standards for investment licensees:**

Most individuals are appropriately qualified. A small number of respondents were concerned that the imposition of mandatory professional qualifications would have a negative impact on attracting new recruits and in the short term a shortage of appropriately qualified staff resulting in the need for UK advisers to be employed.

### **Independent and restricted advice**

The majority of respondents consider that they offer independent advice and the type of advice they offer is disclosed in their marketing literature.

### **Remuneration and restricted advice**

The majority of respondents considered that 5.2.3(a) of the Licensee Rules adequately safeguard customers from unsuitable adviser charging but it is recognised that charging structures could be more transparent and easier to understand.

### **Financial Resources Requirements**

Broadly respondents were content with the current requirements of Capital Adequacy Rules of minimum of £25,000 or 3x expenditure based requirement or lead division's requirement.

### **Platforms**

Number of respondents have highlighted issues with commission payments that platforms currently pay post RDR and the need for greater transparency of platform charges.

We will be working closely with industry and Commerce and Employment and in conjunction with our colleagues in our Insurance Division. A meeting has been scheduled for early November to discuss the findings of the questionnaire in more detail with a small working party consisting of interested licensees. Following that meeting we will meet with Commerce and Employment to consider the matter. Further meetings with Commerce and Employment and/or industry may be necessary. We will take the outcomes of those meetings to Commissioners in respect of any approach to be adopted.

If anyone would like to discuss further then the points of contact are Louise Bougourd and Dawn Sealey.

## **CONCLUSION**

I recall, during the consultation process on the Capital Adequacy Rules, one response stating that the effect would be an upping of their requirement from £300,000 to £6.3 million. This was clearly not the intention of the Rules, and we reworded accordingly. Please tell us your thoughts on the consultation processes. What have the working parties missed? You are the experts. What do you think?