



Jersey Financial Services Commission

Chief Executives (or equivalent)
Of Regulated Businesses

From the office of the Director General

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Dear Chief Executive

Industry Survey

I refer to my letter dated 8 April 2010 ([click here](#)) in which I gave an overview of the results of the Industry Survey (the “**survey**”) conducted by the Commission in November 2009. The survey revealed a few recurring themes which in turn led to the Commission deciding to take forward some work in addition to its annual Business Plan in 2010 to address those themes. The purpose of this letter is to provide you with an update on the various matters identified.

Some of the action points have been completed in full, some are advanced and in two or three cases, for reasons explored below, they have either been deferred or are considered to be captured by another workstream.

- 1 In terms of those which have been completed I would summarise as follows:-
 - 1.1 There were several suggestions that more briefing seminars and workshops should be provided by the Commission following a period during 2008 and 2009 when these were rather limited due to the priority being given to the IMF review. Thus in my letter dated April 2010 I indicated that the Commission would be beginning to put this right in 2010 and accordingly it was able to schedule three seminars during the year on Trust Company Business, AML/CFT issues and Fund Services Business, all held at the Hotel De France and which attracted sizeable audiences. We were also able to cover AML / CFT issues at the Fund Services Business seminar. All sessions received favourable feedback from participants. The Commission is committed to continue this programme of seminars and workshops in the future.
 - 1.2 A further suggestion arising from the survey was that all lending should be regulated and this continues to be a feature of policy discussion within the Island. As promised the Commission continued to keep policy in this respect under close review and further liaised with other stake holders, notably government and consumer organisations, with a view to advancing the discussion. It is interesting to see that the Island’s government has



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now brought forward proposals for legislation to protect customers from unfair trading practices, consultation on which asks whether any new legislation should also be used to regulate some areas of consumer credit and to some extent this is expected to cover certain lending practices in the Island. In turn this is supplemented by the Code of Practice for Consumer Lending which has been in place for a couple of years now following a joint approach involving the Commission, Citizens Advice Bureau and a number of other Island agencies, with half of all the participants involved in the working party being industry representatives. It is not my contention that the matter has been definitively resolved, notably given the fast moving international regulatory situation which may impose further requirements on the Island in time to come. However, the Commission considers that this is a matter which overall has progressed over the past couple of years. We remain entirely open minded as to future attention to this area but are currently proposing to do no further work on the matter pending wider developments.

- 1.3 A further but more minor request that the survey revealed was the need to do something with the Commission's email presentation which could be improved by shortening the disclaimer that previously ran to over a page. This has been taken forward by way of a much shortened version on Commission emails with a link to the full disclaimer and the matter is therefore closed.
- 2 In terms of those matters which have advanced but which are not fully complete I would advise as follows:-
 - 2.1 The survey responses included several comments regarding the Commission's speed of response, particularly in the Funds & Registry authorisations area as well as some more general remarks about our Funds and Fund Services Business regimes. There has continued to be a lively debate between the Commission and various industry representatives, including Jersey Finance Limited ("JFL") regarding the perceived "user friendliness" (or otherwise) of our authorisations process. Alongside this are the draft Certified Fund Codes of Practice, and a great deal of work has gone into these together with work on Collective Investment Funds (Certified Funds - Prospectuses) (Jersey) Order 201- as well as an ongoing debate on outsourcing in respect of Funds Services Business. These discussions have been assisted by the setting up of specific User Groups combining industry and Commission representatives to look at the ongoing process of Funds and Registry authorisations. Finally a further round of process improvements in the Commission's core operating system in the Registry (One-Sys V1) has also been brought to fruition during 2010.
 - 2.2 I do not contend that these developments have removed all concerns that have been expressed regarding the total user experience with the Commission's approval and oversight of business in these areas. Indeed a number of continuing negative comparisons with other jurisdictions, notably Guernsey and Cayman, continue to surface from time to



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time in this respect. However, the position is one of some complexity where important issues of policy, including ongoing changes expected to the Methodology relating to the Core Principles of IOSCO with possible consequent impact for Jersey, have an influence on the Commission's room for manoeuvre in the short term. Significant discussions have been progressed with the Jersey Funds Association ("JFA") and JFL on these issues as well as on the further potential downstream consequences for the Alternative Investment Fund Manager Directive ("AIFMD") finalised by the EU in 2010. The inter-relationship between these various strands is a complex and demanding one and the Commission remains committed to building further on the progress which has been achieved over the past 12 months (for example the Certified Prospectus Order is now nearing completion as is the Code for Funds exercise) and to working with industry to resolve as far as possible all remaining challenges.

- 2.3 Another item in which some progress has been seen over the past 12 months but where, as I pointed out in my April 2010 letter, was not one solely within the Commission's control is the continuing feeling that the legislative process is unnecessarily slow. The Island's government has recently focused on potential reform of the end to end legislative process, in which the Commission is equally captured, and various points in this respect were aired at the recent Jersey Finance Limited presentation of its annual Business Plan held at the Radisson Hotel on Friday, 28 January. That demonstrated the ongoing challenge inherent in reforming this vital piece of the Island's infrastructure, and the Commission has been involved in discussions and will continue to play a constructive role to the extent that it can in this major area. For these reasons, it is not considered appropriate at this point for the Commission to publish its own piece of work regarding the legislative process that would stand in isolation from the wider effort which is under review in the Island.
- 2.4 The third area where work has advanced but has yet to be regarded as completed is in the reform of the Commission's website including, inter alia, the replacement of its quarterly newsletter by way of an electronic information system. Whilst we have attended to the question of publishing the Commission's newsletter electronically, which we did in June last year, the length of time needed in order to progress the overall website revisions has been extended somewhat in the light of other priorities that intruded during 2010 although progress in the background is being achieved and was to some extent commented on in the newsletter. I will update industry on further specific developments in this respect in due course
- 3 Finally, there are two areas where we have clearly not achieved the progress hoped for and expressed in my letter of April 2010.
 - 3.1 The first of these is in relation to the confusion that appears to exist in some quarters between the perceived role of the Commission in relation to investigating financial crime



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and the work of the Joint Financial Crime Unit (“JFCU”). In my April 2010 letter, I committed to an explanatory paper being produced to provide the additional information that was being called for in this respect and the Commission remains committed to fulfilling that objective. To do so effectively we will need to work with our partners in this area and the recent appointments of a new Chief Officer of the States of Jersey Police and of Detective Inspector Lee Turner as Head of the JFCU will help us to achieve this.

- 3.2 Within the survey findings, there was also some negative comment in respect of the length of time that some enforcement cases have taken to be dealt with and it may be of interest to you that our internal statistics show that this has significantly improved during the last eighteen months. This is a consequence of the Commission, in common with many other regulators including the FSA, increasingly using a process of Settlement Agreements where circumstances allow (as opposed to the full utilisation of the Commission Decision Making Process), in order to bring to a close cases where regulatory enforcement action is involved.
- 3.3 The final area where we had hoped to make more progress in 2010 but were to some extent blown off course by a number of other items, both planned and arising, was in the area of the AML Handbook and specifically how changes within the Handbook are publicised to industry. Whilst we have not produced that explanatory piece as yet it remains the aim to do so, and in the meantime a number of ways to interact with industry on this particular point have continued to be explored. Mostly this takes the form of website notification and/or communication to regulated businesses via compliance functions of changes that are all summarised in Part 4 of the AML / CFT Handbook and it is the Commission’s view that the piecemeal nature of many of the amendments seen to date do not lend themselves to publicity by way of a Dear CEO letter as some have called for. I will advise further in due course how we plan to progress.

I hope it will interest you to know that the Commission is intending to conduct a follow up survey towards the end of 2011 and would be grateful for as wide a participation by industry practitioners as is possible. There will be a need to balance the natural desire to continue with the same methodology previously used (in order better to analyse trends) with the knowledge that the initial survey can be developed further in order to provide a wider and more sophisticated understanding of different industry views about the Commission and the way it operates. Moreover, I am aware that in some quarters there is a degree of cynicism about the process, with suggestions that the Commission is merely putting forward questions in a particular way in order to obtain a particular answer. Certainly, I believe this to be unfair and not borne out by the questions or the way in which the 2009 survey was conducted. One way in which we will be seeking to manage this “perception” in respect of the next survey will be to seek a “sense check” of our proposed approach prior to launch. To do this we will proceed as follows. Once the survey questions are finalised by the Commission I will be asking Geoff Cook at JFL, who may in turn wish to liaise with industry sector representatives, to review our



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intended approach to see if there is anything felt to be glaring by its omission or which clearly fails to address current pertinent issues seen from an industry perspective.

Accordingly, I would urge you all not only to respond when the opportunity arises again later this year but also to consider and review the work that has been done in respect of the original survey. Needless to say the next survey, as with the first one, will be completely confidential and will be conducted by an independent third party. The Commission is genuinely interested in surveying opinion and in trying to factor remedial action into its already extensive annual Business Plans in response to criticisms and suggestions, and is prepared to engage in both dialogue and follow-up work.

I hope that you have found this further information useful, and any further comment you may have at this point will be most welcome.

Yours sincerely

A handwritten signature in black ink that reads "John R. Harris". The signature is written in a cursive style with a large, sweeping flourish at the end.

John Harris
Director General