



Jersey Financial Services Commission

Chief Executive (or equivalent)
of Trust Company Businesses

From the office of the Director General

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Your Ref.:

Our Ref.: JH/TCB

14 October 2011

Dear Chief Executive

COBO Structures

Financial Services (Jersey) Law 1998 (the "Law")
Control of Borrowing (Jersey) Law 1947 (the "COBO Law")
Control of Borrowing (Jersey) Order 1958 (the "Order")
Collective Investment Funds (Jersey) Law 1988 ("CIF")

The Commission has identified a number of issues arising from the administration of "COBO only" private and very private fund structures and SPV structures ("COBO structures"). The regulatory oversight of these types of structures at launch is via the mechanism of the COBO Law and Order. Thereafter, the trust company or fund services businesses acting as service providers are expected to adequately control and monitor such structures.

Whilst issues have been identified in both trust company and fund services businesses, a separate letter will, in due course, be sent to fund services businesses which will also include additional CIF related issues.

Recent examinations of the administration of COBO structures at some trust company businesses have led to serious cause for concern, specifically in respect of handling matters such as conflicts of interest, investor suitability, disclosure and reporting to investors and disclosure of information to the Companies Registry/ Commission. Appropriate regulatory action has been taken in relation to specific cases found.

Some examples include cases where:



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- Fund assets are invested in highly speculative and risky ventures with short term investment horizons, in situations where there is a lack of appropriate warning regarding risks and the unregulated status of the COBO structure;
- Vulnerable investors, for example very elderly clients, being placed into unsuitable funds, sometimes via trust vehicles, where the trustee is also acting in other capacities such as an investment advisor or Director of the COBO structure itself without these conflicts being communicated to the investors or indeed a mechanism for managing the conflict being put in place;
- Pooling vehicles being established for the specific purpose of circumventing the minimum investor subscription requirements as stated in the offer documents or as stated as a condition of the consent under the Order;
- Board members and shareholders of the trust company business co-investing with other unconnected clients, into COBO structures for which the trust company business acts as manager, with no disclosure of potential conflicts of interest or a mechanism for managing the conflict being put in place;
- Failure to provide any financial information or inaccurate and misleading financial information provided to investors;
- Nominee companies established for investors by directors of independent financial advisors to the COBO structure and where the rationale for the nominee company is unclear and where the ultimate beneficial ownership of the nominee company is unclear;
- Inadequate disclosure to Companies Registry/ Commission of the COBO structure's activities at the time of incorporation/establishment so that the correct consent under the Order was not obtained or failure to comply on an ongoing basis where the consent so requires;
- Lack of awareness of requirements and/or numerous breaches of the conditions of the consents issued under the Order, including allowing more than 50 offers/investors into COBO only private fund structures thereby possibly undertaking unauthorised funds business under CIF.



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Several cases have highlighted once again the importance of the effective management of conflicts of interest. This is disappointing given that this was the subject of a "Dear CEO Letter" dated 22 October 2010, in which all trust companies were asked to review their internal controls in respect of conflicts.

We are therefore asking all trust company businesses to review their client base and in the first instance to advise the Commission of the number of such vehicles to which services are provided. The review should indicate how this is split between SPVs, Very Private Funds and COBO Only Funds. For the purposes of the response please use the following guidelines:

- Very private COBO funds - up to 15 offers to restricted circle of persons
- COBO Only Funds - up to 50 offers to restricted circle of persons
- SPVs - all orphan structures formed for the purpose of a specific project

Please would you provide this information to your usual Commission contact by 18 November 2011.

Should you have any queries regarding this letter, please do not hesitate to contact your supervision manager at the Commission.

Yours faithfully

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

John Harris
Director General