

Industry Seminar – 23 November 2017

Financial Crime Supervision and Policy Division Presentation

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Good morning

What we have for you today feels more like an arts festival than a session with the supervisor as we have two local offerings of a book and a film to discuss.

Nick is covering the film, and I am taking the book – not the Guernsey Literary and Potato Peel Pie Society but the Handbook and I will be giving feedback on the reviews it had and give an update on its revision but I promise you there will be no book readings from me on business risk assessments or customer due diligence.

We had some encouraging feedback on the Handbook from the joint consultation with Policy & Resources on revisions to the Bailiwick's AML and CFT framework. I won't identify the authors but we had comments that the Handbook was easier to navigate, that the Handbook was more intuitively structured, and even that the Commission had done a great job on this.

We also had feedback from one significant industry body thanking the Commission for listening to a lot of points industry had been raising and trying genuinely to accommodate them.

I like to think that these reviews may find their way on to the front cover of the final published version – though we are still waiting to hear if the Handbook has made Richard and Judy's Book Club.

Slide: Reponses by Sector

We had 75 responses to the consultation which was encouraging after the steps we had taken to meet as many people as possible during the consultation period through seminars, drop-ins and trips to Alderney and Sark.

In all we spoke to upwards of 500 people during the consultation process, and as a result now have nearly 400 pages of feedback to pour over in response to revised elements of the regime which were proposed regarding additional customer due diligence, PEPs relationships, the new beneficial ownership definition, use of intermediary arrangements in the fund sector and financial crime compliance arrangements.

This slide shows the profile of the respondents which includes the industry associations as well as firms.

As much as I'd have loved the Handbook to be a popular read it does at least appear to have been widely viewed as the must read book this summer. We set out on this exercise with two aims to meet international standards and wanting the finance sector to remain competitive. Therefore we very much appreciate the detailed responses and the effort which went into them to give us the industry perspective.

Clearly we – as in P&R which sets the legislation and the Commission which issues the rules and guidance - have a lot to go through. The Commission will be issuing a detailed report on the feedback on the consultation but today I will give you a high level preview.

Broadly feedback fell into the following categories: PEP relationships, proposed ACDD measures, use of intermediary arrangements in the fund sector and financial crime compliance arrangements.

Slide: PEPs – We Asked...

The questions around PEPS drew most interest with 90% of respondents replying to questions on whether based on evidence of ML and TF risk there were circumstances where a risk based approach could be taken to relationships with former PEPs.

We received some good examples where based on the evidence that the money laundering risks were lower a risk based approach could be justified. In conjunction with P & R the Commission will be giving very careful consideration over whether there should be any changes to the current mandatory enhanced due diligence requirements that applies to all PEP which recognise that not all former PEPS present the same level of risk – in other words recognise what could be described as degrees of peppiness.

However there were two key issues to emerge from the feedback which relate to the recommendations made by both the IMF and Moneyval who were able to take a very close look at how we as an IFC operate when they carried out their evaluations in 2010 and 2014.

Slide: Additional Customer Due Diligence

Firstly additional customer due diligence. This comprises of a set of mandatory measures proposed to address the IMF and Moneyval recommendation that the types of customers to whom enhanced due diligence must be applied should be expanded. The concerns raised included that ACDD was counter to the risk based approach because it mandated the due diligence measures to apply to a wide range of customers and that it was creating an additional layer of due diligence to that of simplified, standard and enhanced.

The proposed measures were lifted from Jersey regime which addressed the exact same recommendation but before its Moneyval evaluation.

The feedback we had was well made and will be considered but realistically there is likely to be limited scope for movement.

This is because the types of customers to whom these additional measures should apply are identified by the FATF as potentially higher risk situations, and these types of customer form the bulk of Guernsey's client base. Furthermore it is unlikely that the international community will show much patience if for a third time we were found not have put measures in place commensurate with the experts recommendations.

However we are looking at whether we can re-cast the measures proposed as part of ECDD rather than as separate additional measures which present Guernsey as having a regime with 4 separate tiers of due diligence instead of 3. We will be reaching out to industry on this topic most likely through the industry associations towards the end of this year.

The second issue relates to use in the funds sector of the intermediary provisions which Moneyval recommended should not be allowed on collective investment schemes which have a very limited number of investors because underlying beneficial owners will not be known to the fund or the Guernsey fund administrator.

It a very sector specific issue and here we have been meeting with representatives of the fund sector to explore an alternative solution to address Moneyval's recommendation whereby the current measures in the existing Handbook are largely retained but with additional periodic reporting from the sector on its use of intermediary relationships.

Slide: Compliance Arrangements

The final area for me to cover is the new requirement in the FATF's revised standards that firms should appoint a compliance officer at manager level. In order to meet this new requirement the draft legislation and rules proposed that firms must appoint an "appropriately qualified" and sufficiently independent compliance officer with specific responsibilities for the firms AML and CFT policies, procedures and controls.

The feedback we had on this ranged from the creation of an artificial distinction between the CO and RO roles, that there would be a lot of extra work for firms and for the Commission on creating this new Notifiable Position, to questions on what appropriately qualified means and concerns, understandably from very small firms about how they could ensure sufficient independence of the compliance officer from other duties and responsibilities they might have.

I hope I can put to rest any concern that this new post means more spending on compliance. It does not as that decision rests with a firm to determine based upon the type and volume of business it has and risks it faces.

The compliance officer role could be held by your reporting officer, or the position could be held by the individual who is the compliance officer responsible for compliance with one of the regulatory laws such as the Protection of Investors law, or by another sufficiently senior and knowledgeable individual – it will be up to you to decide and to tell us.

We will consider what further guidance we can give around our expectations on the independence of the individual who will hold compliance officer position and elaborate further on what appropriately qualified means, as well as reconsidering the financial crime titles that were proposed for both the compliance officer and reporting officer.

As this requirement for an AML/CFT compliance officer is clearly in the Standards and is a measure which both Jersey and the UK have taken up there is little if any give here.

I have made a couple of references to an evident lack of flexibility we have on applying measures which the standards require which is for a couple of reasons. The FATF expectations are very granular and contained within its recommendations, interpretative notes and a very detailed methodology that applies to assessing compliance against the recommendations

Secondly throughout this exercise we have sought and continue to seek to ensure that revised measure are pitched at the international standards to put Guernsey on a par with its competitors and not above them. There is therefore little gold plated trimmings to cut back on. We have and continue to study FATF evaluation reports and examine measures which apply in comparable jurisdictions such as the Isle of Man and Jersey and look at how countries in the European Union, including the UK are implementing the 4AMLD.

Slide: AML/CFT Handbook – Next Steps

We are or soon will be engaging with you primarily through the industry associations principally on ACDD before finalising the Handbook. Therefore realistically the final version of the Handbook is unlikely to be issued before the latter part of quarter 1/early quarter 2 next year. Once issued there will be a couple of months lead-in before the measures come into effect.

As a heads for your own planning to revise your policies and procedures there are actually many parts of the revised draft Handbook where subsequent changes between the version we consulted on and the final version are likely to be minimal. This includes important areas on assessing risk, undertaking business risk assessments, introduced business, monitoring arrangements, reporting suspicion, staff recruitment and training and record keeping.

We have been asked about the National Risk Assessment because of the tie in the proposed draft legislation for firms to consider the NRA when considering their risks and controls. If initially there is no NRA to draw upon you cannot be pulled up on this - however an assessment of the TF risks the Bailiwick faces was issued through Themis last year which is relevant for firms in

understanding their TF risk which I would encourage you to look at.

I have given you the main themes of the feedback and outlined the next steps. Please be assured that the Commission is listening, will continue to do so and that it will flag what changes it has made between the edition of the revised Handbook you saw this summer and the final version.

I now hand you to Nick for the second part of our financial crime festival to fulfil the obligations the FATF Recommendations sets supervisors to provide industry with feedback and guidance on regulatory requirements.

Thank you