



Jersey Financial Services Commission

For the attention of the Chief Executive,
or equivalent, of registered persons

From the office of the Director General

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Our Ref.: JH/DS/FC Annual
declaration

16 March 2012

Dear Chief Executive

Financial Services (Jersey) Law 1998 (the "Law")
Financial Services (Trust Company and Investment Business (Accounts, Audits and Reports)) (Jersey) Order 2007 (the "TCB -IB Accounts Order")
Financial Services (Fund Services Business (Accounts, Audits and Reports)) (Jersey) Order 2007 (the "FSB Accounts Order")
Financial Services (General Insurance Mediation Business (Accounts, Audits, Reports and Solvency)) (Jersey) Order 2005 (the "GIMB Accounts and Solvency") (collectively, the "Accounts Orders")

Annual declarations and auditor's reports on the declarations

In view of the upcoming peak submission deadline for financial statements and accompanying documents for registered persons, the Commission considers it timely to remind registered persons (and their auditors) of the importance of the content of the annual declaration and the audit report thereon, as required by the respective Accounts Orders.

Within the annual declaration, the registered person is required to confirm it has complied with the requirements of the Law, any relevant Order or Codes of Practice issued under the Law, has maintained proper accounting records and adequate systems thereto, and complied with all money laundering legislation. The registered person must provide details of all material failures and specify any measures taken, or to be taken, to ensure the failures are not repeated.

The annual declaration is therefore a vital element in supervising registered persons. In reviewing the annual declaration, not only can the Commission assess if a registered person has an effective control environment in place to identify such issues but also whether remediation plans have begun. This is in addition to an assessment of the actual breaches listed. As a result, the document impacts the Commission's risk assessment of the registered person.

All material failures should be included in the annual declaration, along with any measures taken, or to be taken, to ensure failures are not repeated. This demonstrates to the Commission



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how procedures have been improved to prevent recurrence. The Commission does not expect to receive detailed information on non-material items but welcomes cross reference to management letters or on-site examination reports. Where material issues have been raised during the Commission's on-site examinations, these should be included in the annual declaration. If the report has not yet been finalised, reference to the on-site examination report and the material issues should be made. It is not sufficient for the Board to omit those issues but state at a later date the Commission was already aware of them.

A Guidance Note titled "Guidance Note: On aspects of the Accounts Orders for: Fund Services Business; General Insurance Mediation Business; Investment Business and Trust Company Business" (the "Guidance Note") was issued by the Commission in December 2009 providing further detail on what the Commission expected to be included in the annual declaration and audit report. Since the release of this, the Commission has seen an improvement in the quality of the annual declarations. However, from the level of findings identified as part of the 2011 Commission on-site examination programme, it is evident that a significant number of registered persons have not been identifying and capturing material failures in the declaration. Please note materiality should be considered in the context outlined in the Guidance Note.

The quality of the annual declaration significantly varies throughout the regulated FSB, IB, GIMB and TCB regimes. To demonstrate, we have detailed some examples below of the varying quality in recent submissions:

- a) the registered person consecutively submits clean declarations, oblivious to the systemic nature of compliance issues within the business later identified by the Commission. This is of highest concern and indicative of a weak control environment;
- b) the registered person relies on its auditor to complete the declaration. This is not acceptable as it is the registered person's responsibility to produce the declaration;
- c) the registered person has noted some (but not all) material failures in the annual declaration with attempts having been made to rectify them, but, generally an unsatisfactory submission;
- d) the registered person has produced an excellent analysis of the material failures, demonstrating a good control environment and a commitment to remediation.

The Commission expects material failures to be included within an annual declaration and is at times, somewhat sceptical if a clean annual declaration and audit report are repeatedly



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submitted to the Commission. As always, we actively encourage open and transparent communication with the Commission.

Given the level of importance the Commission places on the annual declaration and the usefulness for the Board in reviewing the performance and compliance of the registered person in the period, the Commission expects the Board to devote the appropriate resource to this valuable exercise.

It has been some time since the Guidance Note was issued. The Commission wishes to notify registered persons that where the Commission identifies material failures which were not identified and disclosed by the registered person, this will be considered a major weakness in its corporate governance regime and will be dealt with accordingly.

Should you have any queries regarding this letter, please feel free to contact your supervision manager at the Commission.

Yours sincerely

A handwritten signature in black ink that reads "John Harris".

John Harris
Director General