

Cayman Funds

ROUNDTABLE 2015



Dan Allard, chairman,
Cayman Islands
Funds Administrators
Association



Rob Aspinall,
director,
Intertrust Cayman



Colin MacKay,
group director,
Elian



Geoff Ruddick,
director, International
Management
Services



Jude Scott,
chief executive,
Cayman Finance



Heather Smith,
head of Investment
& Securities,
CIMA



John Lewis,
director,
Highwater



Cassandra Powell,
director,
The Harbour Trust



Monette Windsor,
head of UBS
Fund Services
(Cayman)



Jeffrey Short,
financial services
partner, EY



Alan Craig, partner,
Campbells

OPPORTUNITIES IN CHANGE

In its annual roundtable hosted by EY, *Cayman Funds* invited a dozen hedge funds specialists representing a variety of skillsets to offer their perspectives on the most pressing topics affecting the sector.

How would you characterise the health of the funds industry on Cayman at the moment?

Jeffrey Short: It is not near the levels we saw pre-financial crisis but growth has stabilised and the picture is very positive. Based on the most recent statistics, we were down approximately 5 percent in 2014 in terms of new fund registrations compared with the previous year. Having said this, competing jurisdictions are generally down more. EY is bullish in terms of the opportunities we are seeing especially in terms of existing clients growing and opportunities for spin-outs. But the types

of funds we are seeing are different. They are more institutional-based, which is largely because the barriers to entry have increased.

Heather Smith: Growth for the last year was a bit more conservative with the total number of regulated funds dropping slightly to around 11,000 as compared with 11,379 in 2013. The authority also noted an increase in terminations ahead of the deadline for directors' registration under the Directors Registration and Licensing Law (DRLL). It was further noted that most of the terminations were of funds that had been inactive for some time.

The directors were therefore proactively working to resolve any longstanding issues so that the fund could be terminated. This resulted in a more accurate picture of active funds. The figures for the last two



years included the initial registration of master funds and what was seen for the 2014 calendar year is more along the lines of what is to be expected within a usual year.

There is the continuing trend of more thought going into the formation of funds, with fund operators being quicker to terminate them if the expected level of investment is not achieved.

Monette Windsor: I agree with that but we did see a real spike in activity around larger funds being launched last year. There were fewer smaller launches, which I think was because barriers to entry are much higher now. But there was a spike in existing funds and managers launching.

Jude Scott: We are very positive at Cayman Finance. We see it in terms of the competitive position of the jurisdiction. The fact is that the quality and experience of professionals here is fantastic as is the legislative framework, which also has great support from the court system and government. We recently attended an event in New York which the Cayman government attended and committed to no increases in fees this year based on their prudent management of government finances. They would even seek to even roll back some fees over the next few years where possible. That was very well received.

We also have good examples of innovation in recent years. The update of exempted limited partnerships has been well received—they have lots of uses and can reduce costs.

Cassandra Powell: I agree that, from everything I have seen last year, the larger managers are continuing to grow and introduce new products but also that more new managers are entering the market with new products, albeit at smaller AUM than several years ago. I also attended that event in New York and from my perspective it was great to see government attending and confirming their commitment to our industry. Their willingness to meet stakeholders and to listen to them to understand what their needs and concerns are in relation to Cayman as a jurisdiction and our fund product was welcomed.

In attendance



Wyn Jenkins, managing editor, *Cayman Funds* magazine



Dan Allard, chairman, Cayman Islands Funds Administrators Association



Rob Aspinall, director, Intertrust Cayman



Alan Craig, partner, Campbells



John Lewis, director, Highwater



Colin MacKay, group director, Elian



Cassandra Powell, director, The Harbour Trust



Geoff Ruddick, director, International Management Services



Jude Scott, chief executive, Cayman Finance



Jeffrey Short, financial services partner, EY



Heather Smith, head of Investment & Securities, CIMA



Monette Windsor, head of UBS Fund Services (Cayman)





“I am actually jurisdiction-agnostic but I cannot see a trend of Cayman losing market share yet.”
Colin MacKay

From the increasing number of institutional launches we are seeing and from feedback received from that event, Cayman continues to be the jurisdiction of choice. For government to relay the message directly around fees means that they have listened to the stakeholders and was a positive step which I believe was well received and will bode well for the continued growth of our industry.

Geoff Ruddick: This might be the first unpopular comment of the day: while Cayman undoubtedly is the domicile of choice for all the reasons previously discussed including economic and political stability, location, skilled work force, balanced and flexible regulation, etc, we as a jurisdiction need to be careful rather than complacent. We are seeing other names such as Bermuda and BVI increasingly on the radar.

We do have a good regulatory framework but Cayman was built on a flexible and balanced regulatory approach and we need to be careful of regulatory creep as well as increases in fees and costs, which are continuously increasing relative to competitor jurisdictions. There will be a breaking point. I have received an increasing amount of feedback from US-based lawyers about other domiciles, Bermuda in particular, with regard to their highly efficient and cost-effective new fund offering. Small funds are not coming here as much and they may well choose other jurisdictions.

Powell: That’s why I believe the message from government on no new fees and a potential decrease in other fees was so important.

John Lewis: But the horse has already bolted in some ways on this issue. We already have had a number of new charges and fees over the last two or three years. The multi-billion dollar funds of the future will be launching as smaller funds now and Cayman needs to ensure it is the domicile of choice. Maybe some sort of graduated scale on fees is needed to allow smaller funds to get started.

Colin MacKay: The barriers to entry are there and for a manager trying to set up, they are an irritant. If managers are already regulated in the US, they don’t understand why they need another layer. I have not been a fan of fee increases in recent years but they have probably kept pace with international charges and are lower than onshore costs.

Having said that, you cannot ignore the competition. In some jurisdictions, such as Bermuda, the fund product is becoming commoditised. The bigger managers are launching new products, which is great, but we are seeing fewer new managers and funds.

Scott: The reality is that there has been a cost creep in all jurisdictions. But the story we have to tell is fantastic; we do add a lot of value. But we need a good concise message coming from the jurisdiction to ensure we attract new business as well as top professionals to work here.

Rob Aspinall: The majority of the growth I have recently seen is around existing, well-established managers adding new, customised products. If you look at the detail, it is predominantly the larger funds that are actively creating new funds since they have the necessary size and infrastructure to absorb the set-up costs. There are undoubtedly fewer small and mid-tier start-ups due to the additional layers of costs we have discussed, so increased efforts to attract those smaller fund launches to our jurisdiction is clearly in Cayman’s best interests.

Whilst there are undoubtedly challenges on the horizon, 2015 already appears to be characterised as a year of increased confidence as many funds have made a deliberate return to marketing and capital raising, with considerable success. I see this as a strong indicator of the overall health of the Cayman funds industry.

Are smaller funds or specialised funds such insurance-linked funds being formed on other domiciles?

Alan Craig: There are a lot of positives around Cayman but cost, both in terms of regulatory fees and the cost of addressing additional regulatory requirements, is a concern. Funds now need a higher starting AUM to be viable, which is squeezing out some smaller managers. Cayman therefore risks losing some start-up business to other jurisdictions who have introduced simplified regulatory frameworks to attract this

business, or charge lower fees. While losing out on some smaller start-up funds may not seem that significant it is important that Cayman is part of the growth phase to maintain its overall position.

Lewis: Five years ago the Bahamas had a big push, two years ago it was UCITS and now it is Bermuda. There will be competitive challenges but Cayman has always won out in the end.

Powell: When you look at the large allocators and institutional investors, Cayman still checks the box for them, for many reasons. However, we have seen smaller funds setting up in other jurisdictions citing cost concerns with Cayman; these other jurisdictions have always and will continue to try and get ahead of Cayman therefore we cannot be complacent.

Aspinall: We have already touched upon barriers to entry for new funds but those barriers also exist at the jurisdiction level. The professional skillsets and infrastructure required to support the fund industry are not easy to build or replicate. Cayman is clearly established as the domicile of choice for the offshore fund industry, and, whilst there is no room for complacency, I do not see this changing at any time in the foreseeable future. With the exception of certain niche products, funds domicile in Cayman because there is still no credible alternative.

MacKay: In fact, most of us work for businesses with a presence in competitor jurisdictions. I am actually jurisdiction-agnostic but I cannot see a trend of Cayman losing market share yet.

Short: We see what is going on in the insurance-linked space as a hot topic. We see the asset managers looking at reinsurance opportunities and vice-versa. It is a great opportunity for Cayman as a jurisdiction.

Scott: We have been focused on this and we think it is a natural fit for Cayman but we believe the right platform needs to be formed and the right framework established so that this is sustainable and done correctly. We need the right regulations, expertise, and talent in the market.

Smith: We have not seen many insurance-linked funds being set up but there has been an increase in the number of queries received in this area. There is also some remaining ambiguity as to whether these entities would fall under the insurance legislation or the funds legislation. Such funds do present a challenge in that they can be quite risky and as such the right expertise is needed to understand them. It is an opportunity but the right infrastructure is necessary.

MacKay: International reinsurers favour Bermuda and asset managers prefer Cayman. I agree this is a hot topic. I have had more conversations about this in the last eight weeks than the previous 10 years—all driven by managers in Cayman.

Windsor: They are predisposed to Cayman because of the good regulatory framework, the infrastructure, the talent and their confidence in the laws. They don't want to go on a learning curve again in a different domicile.

MacKay: They are positively predisposed to Cayman but there is a big focus on the type of structure and the process and lead time can be protracted.

Craig: To attract the establishment of insurers that are seeded with hedge fund capital it is important that the licensing process can be completed within weeks rather than months, and that there is a streamlined process for ancillary requirements such as work permits for staff to be based here. Entities such as this which employ people locally make a far bigger individual contribution to the local economy, so this is desirable business to attract.

Powell: With regard to the hedge fund product, I agree that the lead time has increased from initial discussions with a manager to when a fund actually launches; it could be years before a manager pulls the trigger to launch. But during this time, I see more dialogue taking place between the managers, myself as a fiduciary and the other service providers on structuring and operational considerations.



“This speaks volumes as to what the Cayman jurisdiction has to offer in terms of our industry professionals.”
Cassandra Powell

Aspinall: I am seeing a clear trend towards longer lead times for new managers to launch a Cayman fund product. Managers are understandably far more measured in setting up a new fund due to the establishment costs and additional regulatory hurdles. It could easily be three to six months, sometimes considerably longer, before preliminary discussions result in a fund launch.

Scott: Everyone is more measured and deliberate.

MacKay: Managers can't be as reactive these days because of increased regulation. You have to be controlled and organised from the outset. Ten years ago, if three people were forming a fund, one would be in finance and two would be portfolio managers. Now, you need the regulatory management and control infrastructure. Managers can move quickly within existing vehicles but in terms of new manager set-up costs, it is very different now.

Scott: Cayman's big strength has always been relationships. When clients need longer lead times that allows us more time to build relationships. On reinsurance in particular, we have seen some ventures established here and we need to ensure they have a positive experience. We need to build on those and get the right framework in place to take advantage of this opportunity.

What are the main regulatory challenges facing the market?

Dan Allard: The Foreign Account Tax Compliance Act (FATCA) remains a huge undertaking but Cayman has been very good at interacting with the central group and cleaning up any issues. It has been a huge burden but most people seem prepared now.

Ruddick: FATCA continues to be an important agenda item at meetings as the board needs to ensure that FATCA reporting is complete and that nothing falls through the cracks.



“We are very well placed for the future given the talent of the individuals here and the strength of the regulator and government.” *Monette Windsor*

Powell: We continue to see the focus on FATCA also, with this coming in various cycles. There were many managers who early on threw every resource at FATCA to understand their obligations, the role of their administrator and to paper this all up. But there were yet still others where it has definitely been an educational process for them to understand where their FATCA obligations rest, when some of them may for example not have any US investors so were confused as to what the obligations actually were.

My role as a fiduciary through this process has been very important, to ensure that all FATCA requirements are met within the applicable deadlines and to offer valued insight as to what I am seeing within the industry as to processes and services around FATCA. There have certainly been teething pains but I see things going a bit more smoothly closer to the end of 2014; it's now to work through the TIA registration and the reporting which are unknowns at this stage.

Windsor: I had FATCA fatigue for a long time but it is more a case of AIFMD (the EU's Alternative Investment Fund Managers Directive) exhaustion! That said, in the administration space, I also believe that no matter how painful and burdensome these controls have been for us, they have also represented a real opportunity to add additional value and set ourselves apart from our competitors. We have been there to guide our clients through.

Scott: People talk about FATCA but, in fact, it was just the start. We have UK FATCA to follow and it will only be a matter of time before we are on full common reporting standards.

Aspinall: We were fortunate with FATCA in that we had a long lead time during which the fund industry could ensure it understood what was required and there were clear communications regarding deadlines and reporting timeframes. From a director's perspective we understood why FATCA was relevant, when it was being implemented and who would take responsibility for ensuring compliance. Cayman has been way ahead of the pack on this matter and the various different parties involved in implementing it have been very proactive in communicating with the fund industry.

There may yet be teething issues on specific implementation and reporting matters, such as the AEOI portal, but there is no resistance and it is already an accepted part of day-to-day business for the industry.

Smith: CIMA has not taken a lead role in relation to FATCA as it is a tax and not regulatory matter but the overall outcome seems to have been positive.

Powell: One of the most helpful things when dealing with FATCA, and in truth the implementation of any new regulation within the last several years, has been the wealth of available resources from Cayman firms such as legal and audit who have offered great insight and information to assist in understanding the new regulations. Again, I think this speaks volumes as to what the Cayman jurisdiction has to offer in terms of our industry professionals and the skills they bring to the table.

Windsor: Coming back to the AIFMD, I am exhausted because of the sheer number of meetings and conference calls I have sat through around it with our legal department and sister offices. We actually developed a 'depository lite' solution, which took a while to get off the ground but which has been very popular. We thought existing clients would use it but, in fact, it has also attracted new clients. So it has been great for us and been a great opportunity to add value.

Smith: CIMA has been giving consideration to this matter since the directive was first proposed. We are responsible for keeping close to any regulatory initiatives such as this once we know they are coming down the pipeline. There was a working group formed in December 2014 to look at AIFMD and how Cayman funds can be marketed in Europe. We will look at whether any change in regulation is needed to allow this to happen, as well as considering the passporting requirements for funds under the AIFMD.

It should be noted that most of what is required under the AIFMD already exists within our regulatory regime, including a mechanism for information exchange. CIMA has however entered into cooperation agreements with 27 member states that are directly related to the AIFMD.

Mackay: In my experience, European-based fund managers see this as a competitive advantage and non-EU managers as a difficulty

and they want a passport as soon as possible. Reverse solicitation has been held up as the way forward but different jurisdictions are viewing that in different ways. There is a divergence of opinion. It will be interesting to see what happens—the time scale to full implementation could be pushed back.

Ruddick: Reverse solicitation is an increasingly dangerous grey area. In particular, managers need to be careful about their cap intro arrangements. Introductions and the surrounding communication flow needs to be carefully considered. It's important they take guidance from counsel in order to avoid any potential issues.

MacKay: The implementation date for AIFMD is meant to be summer 2017. There are many different steps between now and then, however. Three years ago I saw a very well informed speaker from the regulator who said the deadlines would be pushed back. I saw him more recently and his view had changed: he now believes the industry cannot afford to miss the deadlines because of the uncertainty it is causing.

Powell: I agree, people want certainty and from discussions with my clients and other stakeholders within the industry, the uncertainty around timelines and requirements continues to cause frustrations.

Aspinall: The majority of my North American clients are taking a 'wait and see' approach. Managers want to understand exactly how this will play out and while some have explored reverse solicitation it is generally agreed that is an unsatisfactory short-term solution and they remain very cautious. Many have cut off, or significantly curtailed, their marketing efforts in Europe until they see some clarity in how the AIFMD will be implemented.

The key upcoming date will be July 22, 2015 when the European Securities and Markets Authority (ESMA) is expected to issue its opinion on offering the EU passport solution to non-EU alternative investment funds and I don't expect to see many non-EU funds taking any definitive steps until that opinion is issued and analysed.

MacKay: The speaker I mentioned said the assumption had been that life would continue as normal ahead of AIFMD but the realisation more recently has been that the inherent risks are unacceptable. There are certain areas where the burden of proof on reverse solicitation has been reversed so that you have to prove the absence of active solicitation. In the old days, an invitation to treat from a fund would have been considered fine but there is a growing nervousness now. The liability and the penalty are disproportionate to the opportunity.

Powell: Is the idea as far as regulators are concerned that regulations such as AIFMD would prevent a fund's blow-up?

MacKay: That is absolutely the political driver—to avoid a repeat of what happened in 2007 and 2008.

Aspinall: But we must not overlook the fact that the industry is constantly evolving. Although well intentioned, regulators are nearly always reactive and seek to make changes after the horse has bolted. They can attempt to change the investment environment to avoid another Madoff type situation, but the chances are that the next crisis will be driven by an event that we have not even contemplated yet!

MacKay: And bear in mind that Madoff was a fraud. It is very difficult to regulate against those.

Smith: We cannot regulate risk, that is clearly an objective matter, but if the oversight is right then we can try and determine if people understand the risk. The AIFMD is an example of a response from regulators in based on occurrences in other markets and seeking to ensure that there is not a repeat of the issues in their market.

Aspinall: It will be fascinating how this plays out. With the restrictions and additional costs associated with implementing the AIFMD it could mean that European fund returns are inferior to funds that operate outside of that region. How European investors will react to this over time is yet to be determined.

What are your thoughts on the proposed directors' database and the idea this could be used to limit capacity?

Ruddick: I'm respectful of Heather and her views, but I would offer a slightly different perspective. Heather suggests that regulators can't regulate risk. I would suggest however, that regulators can regulate risk, but they can't effectively regulate risk. They quite simply don't have the bandwidth. I'd also suggest that regulators can regulate capacity, however, again they can't effectively regulate capacity.

If the idea is to regulate and potentially limit capacity based on numbers alone there will be a problem, for as we know numbers in isolation can be incredibly misleading. The metrics CIMA proposed including numbers, fund complexity and strategy, as well as model of fiduciary firm would be difficult if not impossible to monitor given the complexity and time commitment involved, thus making it dangerous to try to regulate capacity.

Regulate the people and firms instead and make sure they are fit and proper. I'm unaware of any other industry where capacity itself has been attempted to be regulated.

Smith: A decision on this issue has not yet been made. CIMA is currently assessing the information obtained as a result of the enactment of the Directors Registration and Licensing Law (DRLL), which will then determine what else we might need and what we do next. It is clear that it cannot be a focus on numbers only and we will assess what additional controls would need to be in place to enable



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“Let’s do it right and find a Cayman solution in our own time rather than end up pushed into something.”
John Lewis

effective oversight by directors. I do not at this stage know the final outcome but we share your concerns and recognise the challenges inherent in defining capacity.

Lewis: DRLL is already in place and the database is potentially the next step. However we spent a long time considering fund governance before it became a global issue and we should not repeat this pattern. My main advice would be to keep it at the forefront of our agenda. This is a priority for some global investors but we also have some time after the enactment of the DRLL. Let’s do it right and find a Cayman solution in our own time rather than end up pushed into something in three years’ time when offshore governance again becomes an issue globally.

Ruddick: If the main issue is transparency there are ways of solving the issue other than simply publishing a public, searchable database, which may lead to proprietary, industry, and, jurisdictional risks as well as the risk of a corresponding media frenzy.

If greater transparency is deemed necessary and ultimately mandated by CIMA, this can potentially be accomplished via other means without putting Cayman, as a jurisdiction, the overall funds industry itself, or specific providers within the funds industry, at risk via a public database.

One possibility is to mandate disclosure to authorised parties, but to have the information stem from the fiduciary. The benefits of this approach are that it reduces the risk of the media mania and misinterpretation that will follow; it does not show all our cards to competitor jurisdictions; the data will be more complete and up to date if individuals themselves control it; and it will avoid the financial cost associated with building systems and the human resources required to maintain information.

Smith: The discussion started a long time ago with transparency as the goal. Investors are demanding more information around the operation of the fund in which they invest but we understand that there are many challenges around what is disclosed.

Powell: As a fiduciary, I accept that there is certain information my clients or potential clients may want and I have no issues with transparency but I understand that there are concerns with a fully searchable database with

regard to what parties can have access to that database and potentially what they may do with the available information.

Ruddick: The market addresses this on its own. If someone asks me the numbers question in relation to capacity, I first address numerous other considerations before finally answering that question in order to provide full context and a comprehensive overview of capacity. There is nothing more concerning and annoying than the numbers question in isolation.

Going back to transparency we do have some legacy clients who prefer that the matters of their business not be discussed. They are highly regulated and follow corporate governance best practices, but they would prefer not to be searchable via a public database.

Aspinall: My concern is that the proposed database represents an incomplete picture, as it will only ever be able to record directors serving on the boards of CIMA covered entities. There are many non-regulated funds and other forms of onshore entities in existence where directors hold fiduciary positions that will not be captured in the database. Advisory committees to partnerships and boards of managers to Delaware LLC’s immediately spring to mind.

These positions are clearly relevant from a capacity standpoint as they impact the amount of time an individual has to devote to the business of being a director. If the objective of the database is to provide transparency to investors in order to help them make an informed decision on a particular directors’ level of capacity, then this objective will not be met. In fact it may confuse the conversation even further. I have real concerns that we are contemplating developing a tool which is not fit for task.

Transparency is clearly important but the market can achieve that far more efficiently than via a CIMA-managed database. I see no good reason an independent director would not give sophisticated investors a detailed explanation and breakdown regarding the number of boards they sit on if they were asked. In the current environment failure to do so should immediately raise red flags regarding whether that individual is appropriate to sit on the board of a fund.



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Ruddick: We, as a firm, don't cap at 25 relationships or whatever arbitrary number people suggest you should as my role and our model is different from many others. We are for the most part full-time fiduciaries with minimal other managerial commitments as we have a number of full-time operationally-focused personnel. Capacity is a function of time and ability, therefore people need to dig a lot deeper than numbers alone.

Scott: But the great thing is that we can talk about this. CIMA can get feedback and respond. I am very encouraged by this dialogue. It causes more setbacks when we take things out of the jurisdiction. When we work together and engage we will get the right answer.

Smith: We will have a formal consultation with the industry once we are in a position to propose a measure. We will endeavour, as is our usual approach, to address all concerns raised.

As a regulator we often get advance notice of upcoming regulatory initiatives. This may result in us having to make unpopular decisions but we realise that you will never please everyone. Our objective will always be to work diligently to promote and enhance market confidence, investor protection and the reputation of the Cayman Islands as a financial centre.

What would be the knock-on effect of a cap on capacity?

Powell: As mentioned, it would be extremely difficult to set a number to represent capacity for every provider given the different directorship models that operate within our industry. Should CIMA decide to impose a cap on capacity it has been accepted that Cayman does not have sufficient directors to meet the increasing needs therefore I believe we would see more people/firms entering the market, not only from within Cayman but from onshore as well.

As a fiduciary, I welcome others to enter the industry provided they are quality service providers who truly understand and take their corporate governance roles seriously.

Ruddick: There is not enough talent and an arbitrary matrix that would limit capacity would only further reduce the available talent. It would have the same effect as the previously debated potential for a mandatory resident Cayman director—an idea we scrapped long ago.

We are seeing new entrants come into the market. Many are appropriately experienced and qualified but others are simply seeing an opportunity and therein lies the risk that it could lead to the industry being watered down with all the new entrants who do not have any experience serving on boards.

We are directors, thus providing high level oversight. We do need to have a depth of experience and qualifications in order to have an understanding of a wide range of issues, but we don't need to be experts in every area.

Lewis: We are seeing a lot of people from the US and UK move into these roles and seeing more skills come into the sector is good. We are also seeing more split boards which is providing the different skillsets needed.

Aspinall: There is a clear trend towards customised boards where the individual directors have been carefully selected based on their specific skillsets and backgrounds.

Lewis: Skillsets are just one factor though—it is also about experience and personality. Appointing a lawyer just because they are a lawyer does not always work. They need to be engaged, interactive, knowledgeable, etc.

Aspinall: I absolutely agree. Just because an individual has a specific background that ticks the right boxes does not necessarily make him or her a good or effective director.

Ruddick: Governance itself is a skillset and people often forget that. Not everyone can make the transition successfully. Everyone is talking about complementary skillsets and having an accountant, lawyer, investment or risk expert, etc, in order to have a comprehensive and well-rounded board, but one overlooked attribute is fund governance itself.

Fund governance is an important skillset, however, the assumption by many is that since they used to be a senior accountant, lawyer, investment or risk expert, etc, they can become a director. The reality though, is that not everyone seems to be able to make the transition from their prior role into a governing and leadership role.

Smith: Effective corporate governance as a very important skillset and necessary for investor protection.

Lewis: There are plenty of people coming in and we do have to grow the industry inventory of quality independent directors. I would have thought that the big concerns are where friends and family are acting as directors or where they are smart people but don't necessarily understand the complexities of what they are seeing. After 2008, you need people who know what they are doing, who can add value in the role and respond appropriately when needed.

Craig: If a numerical cap was introduced that would likely simply lead to people that currently work in support roles to directors being named as directors themselves; which is unlikely to be the client preference. And the change would largely be form over substance as it is likely that the same number of people would be servicing the same number of entities, just with a reallocation of titles.

Aspinall: I keep hearing demands for highly experienced independent directors with very specific backgrounds, such as investment or risk management, yet at the same time allied with requests for stricter capacity constraints. The reality is that if investors want to attract this calibre of individuals to the boards of the funds they invest in they will have to accept that it will necessarily involve an increase in director fees.

MackKay: I have very strong views on this and a fundamental issue with the premise of the debate. The evolution of corporate governance should happen organically across what is a truly global industry.

The primary investment driver for investors remains the level of the return and I believe that any sort of codification of minimum corporate governance standards would be a backwards step because those minimum standards quickly become best practice when actually most directors were doing a lot more before. That would be a dangerous development.

Ruddick: I agree that codifying minimum standards that a few vocal investors appear to be pushing for would be very dangerous. For example suggesting a minimum number of meetings simply creates that minimum standard when many people were going beyond that before—my point being that investors should not get everything they feel they need. No fund director would give up the fund’s minute book yet it is amazing how often you get asked for that.

The whole point of a corporate structure is to have some separation between investors, management and the board. There are a lot of marketing games around codifying minimum fund governance standards as well as other topical issues like form over substance, capacity and split boards, complimentary skillsets, etc, all of which are used by people for their own self-interest. It’s unfortunate as these are fundamental governance issues which require thoughtful attention and the industry needs to get away from using them as governance games.

Lewis: Investment performance is the main driver but investors do look at other things and if they see enough red flags, the operational due diligence (ODD) teams may react and veto and investment.



“FATCA remains a huge undertaking but Cayman has been very good at interacting with the central group and cleaning up any issues.”
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“We should be looking to up the game of the entire industry in Cayman whether it is around corporate governance, the legal profession or accounting.” *Jeffrey Short*

Aspinall: It does happen in today’s environment. Post-2008 operational due diligence teams have been given real powers, by which I mean the right to veto an investment irrespective of performance. Where operational red flags are raised some investors do walk away.

Lewis: An issue around a director might raise a red flag and they might pause but I am not sure that alone it would be enough of a flag to make an investor walk away.

Powell: I agree, I have not seen sufficient instances of an investor walking away solely on the basis of who the directors are. It may be a concern, but fund performance is still the driver. Ultimately, the manager may face pressure from a material investor sufficient enough for him to initiate a change and from my perspective, there needs to be more of an educational process for investors considering a change in how they go about choosing a director and the questions to ask, in the same way they choose an audit or law firm.

MackKay: I agree that a minimum set of standards is not needed. You can’t regulate that in the same way you can’t prescribe what good legal advice looks like.

Aspinall: There appears to a general perception in the industry that changing a director on a fund is not viewed as a red flag in the same way that changing the fund’s auditor might be. In my mind this is an area investors should be far more focused on and further education is definitely required.

Ruddick: The forefront of this discussion is around capacity as a function of form over substance.

Short: But it is great that these discussions are taking place. The outcome is that we should continue to step up the game of the entire industry in Cayman whether it is around corporate governance, the legal



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profession or accounting. You need to consider the quality of the people, their reputation and whether you want to be associated with them.

What are your final thoughts on this discussion?

Powell: From my perspective it is great that we have the ability to sit in this room and openly debate these critical issues that impact all of us in some manner. Some of us are competitors but it speaks volumes to our industry and our collective desire to grow and make our industry better that we engage in full and frank discussions for the good of everyone.

Ruddick: Other than my original point that we as a jurisdiction can't get complacent with regard to regulatory creep and costs, meetings like these are important as it is together where we will achieve more, stay strong and stay ahead. The collective aspect of the hedge funds community here is very important.

Smith: I have been in this industry for over 18 years and the changes have been amazing. It is great to be a part of the discussion with key stakeholders, as it assists CIMA's policy-making and is a good starting place from which to send a united message to the world.

Windsor: I am really proud to be part of the Cayman funds industry and I think we are very well placed for the future given the talent of the individuals here and the strength of the regulator and government.

Aspinall: While we continue to face challenges in the form of increased regulations there seems to be a lot of optimism in the industry at present. The fundamental shifts occurring in the funds industry create enormous opportunities to those that are prepared to embrace the changes. I see Cayman at the forefront of that conversation and I am very positive about the future.

MacKay: Cayman has always been marketed on the basis of its economic strength, political stability, technical expertise and talent. That remains as true today as ever and, in fact, even through the worst times we were much better off compared with many other places.

“Cayman was built on a flexible and balanced regulatory approach and we need to be careful of regulatory creep as well as increases in fees and costs.”
Geoff Ruddick

We are more advanced and innovative than we have ever been and the future is very bright and optimistic.

Craig: Discussions such as this are positive. I am very conscious that it is a competitive environment and that we can't rest on our laurels, but the reasons why Cayman is the pre-eminent jurisdiction for investment funds have been spelled out in this discussion and provide a strong base for Cayman to prosper going forward if properly managed.

Lewis: If I think back, there have always been periods of doom and gloom in the industry but that is not the case now—everything is very optimistic. Cayman is in a great position from which to thrive.

Allard: It is all about relationships. We are in a great position to keep moving forward.

Scott: We are seeing very positive growth and the development of a great partnership between the industry and government. We must focus on excellence while always putting the client first.

Short: I agree with all the comments. CIMA is doing some great work as is Cayman Finance. There is a lot of positivity and excitement. The title of this session was opportunities in change; I would say change is certainly constant but the opportunities are all around us. ■