Guernsey Financial Services Commission

Industry Seminar – 21 November 2014

Investment Supervision and Policy Division Presentation:
Guernsey – International and Interconnected

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Introduction

Last time I spoke at this presentation I enjoyed telling the true story of how, walking up to St James, two men in front of me had commented:

"Another day of the Commission telling us what to do."

This departure from script led to white faces amongst colleagues.

But I went on to say that I hoped the day would be one of engagement and discussion. And certainly I hope to show that over the course of this last year this Division has followed the Commission's line of listening and engaging with you, without compromising sound regulatory judgement.

Revision of Laws

The revitalised Revision of Laws project has seen unprecedented consultation with industry. The have been working parties, project boards, internal working parties, discussion papers, a future consultation paper, open houses, drop-in sessions, fireside chats, everything just short of state of the union addresses. We have done all this to ensure that we are working with you towards a common goal of a workable framework of regulation with no unintended consequences. Sitting on the working party, it really has felt like no stone has been left unturned and I agree with the Chairman's comments yesterday that it had been a much better start. The work of this Division has largely focussed on the ability to have a flexible regulatory framework or, as we have been calling it, "future proofing".

We believe, for instance, that some matters should be dropped down from the law into regulation. This does not necessarily mean us finding ways to regulate more but it will give the Policy Council, and us, the opportunity to respond quickly to any unexpected threats to the reputation of the jurisdiction that zoom over the horizon – or, indeed, sudden opportunities. In addition, we are considering how flexible fund products need to be in the future, and we are working with GIFA in that respect. Considerations on the table include a very private fund and a private placement fund (AIFMD) - and we are not ignoring whether Guernsey should have a future in the retail fund space.

Innovation

It seems that no presentation would be complete without referring to FINTECH and innovation.

Certainly this has presented a large part of my workload over the last quarter. You may well have seen the press release regarding the rebranding of the Fiduciary Supervision Policy and Innovation Division under the leadership of Gillian Browning. The press release went on to explain that Philip Marr as the Commission'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 this division will be included in any discussions. Communication between divisions has improved with the aim of ensuring you will receive one joined-up response: we are one Commission.

So what areas have we been looking at?

1. Crowdfunding and Peer to Peer

   We have had meetings with several individuals involved in this space. We continue to look to the Policy Council for guidance on any legislative changes required in order to appropriately regulate such offerings. Peer to peer, in particular, requires careful thought, we must avoid unintended consequences, not least the regulation of other debt.

   "Purer" crowdfunding, where a site domiciled in Guernsey is being used to arrange investment, would fall as a restricted activity as the law exists today. Nevertheless there will still be challenges, not least over where the product or service is actually domiciled.

2. Spread Betting

   You may have seen certain comment on how the Commission is entering into the world of on-line gambling. There is much I could say about this, including how I could now recommend to you the best sites to use, however let me limit this to commenting that spread bets currently fall within the definition of contracts for difference under the POI Law. I mention this because sports spread betting is one subject which we do not believe we, the Commission, should be regulating, and we are currently exploring what we can do about it. So, believe it or not, having the future proofing proposals of the Revision of Laws project would enable us, on occasions, to regulate less, not more.

So will our applications process change?

As with any new application our focus when considering innovative proposals will be on the fitness and propriety of the principals involved as well as understanding the product/structure being utilised and the risks thereon. We have to consider how firms will consider onboarding, client suitability/appropriateness, anti-money laundering, and promotional statements which contain responsible risk warnings. We have to consider whether the target market is institutional or retail – ie B2B or B2C.

In that regard we are very open to exploring ideas with industry and our approach to date has been to meet with firms with no preconceptions. This is particularly important as I have commented to colleagues that it is very rare for me to be in meetings when the visitor is more scruffily dressed than me. To quote John Maynard Keynes

"The world has not yet changed but we are dancing to a different tune."

Having got married last year, my wife will be the first one to tell you I am not the best dancer. Nevertheless, we have had to consider very carefully the paradigm of fitness and propriety in

this new tune of FINTECH. Where a firm requires a licence, we still have to reference Schedule 4 to the POI Law, but there is no doubt that track record is different in this field, and we will interpret it on a case-by-case, appropriate basis.

We recognise this is a rapidly changing field and, like you, we are learning. The Commission ran a session for advocates in October and there are likely to be many more. In any case, our door is open. Please come and see us with proposals and let us see if we can make things work.

GFAS/Conduct of Business Rules

You will all be aware that, as at 1 January 2015, some of the hard-earned work colleagues and I did some years ago will be confined to the dustbin of history and the new Conduct of Business Rules, compliant for GFAS, will be in place – the result of several consultations and considerable hard work. Here, again, I would suggest, we have listened to legitimate concerns:

- There will be no need to place a condition on licences depending on the type of clients being advised, as you felt the connotation was pejorative;

- An expanded definition of clients' attitude to investment risk; and

- Other representations more appropriate for MiFID II and the Revision of Laws are being carried forward into those workstreams.

Finally, you have asked us for a version of the Rules blacklined to the 2009 Rules. My colleagues in Conduct are working on that, and, having tried such documents on other rules, I can only offer them my condolences and the very best of luck.

PRISM

The Division went live on the PRISM IT architecture in the summer of this year. However, to all intents and purposes, the methodology of PRISM had been incorporated into our supervision of significant firms over the course of this entire year.

So it is a good time to inform you what PRISM has meant for us. As the Chairman stated yesterday, it has made us leaner and meaner, more focussed on the risks and more able to react quickly as they present themselves to us. We have always focussed strongly on prudential, conduct of business and corporate governance, but to that we have added several areas, most notably business model analysis. PRISM as a whole has enabled us to better identify an appropriate level of supervisory engagement, with staff empowered to take appropriate supervisory decisions. The assurance of the process comes through risk governance panels, populated with senior officers across the Commission, who challenge the staff responsible for supervising a firm – and let me tell you from personal experience, that is no picnic.

At the start of this year, we restructured our Division to reflect the PRISM way of working. We have a Low Impact team, which also deals with applications, a Medium High team, and a third team covering High and Medium Low. In discussions I have had, I think there is still some confusion as to what these categorisations mean. If you are categorised medium high, it does not mean that you have a medium high risk of failure. That is a separate categorisation. What it means is that you have a medium high impact on the Bailiwick.

This year, in accordance with consideration of impact, our main focus on visits has been on high and medium-high firms. So far, we have found the PRISM approach to have given us a strong understanding of a firm's business and I would hope that we have demonstrated a better appreciation of your business in the discussions we have had with you.

Conclusion

I hope you would agree that we have listened to you where we can, whilst remaining true to sound supervisory standards and, in that spirit, may I thank you for, in turn, today, listening to me.