



Jersey Financial Services Commission

From the office of the Director General

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Dear Chief Executive Officer

The Role and Responsibility of the Jersey Financial Services Commission to Combat Financial Crimes

Last year's industry survey highlighted a degree of confusion of the roles performed by the Enforcement Division ("Enforcement") of the Jersey Financial Services Commission (the "Commission") and the States of Jersey Police and Customs Joint Financial Crimes Unit (the "JFCU"). Therefore the purpose of this letter is to set out the different roles and address any perception that the Commission is in some way duplicating the work performed by the JFCU.

An independent assessment of the roles and responsibilities of both the JFCU and the Commission is set out in the International Monetary Fund's detailed report of the Island's anti-money laundering infrastructure published in September 2009 and provides a very detailed description of the roles and responsibilities performed by Enforcement and the JFCU. I would urge anyone in need of further clarification to read the document available via the following link <https://www.imf.org/external/pubs/ft/scr/2009/cr09280.pdf>

It is important to stress at the outset that the Commission does not consider itself as having a responsibility for the investigation or prosecution of financial crime which rests firmly with the Police and the Law Officers' Department. The Commission's role in relation to financial crime is confined to fulfilling its guiding principles set out in Article 7 of the Financial Services Commission (Jersey) Law 1998 namely,

The Commission may take into account any matter which it considers appropriate, but shall in particular have regard to

- (a) *the reduction of the risk to the public of financial loss due to dishonesty, incompetence, or malpractice by or the financial unsoundness of persons carrying on the business of financial services in or from within Jersey;*
- (b) *the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;*



- (c) *the best economic interests of Jersey; and*
- (d) *the need to counter financial crime both in Jersey and elsewhere.*

In fulfilling the guiding principles the Commission will also consider the content of the regulatory laws¹, for example when assessing if a Principal Person's conduct has been fit and proper the Commission may consider issues of integrity and competence as set out in Article 9(3)(i) of the Financial Services (Jersey) Law 1998. In the course of such an assessment the Commission may form the opinion that the information reviewed indicates that a person may have been engaged in money laundering. In such circumstances, the Commission has a lawful responsibility to report the matter to the Police under the provision of Article 23 of the Money Laundering (Jersey) Order 2008.

Approximately 97.5% of regulatory enforcement cases investigated by the Commission in 2010 were concluded without the need for a criminal investigation or prosecution. The main focus of the Commission continues to be the enforcement of the regulatory laws, codes of practice, servicing requests for assistance from overseas regulators and pursuing cases of unauthorised business by exercising regulatory powers to achieve compliance.

Where it becomes clear from the outset that a case will involve a combination of criminal and regulatory issues, the Commission will meet with senior representatives of the JFCU and the Law Officers' Department at the earliest opportunity to agree an appropriate way forward. Such meetings ensure that the Commission remains focused on its regulatory responsibilities whilst ensuring that instances of serious criminal conduct are brought swiftly to the attention of the Police and the Attorney General. In exceptional cases a regulatory investigation undertaken by the Commission may run in parallel with a criminal investigation pursued by the JFCU. The Commission recognises the need to ensure the discharge of its regulatory function without compromising any criminal investigation or prosecution. For example, where a Principal Person's misconduct is considered so serious the Commission is likely to invoke its decision-making process without waiting for the conclusion of a criminal prosecution which may ultimately lead to the issue of a Public Statement. Whilst such cases are infrequent, the Commission regards acting in such way as necessary because the Public Statement often serves to warn the industry and protect the investing public.

It may be helpful to use a hypothetical case to further illustrate the point. For example, where a regulated business reports that an employee has defrauded the business and reports the matter to the Commission and the Police. When challenged the employee admits to taking the money. In such circumstances the Commission's responsibility would be to conduct a fit and proper assessment of the employee to determine if the person should be able to continue to seek similar employment within the finance industry but also to establish whether the regulated business operates adequate systems and controls to mitigate the risk of such an event occurring. In such circumstances the Police have responsibility to instigate a criminal investigation and prosecution, together with seeking the restraint and confiscation of the proceeds of the crime.

¹ The regulatory laws comprise:

- the Banking Business (Jersey) Law 1991;
- the Collective Investment Funds (Jersey) Law 1988;
- the Financial Services (Jersey) Law 1998;
- the Insurance Business (Jersey) Law 1996; and
- the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008.



The roles and responsibilities are therefore very different and the time taken to conclude a regulatory investigation is often considerably shorter than a criminal investigation due to such differing roles, particularly where the Commission feels it is appropriate to conclude an investigation through the use of a settlement agreement.

Where during the conduct of a regulatory investigation, the Commission becomes aware of a serious breach of a statute, for example, providing false and misleading information to the Commission, the Commission may refer the matter directly to the Attorney General in accordance with its published policy entitled "Policy on Referrals to the Attorney General" http://www.jerseyfsc.org/pdf/policy_on_referrals_to_attorney_general.pdf. Such referrals remain a rare occurrence, for example, only one such referral was made in 2010.

I hope this letter clarifies the differing roles of the Enforcement Division within the Commission and the JFCU. The Commission intends to hold a number of lunch time seminars in quarter three to explain their role further and provide generic feedback on the trends and recurring issues that have come to their attention over the last three years. Details of the events will be published during quarter two.

Yours sincerely,

A handwritten signature in black ink that reads "John Harris" with a long, sweeping flourish extending to the right.

John Harris
Director General