



Good afternoon everyone and it is my pleasure to be here today and thank you for inviting me to speak to you at your annual conference.

I would like to spend my time this afternoon describing what it is that is keeping me and my team busy and why.

As you may expect I will be picking up on some of the themes raised by Guy Rainbird. I often console myself that whilst I may be a financial services supervisor at least I am not an EU financial services supervisor. My thoughts on this are two-fold; first hopefully it means I am slightly more welcome in the room than my colleagues from the EU would be but also, at least I only have to deal with the EU legislation from the perspective of a third country supervisor and not the whole gambit as would an EU supervisor. Nor for that matter do I have to tackle the wider EU landscape to the extent that Steve Williams and his team at CIBO do, more on which you will hear from him later I am sure.

I am grateful to Guy because he has also made my job here today easier by breaking the bad news to you regarding all the major pieces of legislation coming out of the EU that we, in the Channel Islands, need to ensure we have at the very least an awareness of. In my experience industry members pay far more attention to their peers on these topics than to anything I, as a supervisor, may have to say on the subjects. I suspect that the perception is that all supervisors welcome the deluge of regulation from the EU Commission as job creation schemes. Well that is certainly not the case with the GFSC and I would venture to say the same for my colleagues at the JFSC. Indeed in discussions with EU supervisors in the margins of the international conferences we attend that is also not the case for them. The EU supervisors are generally not the policy makers but under the guidance of ESMA are simply expected to ensure that level two regulation is implemented in as a pragmatic form as possible within the constraints of level one Directive. I say simply but this is not always easy; ESMA has been asked by the EU to revisit certain of its draft regulatory technical standards. And in one case despite strongly defending their original regulatory technical standards ESMA, in order to ensure a timely implementation of the AIFMD provisions, decided they had no choice but to submit an amended version for the Commission's consideration. In addition, you may have seen the statement of only a couple of days ago delivered by Steven Maijoor Chair of ESMA to the Economic and Monetary Affairs Committee of the European Parliament. In his statement<sup>1</sup> Mr Maijoor commented that the EU would only complete its aim of a single market in financial services if the single rulebook is applied consistently and supervised adequately so that all stakeholders can benefit from it in daily practice. Consistency is something the third countries would most whole heartedly

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<sup>1</sup> Statement by Steven Maijoor, Chair ESMA to ECON Committee, European Parliament 23 September 2014  
ESMA/2014/1164

support and would hope may be achieved for us through passporting under AIFMD – more of which I will come to later.

At a local event I attended recently, prominent members of the industry on a discussion panel proffered the use of principles in regulation as a preference to the rules and lengthy tomes of legislation originating from the likes of the EU. The panellists suggested the GFSC could operate under a handful of principles. I scribbled on my note pad at the time “the Principles of Conduct of Finance Business” - a catchy title for the introduction of such principles perhaps? Well no, in fact the name of the principles that are already enshrined through our legislation and in the investment world, as I am sure you know, which are contained right at the start of the Licensees Conduct of Business Rules 2009.

We operate as an international financial centre in a world where, regardless of our own domestic preference towards principle led supervision, regulations of other jurisdictions cannot be ignored - especially if we wish to market into those jurisdictions. That said, we are not leaping to adopt the regulations for the sake of it and taking our time, as far as others’ timetables will allow, to consider and decide on the appropriate response as was seen by our response to AIFMD with a dual regime. Which leads me nicely to the main topics of my presentation today.

At your conference last year William Mason, the Director General, spoke to you about, AIFMD and MiFID II (encompassing MiFID and MiFIR) and you will not be surprised that these two major pieces of EU regulation still occupy a significant proportion of my team’s time albeit that the emphasis between the two may have shifted. That said I will still start with AIFMD.

## **AIFMD**

The Directive has been in force for over a year now; the deadline of 22 July 2014 for implementation and the end of transitional arrangements came and went. But what else has happened over the last year or so?

Since July 2013 Guernsey has been largely operating under the national private placement regimes without significant difficulty. As part of that application process the GFSC has provided attestations to EU competent authorities aiming to ensure the applications by Guernsey AIFMs progress as smoothly as possible. To that end you may have seen from our website just this week that we have been able to reach agreement with the competent authority of the Netherlands, the AFM, whereby the AFM has accepted an overarching statement from the GFSC, therefore, individual attestations will no longer be required. The AFM still requires confirmation that Guernsey AIFMs are appropriately licensed under the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended. The AFM has confirmed that a screen print from our website would satisfy this requirement.

We are receiving notifications under the AIFMD (Marketing) Rules, 2013 and at last count 34 Guernsey AIFMS were marketing into one or more EEA member states and three licensees, offering depositary services, have been established.

In addition we have consulted on the guidance for depositaries under article 36 and later this week Nick Herquin, one of my assistant directors, will be meeting with GIFA's depositary subcommittee (even we do not call them custodians anymore!) to discuss the consultation responses.

### **Next Steps – Passporting**

It would be easy to think the AIFMD has been implemented, we have our response in place, the dual regime, we can sit back and rest on our laurels but as Guy identified, ESMA is now reviewing the AIFM national private placement and passport regime. There is the potential for passporting to be granted to non – EU AIFM (third countries) subject to ESMA findings and no objections. By July 2015, ESMA is required to issue to the European Commission:

- a) an opinion on the functioning of the passport for EU AIFMs managing and/or marketing EU AIFs and on the functioning of the marketing of non-EU AIFs by EU AIFMs in the Member States and the management and/or marketing of AIFs by non-EU AIFMs in the Member States pursuant to the applicable national regimes; and
- b) advice on the application of the passport to the marketing of non-EU AIFs by EU AIFMs in the Member States and the management and/or marketing of AIFs by non-EU AIFMs in the Member States (so called 'third country passports').

ESMA's review of AIFM was meant to occur in the context that the Directive had been fully implemented by EU States from July 22, 2013, and not July 22, 2014 or even the end of 2014 as seems likely for some states. ESMA will therefore be reviewing a Directive which has only been effective for 6 to 12 months instead of 24 months. Some commentators are suggesting that "ESMA might decide to defer issuing any advice or request an extended timeframe", (Martin Cornish, partner at law firm MJ Hudson, speaking at the Hedge Fund Start-Up Forum in London). We do not yet know if that will be the case but we are monitoring the situation carefully.

In my introduction I promised to provide the reason why I and my team are devoting so much time and resource to the AIFMD and to my next topic MiFID II – well, in short, market access. Far from being business prevention officers we are in fact endeavouring to ensure that the EU market (and yes that includes the UK) remains as open as possible for Guernsey Funds and financial service providers. Whilst we do not have a definite figure a good estimate is between 60-80% of our business relies on the EU. That is why it is essential that we, as a jurisdiction, take the measures needed to ensure we retain our market access. I will come to how the GFSC is seeking to contribute later but first...

### **MiFID II**

Moving to MiFID II. I was asked by Ian Sayers, Director General AIC, to ensure that any comments I make on MiFID II remain high level, not full of technical detail (trust me my comments will be just that as, before being appointed as Director of the Investment Supervision and Policy Division, I was involved in our response to AIFMD but was able to bask in the enviable position of having only a passing interest in MiFID II. Even now whilst I

have clearly been required to get up speed on MiFID II I will be leaving Louise Bougourd, one of my deputy directors to continue to lead on the Commission's response).

Ian also asked me to ensure that any comments on MiFID II are in respect of how it is relevant to you as members of the Association of Investment Companies, i.e. how MiFID II will impact on you. Identifying the relevance or impact of any EU regulation, such as MiFID II, is really the key challenge. MiFID II is well over 500 pages long, and at that same local event where principles were discussed panellists joked about anyone ever wanting to read the directive in its entirety and suggested to the few in the audience who claimed they had read it and could give a high level overview of it, that they should find more fulfilling ways to spend their lives.

You will not be surprised to learn that of the few audience members that had read the directive a number were in my team. "Get a life", intended as a funny throwaway line I am sure, but I am actually quite proud of the fact that members of my team have indeed read the directive because without having done so we really do not stand a chance of identifying how it will impact third countries nor will we be able to exploit the opportunities that may be presented to us from MiFID II. In order to influence any outcome of the EU regulation we need, as a jurisdiction, to be proactive.

A non-financial services example of this involves the decision to purchase Aurigny by the States of Guernsey. The GFSC's General Counsel recently explained to the staff at the GFSC how, at the time, he was the law officer responsible for overseeing the purchase of Aurigny. He described how buried within the midst of rafts of aviation legislation produced by the EU was the fact that only airlines could own flight slots, not Governments. The discovery of this fact was a key driver in the decision to purchase Aurigny.

Back to MiFID II, at this stage, the only certainty with MiFID II is that it will impact us (or will if you provide investment services to EU markets). There is still a great deal of uncertainty around exactly how MiFID II will impact us. The impact will be dependent on the level to which the EU Commission will be prepared to accept equivalence from third countries like Guernsey and Jersey. Will they be prepared to accept a form of bifurcation or will equivalence only be achieved through full inclusion at the primary legislation level?

### **Next Steps**

ESMA is responsible for drafting a large number of Level 2 Measures before the end of 2016 when the EU Member States are required to implement MiFID II, and when MIFIR comes into effect. This guidance is expected to provide further details on how interaction with third countries will occur.

My plea therefore to you is to pay attention to it, not to file it in your "to do" pile thinking it does not come into implementation until 2017, there is plenty of time and I can worry about it later. That said I do appreciate that in roles as directors of investment companies you are faced with a wall of documentation to read on top of doing the day job of endeavouring to achieve the best return possible for your investors.

In order to help we have issued on our website an overview document and a series of FAQs. I do not intend to repeat the content of the overview here today however; the key point worth reminding ourselves of is that MiFID II has introduced a regime for third country firms that wish to provide cross-border services to clients established in an EU Member State. As I said earlier the impact of the Third Country regime for Guernsey will not be immediate but we need to consider what action will be required sooner rather than later not least because of the GFSC's own ongoing revision of laws project where the implications of MiFID are being carefully considered. The milestones for that project are inevitably shorter term to allow the required time for drafting and consultation in order to meet the MiFID January 2017 implementation deadline.

I referred earlier to industry often taking more notice of their peers than supervisors droning on and for that reason I was very grateful to Barney Lee and Andy for Sloan helping us with the recent Town Hall we held on MiFID II. Again I do not propose to repeat that presentation here and in any event the slides from the Town Hall are now available on our website. Barney and Andy both sit on our working group on MiFID II and their contributions as well as those of the wider group are much appreciated. This combined GFSC, industry and government working party was a method that we used to good effect over the introduction of the AIFMD dual regime and it also seems to be working well on MiFID II.

In terms of the Channel Islands' specific responses, the GFSC and the JFSC, together with the respective governments and the Channel Islands Brussels office, will seek to engage throughout the autumn with EU officials. That engagement, which will build upon the work undertaken during the implementation of the AIFMD regime, will seek to inform and update those officials in respect of the regulated financial services sectors in the Channel Islands as well as obtaining a better understanding of the practical and operational issues arising from MiFID II. In gaining the cooperation agreements under AIFMD it was vital to demonstrate how our industry was a vital part of the EU member states' industry. How was this achieved? By good old fashioned doorstepping. We do not yet know what the outcome of ESMA's consideration of third country passports will be but we have already offered assistance to ESMA in their deliberations and will follow up with further offers of help. Over the course of the next few weeks we will have a number of opportunities to lobby our EU colleagues at the EU competent authorities over AIFMD passporting and also trying to obtain a sense of their inclination towards a bifurcation regime for MiFID II. These opportunities start with my attendance at the IOSCO annual meeting next week and will continue as my colleagues attend international conferences over the autumn and into the winter.

In addition Steve and his team at CIBO have already identified key contacts at the EU Commission and, as you may be aware, my colleague Caroline Bradley, Deputy Director of Insurance Supervision and Policy Division has been seconded to CIBO for the next three months during which time I understand her priorities will include lobbying these contacts. I am sure Steve Williams when he speaks later this afternoon will touch on CIBO's plans in this area as well as the other activities it is undertaking on the Channel Islands' behalf.

## **Innovation**

Finally I would like to finish with a few comments on the Commission's approach to innovation. You may well have seen the Commission's media statement regarding the rebranding of the Fiduciary Supervision Policy and Innovations Division under the leadership of Gillian Browning. It also went on to explain that Philip Marr as the GFSC's economist will also be available to discuss early stage innovation ideas. Whilst Gillian and her division will be the first point of contact for innovations, where the proposals involve funds or are investment related my division will be included in any discussions with the aim of ensuring you will receive one joined up response.

As with any new application our focus when considering innovative proposals will be on the fitness and properness of the principals involved as well as understanding the product/structure being utilised. In that regard essentially, if you will excuse the pun, there is nothing new about innovation, but as I have described we do have a new approach to innovation at the Commission and we are very open to exploring ideas with industry. Indeed during October we will be running an information session for all the advocates firms who wish to learn more about our approach and expectations.

I have only touched on three key areas this afternoon and listening to me talk you may wonder why there is supervision in my Division's title as it would appear the majority of our time is taken up on policy or policy related matters. We do still have a day job of supervision and a number of you, through the relationships with your service providers, will be aware of the Commission's PRISM framework for risk based supervision. I do not have time to go into any detail here but should you like to learn more please do contact me and I would be happy to explain our approach. And of course on top of all of that we are making our final preparations for the MoneyVal assessment visit commencing on 6 October. I thank those of you who may have already assisted with the Jurisdiction's response or are expecting to be involved with the visit itself. It is another example of industry, Government, GFSC and the Law enforcement agencies working together. Focus on all of these matters is helping to ensure Guernsey is a well regulated jurisdiction attractive to your investment companies.

I hope that the comments I have made today have been informative and if nothing else have helped to reassure you, should it have been required, that under my tenure as Director there has not been any change of tone at the top of the Investment Supervision and Policy Division.

I was lucky in two respects when I took over the helm of the good ship Investment 1) being the good state that Carl Rosumek, my predecessor, left the ship in, and 2) the loyalty and expertise of my team but particularly my deputies Louise Bougourd and Mark Le Page and my assistant directors Nick Herquin, Dawn Sealey and, I am pleased to announce recently appointed with effect from 1 October, Amanda De Carteret. Quite frankly, it should not be a surprise that I was never going to try to fix what ain't broken.

Thank you.