THE SPIRIT OF POSITIVITY

The annual *Cayman Funds* magazine roundtable, hosted by EY, adopted the topic of renewed optimism despite the headwinds for the funds industry on Cayman, reflecting the challenges of this ever-changing sector and the increasing positivity re-entering the space.

How would you characterise the health of the funds industry?

Baron Jacob: We released our 10th annual hedge fund survey in November 2016, which gives us a global perspective from Asia, Europe and North America on what investors and investment funds are doing. In January, we also released our private equity (PE) survey, where we did a similar exercise.

One issue that came to the fore was performance. Hedge funds have not, in the past year in particular, performed that well relative to markets and that puts a lot of pressure on investment managers as investors question what they are doing. Top of mind for many investors are things such as, how are you going to find alpha and performance? If you're not going to find performance, investors will vote with their feet, pulling out of or pulling back their allocations for hedge funds.

The other issue is management fees. Investors are questioning these and management fees on average have come down in the

past 12 months. On top of questioning management fees, there are also questions around total expense ratios for hedge funds.

Other topics that came up in the hedge fund space and in PE are what are the investment managers doing to attract the right talent and retain it. This is an issue that also moves into what investment managers are doing to optimise using technology, outsourcing and other programmes to reduce the burden on the existing team and allow the investment management team to execute good quality service for their clients. It might be a question of reorganising how the investment management professionals spend the time to focus on portfolio analysis instead of regulation, for example.

The fact is that our industry has to be nimble and has to adapt otherwise the investors who make this industry so vibrant and make Cayman the jurisdictional choice when it comes to new formations will look at other jurisdictions as alternatives. We are also seeing more interest in things such as PE or real estate investments.

On the whole, Cayman is proud to continue to be a premier financial services jurisdiction.

In attendance

Dan Allard, chairman, Cayman Islands Fund Administrators Association

Jennifer Collins, director, Carne Group

Mark Cook, director, International Management Services

André Ebanks, senior legislative policy advisor, department of Financial Services Policy and Legislation

Leanne Golding, senior vice president, Harbour

Rick Gorter, managing director, Trident Trust Company (Cayman)

Baron Jacob, partner, EY

Tammy Jennissen, assistant secretary, Cayman Islands Directors Association

Colin MacKay, chairman, Alternative Investment Management Association, Cayman

Duncan Nicol, director, Department for International Tax Cooperation

Jude Scott, chief executive, Cayman Finance

Heather Smith, head of Investments and Securities Division, CIMA

Richard Spencer, partner, Campbells

Monette Windsor, managing director, MUFG Alternative Fund Services (Cayman)

Chair: Wyn Jenkins, editor, *Cayman Funds* magazine

> "The message needs to be clearly made that what Cayman offers in terms of fund establishment has not changed." *Richard Spencer*

Heather Smith: There were 10,586 regulated funds as at the end of December 2016 compared to 10,940 in December 2015.

It is not fund formations that are creating the drag on the numbers, it's more the rate of the de-registrations. Globally that tends to be the trend we're seeing with funds closing more quickly where the desired returns are not achieved.

Other jurisdictions are also reporting lower overall numbers and Cayman holds its position as the number one domicile. Despite the overall decrease in fund numbers, assets under management for Cayman funds have gone up. There has been growth in total assets for Cayman regulated funds of 1.8 percent as reflected in the $3.5 trillion net asset value reported in the 2015 Investments Statistical Digest.

Jude Scott: We're very fortunate—we continue to be one of the premier global financial hubs and in addition to hedge funds, PE and other alternatives are finding Cayman attractive.

We still see Cayman playing a leadership role with a flight to quality coming into Cayman because of its advantages and strong regulatory regime. Whereas perhaps in the past we lost some business because of cost, people are increasingly recognising the differentiation in the quality in the jurisdiction here and they want to be part of that.

We're also gaining more traction in multiple sectors, such as reinsurance and insurance. Just in January we announced reinsurance as a formal sector for Cayman. We also have our capital markets and trusts sectors.

We're also uniquely placed to help countries address some very important issues including Brexit. The UK and the city of London are feeling under threat and our message is that we're a strong partner of the UK in many ways. We're in a position to provide significant inward investment and liquidity into the UK economy during these uncertain times.

Jennifer Collins: The flight of quality to Cayman is interesting. I was working with a fund recently that transferred its domicile to Cayman from another jurisdiction precisely for that reason. Now that they have transferred they talk about the engagement of the directors here, the ease of dealing with the regulator and the acceptance of the jurisdiction in institutional investment meetings. Quality like that speaks for itself.

Colin MacKay: AIMA conducted a survey last year of the management community and the results echo everything Baron said. It also reflects the challenges of performance, seeking returns and how to differentiate from other products that are out there.

From the investor perspective, some seemed very keen for short-term growth but they were prepared to accept higher volatility. The institutional pension funds are looking for steady return over the longer term. The focus for those investors was around the medium to long term, rather than short-term return.

The sub topics that came out of the survey were spend ratios and fee structures. Everybody is prepared to be creative on fees now, especially if the ticket is large enough.

The investment managers are looking optimistically at Brexit and at the Trump impact as perhaps they will increase volatility.

Certain economists seem to be suggesting we are overdue a recession, and that will bring with it increased opportunity to pursue a return but on the downside. That's attractive to managers.

Mark Cook: As the rate of new launches slows perhaps people are looking to do new things. The number of PE funds is growing, for example, and we're starting to field more enquiries for advisory boards for onshore feeder funds.

Tammy Jennissen: I'm an optimist, and Cayman is able to do things other places cannot. Given the infrastructure and knowledge we have here alongside the regulations definitely offers a good model.

CIMA and the government do great work in terms of making sure that we've got the right regulations in place, without being too overbearing in regulatory terms that would stifle growth opportunities.

Leanne Golding: There has been a sustained status quo for several years now with few changes, or new fees. You know what you're getting when you come to Cayman and that stability is a tremendous benefit to our jurisdiction.

Jacob: That stability Leanne is talking about is one of the hidden gems we don't talk about enough. Also, the jurisdiction has a very firm and efficient court system that allows a sensible expectation as to an outcome that's reasonable for investors.

From formation to wind-down, there are precedents that can be relied on and we have a competent judiciary.

That represents a really good insurance policy that not many jurisdictions have. There are other jurisdictions that try to be financial services hubs where the court system turns people away.

The other big issue is the use of technology. We need to adapt and embrace this because it can offer us the bandwidth to expand.

Finally, the very fact that we are sitting here working together as professionals from different parts of the industry says a lot about how special Cayman is—that cannot easily be replicated.

André Ebanks: Your point about the judicial system is a good one and something the government tries to highlight in cross-border regulatory discussions. The court has made a division specifically dedicated to financial services. I can't think of any of our competitors that have done that. We also have very experienced people in the judiciary—they're ex-practitioners, they've seen it all. It's a huge plus.

Scott: We're currently working on a model and launching a working group within Cayman Finance focused on physical presence, specifically looking at categories that we think are very synergistic with the business model we have in Cayman: family offices, reinsurance companies, investment managers, fund administration, as well as aspects of fintech intellectual property development that will continue to drive leadership in the industry globally and how we position ourselves.

When we look at our market for alternative investments, probably 50 percent of our business comes through the US, 20 percent through Europe, 20 through Asia and 10 percent elsewhere. When we look at Europe itself, probably 80 percent of that 20 percent comes through the UK, so when we look at Europe outside of the UK, we're probably only talking about 4 percent of our business.

We want to continue to grow that business but we also have to make sure it's proportionate with other opportunities we have around the world and all the other significant growth that we're seeing in areas like Asia and elsewhere, so we want to make sure that we are pouring our resources in the areas that work very synergistically and will continue to grow our business model.

Monette Windsor: Something this jurisdiction has that's quite unique is it's February, when there is snow in many parts of the world, and we're sitting here in beautiful sunshine and 82 degrees. The quality of life here is very high. When businesses talk about retaining and attracting talent, Cayman has the advantage of all of the wonderful things about living on the Islands as well as the financial attractiveness of doing business here. Cayman is well poised to attract and retain new business and talent.

What are the challenges and headwinds facing the industry?

Ebanks: There is a lot on our plate right now. We recently had our peer review onsite visit by the OCED Global Forum assessment team in respect of the second round of Exchange of Information on Request, which seemed to go well. Then we have the upcoming Caribbean Financial Action Task Force (CFATF) assessment scheduled for the end of this year for which legislative amendments are being made in preparation therefor. Then we have the IMF review, which we believe will take place some time in 2017.

Other mini assessments are also going on, such as the UK is assessing our beneficial ownership regime. We're already collecting beneficial ownership information, but are putting in place a searchable register for the enhanced exchange of beneficial ownership information with UK law enforcement authorities when in pursuit of bad actors. This is a material enhancement and we have to ensure we get the related legislation right.

Then there is the EU Alternative Investment Fund Managers Directive (AIFMD) which, even though it's really only looking at access to EU investors, it is an assessment that looks at our overall regime.

"You know what you're getting when you come to Cayman and that stability is a tremendous benefit."
Leanne Golding

"Post the Brexit vote, people have taken a step back to wonder whether they want the passport." *André Ebanks*

Duncan Nicol: Many of topics underlying the reviews are interlinked. For example, on beneficial ownership, it's also an issue for the tax standards and partly underpins the Common Reporting Standard (CRS). There's an increasing integration between all the reviews conducted by international bodies.

You therefore have to look at how the jurisdiction itself is integrating these things, the legislative package and the regulations, so that it can be business as usual and cause the least disruption.

The ministry takes a very holistic view of the various initiatives and where there's commonality on an issue solutions can cascade through different reviews. We need to ensure that what we do works for Cayman and can also meet the assessments of the international standard-setters.

Smith: There are some practical implications around reporting, because each review seems to require something slightly different. Our objective is to ensure that we're not having to go to the industry each time looking for different information; ideally all required information should be readily available.

We must therefore anticipate the necessary reporting, look at what we currently have and what we may need to consider adding in the future.

Scott: There is significant convergence globally and a lot of pressure. The challenge is that some of the underlying pushes are actually not reasonable yet they create a tremendous amount of pressure.

Cayman always tries to be the best of its peers and follow the right rules. But some of the rules that are now being promulgated frankly are protectionist and very unreasonable. We must ensure we are fulfilling the high standards, while getting the balance correct.

We value the relationship with government, with the regulator, to be able in some cases to provide a good basis for pushing back on some of those things that are not reasonable for the jurisdiction, aren't balanced and really do not help protect the global financial system.

Nicol: The voice of non-governmental organisations has become more prevalent and there are also more trading blocks, such as the EU, describing what their view of fair taxation should be. It may not align with the rest of the world, but that's the EU view. From a Cayman perspective it has been helpful for us to stay aligned with international standards that have been globally accepted.

Richard Spencer: We have seen some European managers move away from Channel Islands fund structures to use Cayman. That's one potential avenue of growth. We are also seeing managers in Asia moving away from what they perceive as higher risk, less sophisticated offshore jurisdictions, to Cayman, which is very well positioned. The message needs to be clearly made that what Cayman offers in terms of fund establishment has not changed.

What are the pressures beyond the regulatory environment?

MacKay: From a manager's perspective, the critical headwind is achieving performance. If they cannot achieve and deliver performance to their investors, the investors will vote with their feet. The regulatory environment is a consideration but performance matters more.

We have also seen more wind-downs. Some are a consequence of new managers who are simply unable to achieve capital growth or could not raise what they had hoped. Maybe they start off with $20 million but they can't get the institutional mandate to boost capital.

The larger institutional managers continue to grow product and capital, however, which can be counterintuitive because often it's the smaller managers who are able to deliver better performance because they're able to accommodate a higher degree of volatility. Yet when you're dealing with pension money, there's only so much volatility that they're prepared to accept and that tends to push them towards higher value managers.

Jacob: Some of the smaller managers will be the future stars. Colin is right about performance though and investors will pursue alternatives if performance is not there. You can't take the chance of getting it wrong in this environment. The benchmarks prove that you don't need to go to a hedge fund for diversification but I believe the future is with the emerging managers. They need to get that performance right early otherwise they won't attract enough capital to cover the cost of the necessary reporting to regulators, investors and others, nor will they be able to cover the costs of attracting and retaining good talent.

MacKay: In terms of new managers, one of the strengths of Cayman has also been the quality professionals and advice you're getting, and the tried and tested structuring path that deliver cost efficiency to the managers. It may not be high on their list of priorities but while they're seeking volatility on an investment perspective, they do not want volatility on restructuring or jurisdictional perspective.

The other point is that service providers also make an investment alongside our clients, we invest time through fixed fee structuring and fee reductions, for exactly the reason that these new managers and funds are the stars of tomorrow.

Golding: The fee pressure is great. Emerging managers are not only having to deliver returns in a short amount of time, they're having to build a business with much lower fee rates than their predecessors did. The average management fee has dropped along with performance fee.

We see new managers having to set aside enough funds to self-fund for up to two or three years until they can attract the capital that makes their business sustainable.

Scott: An advantage to Cayman is that we're very dynamic and a very efficient connector of users and providers of capital and financing around the world.

There are some things that we cannot control but we provide the very best environment for managers to be successful in. One of the underlying investors into Cayman is private wealth, and from a jurisdictional perspective, we are attracting more family offices. They are growing and are keen to be in environments where they can connect with others and co-invest.

Cook: There's a growing recognition of that infrastructure; we deal with such a breadth of funds from around the world and they feed information back to new entrants or other parties that may be interested in moving here.

Windsor: Emerging managers are competing on performance, but also they're a more risky bet for an investor. So they're looking to de-risk their offering and relocate to Cayman for all those reasons we talked about in terms of the judiciary and regulatory framework. They are also de-risking themselves by partnering with top tier service providers, administrators, lawyers, directors.

In this environment institutional investors are really pushing for those brand name service providers and quality jurisdictions, which helps our industry here in Cayman.

Golding: Returning to the topic of wind-downs, we are sometimes faced with a scenario where not only an individual fund structure is shutting down but the actual investment management entity is closing. As the director you're sometimes the only one left standing at the end of the day once the investment manager has closed its doors and service providers have all resigned.

To make sure that the fund has an orderly wind-down you have to hold conversations with the manager and all the service providers early to figure out an orderly plan to get through it. Certain steps need to happen in the right order or the wind-down can become unnecessarily complex.

MacKay: The regulatory requirements around a wind-down have taken a little bit of time to resonate with the management community. Conceptually it makes perfect sense but you're balancing the concept against the cost. Pre-emptive conversations with the manager are important to make sure you have money set aside and we make sure we're going through that process correctly.

Smith: The amendments to the procedure for winding down funds have been exactly to achieve that. All we want to know is if there's anybody left to turn the lights off as the regulator isn't usually involved while those conversations are ongoing.

It is worthwhile therefore to include the regulator in the conversation to ensure that everyone is a part of the discussion and knows exactly what is happening.

Windsor: It is especially complex when a fund of funds is winding down in terms of claw-backs on redemptions. There is the potential for litigation in the future.

Golding: You can also have the challenge on the flipside when more complex strategies wind down where a fund might have pending claims waiting to be received. How do you balance the need to wait for receipt of a claim with the demands of investors who want to be fully redeemed now?

As a director there has to be a certain element of flexibility to figure out the right approach to the realisation of future claims, otherwise you can be faced with an issue a year or two years down the road when you receive a windfall—who does it go to, has the fund been liquidated and dissolved?

"In terms of new managers, one of the strengths of Cayman has also been the quality professionals and advice you're getting."
Colin MacKay

Collins: In the short term, it was difficult for some managers to accept having to pay for that final audit if they themselves were acting as voluntary liquidator. However, when you step back from the situation and look at it from a regulatory perspective, it's a very efficient way of holding people's feet to the fire to the final day, to ensure that they manage the fund to the very end.

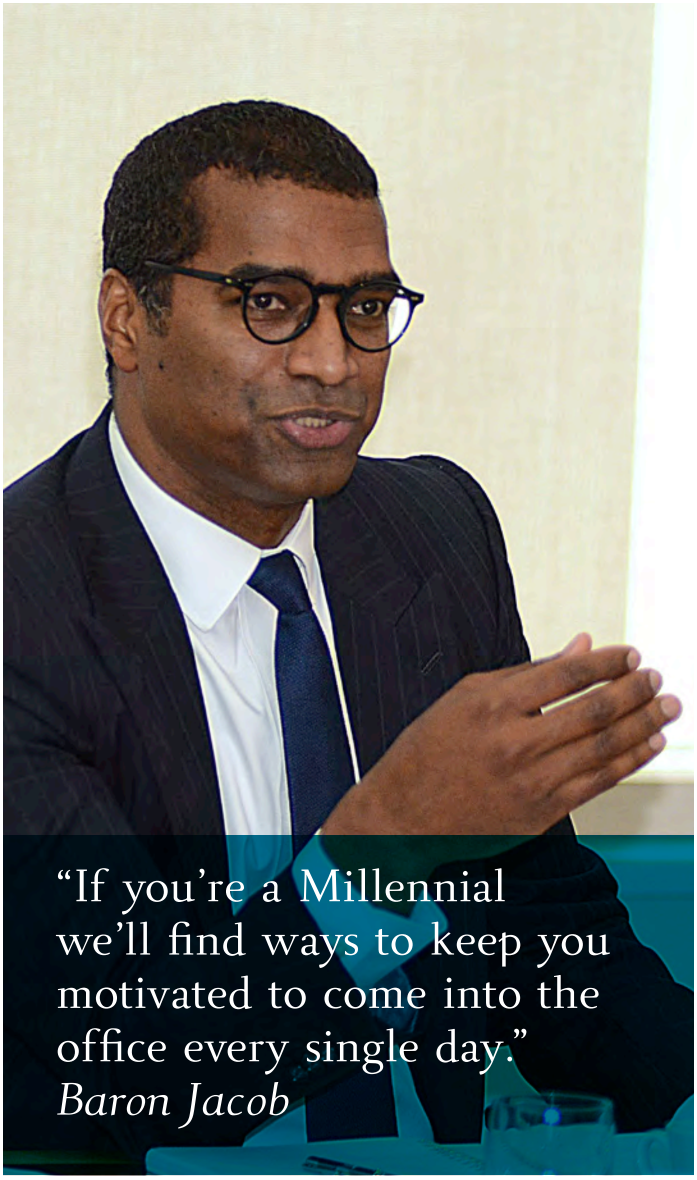
Has the FATCA and CRS process settled down?

Dan Allard: To make a brief comment on the Foreign Account Tax Compliance Act (FATCA), as an association we feel we've got a good process in place, and a good partnership with the government and Cayman Finance to help determine the best way to administer that regulation.

There are some items needed for the CRS to be able to properly meet these requirements but overall we feel that with all these regulations and the requirement within the industry to be transparent, it's made it easier in some cases for the administrators to ask for that extra information on beneficial ownership, which demonstrates that there have been some benefits.

Collins: You've hit the nail on the head. When CRS and FATCA came out, there was a big question mark as to how funds were going to handle it and how would the boards fulfil their oversight duties. But, in actual fact, it has very quickly become standard practice. To give kudos to the fund administrators, they have very much led the charge on FATCA and CRS. It's been much less of an issue from the governance side than you would have expected.

"We want to make sure that we are pouring our resources in the areas that work very synergistically." *Jude Scott*



"If you're a Millennial we'll find ways to keep you motivated to come into the office every single day." *Baron Jacob*

Nicol: I was encouraged to hear Dan say there are benefits to FATCA in terms of getting the right information from the underlying clients and being able to comply with the regulations so that's good to hear.

Has it gone smoothly? Yes and no. On FATCA a number of changes took place at the US level which caused a lot of headaches for us on the government side, as much as they did in industry. From our perspective, FATCA has gone reasonably well and the key thing has been to do the exchanges and honour our international agreements. The collaboration of industry has been excellent.

One thing to note about FATCA, and the same applies to CRS, is that Cayman is a non- reciprocal jurisdiction. What we do is gather and provide information. It's supposed to be exchange of information—it's not, it's provision of information out of Cayman, we don't receive anything, but once the information goes to the US of course there is a feedback mechanism. Although we are a provider of information to the US or, in the case of CRS, to other countries, it doesn't mean that the process stops once the information crosses the border.

Everybody in the room is probably engaged with the CRS to some extent. We've just put some new regulations in place which include the framework for compliance and penalty measures, some of which have been more readily received by than others. One of the key things about the CRS is that there is an effective implementation component built into it. In other words, we're going to be assessed on the effectiveness of our CRS implementation, so we're building for the future as much as doing what needs to be done on a bare bones level at this stage.

First exchanges should take place this year and work continues on making the Cayman Automatic Exchange of Information (AEOI) portal ready to receive registrations and data. There'll be further announcements about that in due course, but the key thing is to put us in a position to be able to honour our international obligations this year.

The working group is currently working on the next version of the guidance notes; it's a rigorous consultation process which is good for everybody so that we get close to the issues, but we are confident we can deliver. There are currently100 jurisdictions which have committed to the CRS; 53, including us, say we will exchange in 2017 and the remainder in 2018.

We expect to exchange with all the 2017 jurisdictions provided they have the necessary legal instruments in place and there's work being done at the OECD as to how that will actually happen. There are approximately 40 jurisdictions with which we are switched on, ready to exchange, and that includes most European countries, although some have a few issues to resolve themselves. A number of countries in the 2017 group are non-reciprocal like Cayman; these are the overseas territories and a couple of other countries that are only giving information and not receiving, so there will be a few less than the full slate of 2017 countries that we will actually exchange with in September.

In terms of the impact on industry, CRS from a government point of view is not a competitive issue, everybody's doing it. We are watching all our fellow jurisdictions to make sure that they are doing what we are doing and that implementation is consistent. There will inevitably be some arbitrage but it is being kept to a minimum by ongoing monitoring by the Global Forum.

Our intention, once it's running, is that it should run in the background and we will be encouraged if there are benefits that come out of CRS. FATCA for all its problems has been a good trailblazer and the infrastructure that was put in place for FATCA has given us the opportunity to build on that for CRS.

This is a massive change to the global system. For the first time, financial institutions are being data collectors for tax authorities. It's not something that one would advertise necessarily but that's the reality: the financial services industry is now the main collector and provider of that information to the tax authorities. We need to keep working in tandem with industry because it's a jurisdictional solution that we're trying to put in place, not a government solution.

Allard: On CRS, the fact there are so many countries involved and so much reporting keeps us as administrators up at night. If you have 800 funds it's that times 90 or 100 reports you are sending out for any one period. That alone is driving how many people I need to physically do this sort of work and that's why we need to continue to have conversations with government about that.

Golding: That's right, technology can take you only so far. You still need skilled people behind the technology.

Nicol: One of the issues that we're looking at very closely is what kind of people do you need. You cannot, as we discovered in FATCA,

"In the past investors never came to talk to directors or service providers, now they talk to everybody." *Tammy Jennissen*

eliminate the human element from an automated system. We are in a different position from other jurisdictions because we do not have a tax administration. Colleagues I speak to in other jurisdictions say ‘we’re setting up a FATCA or CRS unit so we’ll pull some people from our tax administration and have them working in the international team’—we can’t do that.

For us to receive data and then have to do what a tax administration would do with that information before onwardly transmitting it, is a challenge. We don’t ordinarily do that, so that comes back to your point Leanne about what kind of people you need to do that work.

Cook: Each Cayman fund has one counterparty in the tax authority, so would it not be possible to simply make a single holistic filing of essentially the entire investor base for any given fund that classifies by jurisdiction and fills out the balance of information that you as a tax authority would require. Why would you need to make multiple filings when it’s essentially sub-sets of the same information.

Nicol: Yes, again there’s an IT component to that and there’s also how does it fit in with the CRS rules.

Collins: From an international reputation perspective, we helped manage expectations in the beginning, when FATCA was rolled out and people were frustrated that Cayman didn’t know what its reporting was going to look like.

Having moved here from Canada with its very robust tax system I would remind clients that Cayman is not bolting anything on to its existing tax reporting. As a jurisdiction Cayman had first to create its tax reporting infrastructure, then determine how its reporting was going to look, so of course it was going to take time. Having strong service providers who understand the issues and the intricacies of the jurisdiction helps ensure Cayman is positioned properly on the global stage.

It made a huge difference with the funds that I work with once they understood the whole picture. They were no longer as frustrated that the solution wasn’t there right away because they could understand the complexities of implementation if the tax system was not already in existence.

As service providers within the industry, part of our role is to help the international finance community better understand Cayman’s position. With FATCA and CRS we were able to do that.

MacKay: The Cayman service providers are increasingly becoming data custodians and as a consequence of that, the interaction with, whether it be your department Duncan, whether it be CIMA, whether it be the Economics and Statistics Office, the greater uniformity we can have from a government perspective of the data fields that are required, the easier it is for us to then import or export that data into your systems because we are all fishing in a very shallow pool when it comes to expertise on handling big data. We need to find a way to get that data flow efficient, effective and in a way that it’s required at your end.

This needs to be without imposing a huge cost base on the industry because that has to be passed on to the managers and investors who are incredibly cost-sensitive and looking for a return.

Smith: I agree but I think the challenge is going to be the constant moving targets. Once you’ve pinned down what the expectation is from this avenue then something changes, so it’s really trying to keep ahead of what each requestor wants so that we can then be prepared.

What is the latest on AIFMD?

Ebanks: In August 2015 we amended the mutual funds law and security and investment business law so that the primary legislation opened up the framework for AIFMD. In December 2015, we

completed underlying regulations, they were submitted to the European Securities and Markets Authority (ESMA) in draft form at the beginning of 2016 and in their opinion released in July 2016 they basically said they were hesitant to give us a full compliance assessment until they knew that the regulations were final.

We took a few additional months to put some finishing touches on our draft regulations and at the end of last year, December 16, both sets of regulations were completed: the Mutual Funds (EU Connected Fund [AIFMD]) Regulations, 2016 and the Securities Investment Business (EU Connected Fund [AIFMD]) Regulations, 2016. They set out the detail, the procedures and the substantive provisions of how it's all meant to work.

As far as we can see, we have a consistent AIFMD regime and are now working on the two other bits ESMA noted in their July 2016 opinion that they would like the jurisdiction to complete. One is the ability for CIMA to impose administrative fines for regulatory breaches, which would, however, impact not just funds but also every other regulated sector.

It's going to require more than just the folks sitting at this table, it's everybody: bankers, insurance, the money services managers, the trust companies are all going to have to take a look at the regulations, and understand the procedure which CIMA will conduct in order to impose an administrative fine.

I'm sure there will be lots of pleasant meetings to go over the regulations before they get finalised. They're not just being prepared for the purpose of the AIFMD, they're being prepared to enhance the overall regulatory framework.

The last point was for us to have a macro prudential policy in place—the ministry and CIMA are now looking to put in place at least an initial framework for this. Hopefully that will suffice for AIFMD purposes while we continue to develop it further over time. We now await further contact from ESMA. We understand that every jurisdiction that was in the second wave queue will continue to be assessed. No-one has fallen behind.

Scott: With Brexit coming about, there's significant uncertainty as to what is actually going to happen with regard to extension of passports. What we're seeing in many cases is that investment managers outside Europe who have access to the national private placement regimes (NPPRs) are quite happy with the status quo. They're able to access the jurisdictions they'd like to market to and in many cases they find that the additional oversight burden and cost would actually be far greater if they have to move to an actual AIFMD passport regime and that the current regime allows them to target the countries they have an interest in efficiently and effectively with their current structures.

Ebanks: There is talk in the EU that the NPPR won't last forever, so if that really shuts down that's more of a reason why Cayman has to go out and try to get the passports for those who are interested in European investors. If you have a fund that has no interest in European investors it is business as usual, nothing has changed.

I agree that post the Brexit vote, people have taken a step back to wonder whether they want the passport, but as a jurisdiction since we've come this far we might as well finish the process so that the product is there for those who need it, particularly if NPPRs are cut off.

Windsor: Any time there are changes in regulations, such as AIFMD, it's an opportunity for us as a jurisdiction and for service providers to demonstrate how we add value to our investment managers.

The investment in terms of people, technology, resources and data management is sometimes sizeable, but I sincerely believe that there is definite added value to our clients and their investors, as well as the jurisdiction.

MacKay: This is probably the single largest issue facing the management community and will be for the next couple of years. For managers who are managing US-based assets or non-EU assets and looking for non-EU investment opportunities it is a non-issue but increasingly more managers do have an exposure to a European investor base or European investments. Some influential people have warned London not to seek to become 'the Singapore of Europe'; don't go for low tax, don't go for tax-free aggregation vehicles, that warning is pretty clear.

Cayman has a tremendous opportunity to attract an inflow not just of additional capital to the jurisdiction through aggregation vehicles but to attract managers to the jurisdiction. From the point of view of long-term stability for the local economy getting more managers on the ground here with functionality would be a huge step forward for us. We're working in an environment with some of the best and brightest minds in the industry and it's a natural place for the management community to come; the more we can do from a government perspective, but also from a regulatory perspective, to encourage that the better.

Cook: If nothing else it helps with perception, in that you've jumped through all these hurdles and you're at the same level as everybody else, if not above.

Nicol: There are issues of perception and credibility, but the more we are at the table and actively engaged the better our reputation becomes. In terms of the smaller jurisdictions Cayman probably stands out and I think that's as a result of our engagement. Following through with a lot of these initiatives—whether or not they are of immediate direct benefit—is worthwhile because in the long term, the reputational framework is much better.

"We've got a good process in place, and a good partnership with the government and Cayman Finance." *Dan Allard*

How have changes in corporate governance changed the dynamic on Cayman?

Jacob: One of the benefits we have is that a lot of the people who participate in that space are in this room. For us as auditors we've heard some of the things that people talk about in particular when new launches come to the table. We are all prepared when a new client says 'work with me, I'm a star in the making, co-invest with me as I build AUM and don't have the ability right now to take the entire burden of your traditional fees'.

We make those bets but it goes back to our being required every day to do the best job for our clients through development of our people, attracting talent that is competent, and then also working with our colleagues to make sure that we bring the right touch to what we do in Cayman, from the ministry to the regulator and to us.

The uptick in corporate governance is the result of a great many things. Cayman is uniquely positioned whereby through the local auditor regime, we work with our colleagues throughout the world to ensure best practices in areas like corporate governance are provided to every client we work with.

It used to be you'd spend an exorbitant amount of time defending why a fund would be domiciled in Cayman and the requirements of the jurisdiction as a whole, now it may take five minutes to have the same type of conversation because people know what they should expect from Cayman. The high quality of corporate governance, for example, has allowed that perception to be expected as the norm when funds choose to launch and a majority of new funds choose Cayman. That's really a compliment to the people who work in a financial service industry here in Cayman.

"Institutional investors are really pushing for those brand name service providers and quality jurisdictions."
Monette Windsor

Rick Gorter: Corporate governance is not just being driven by the fund principals and regulators, it's also being driven by the investors. When I started out in the industry, investors had very little input, they took a back seat, you dealt with the fund managers, but now in order to provide comfort not only do we have annual external audits we are also subjected to SOC1 examinations, security and data protection audits and questionnaires, as well as anti-money laundering audits and regular regulatory examinations. The sophistication is increasing and there is greater pressure on the administrators for compliance.

The challenge I see as an accountant is that income has to exceed expenses otherwise you're on a fast track to nowhere, but we're seeing downward pressure on fees yet compliance costs are increasing dramatically. Audit and compliance fees are a fairly substantial part of our expenses and I'm not sure how this is all going to play out, not to mention the increased cost of FATCA and CRS compliance where the IT costs of implementation alone have been astronomical.

The other issue on corporate governance is the question of outsourcing which is being driven by price sensitivity issues. How do you operate effectively within a regulatory environment when the work may not always be done in Cayman any longer? There are substantial challenges and our operations are becoming a lot more complex. It seems like we are hiring more IT and compliance people than accountants these days. As Colin said, we're becoming data custodians so we have to manage the data as efficiently as possible.

Golding: When the Statement of Guidance for Regulated Mutual Funds was issued everyone in this room who's in the governance field looked at it and said 'we're already doing this and more'. The heightened attention investors have paid to corporate governance has only helped our message when we're speaking with clients and getting across the idea to consider us a trusted advisor, someone who you can come to for advice.

Yes, a cost comes with having an active board of directors but it's usually pretty de minimis in the grand scheme of things when the fund is of sufficient size, so consider us an affordable resource that you can come to and bounce ideas off.

Jennissen: In the past investors never came to talk to directors or service providers, now they talk to everybody. Investors want to know all the background and that's partly why we're being elevated so high in the corporate governance world.

The Cayman Islands Directors Association is going from strength to strength. Directors need to be involved in any type of regulation that's in the pipeline because if we don't know what's going on we can't effectively govern and make sure that the investors are protected. Ultimately our goal is to make sure that the investors are being taken care of. We all sit on many different structures, multiple variances of funds, the PE world is such a broad spectrum that we have to have access to the information and we're definitely more vocal than we were in the past.

That's driven a lot of the new blood coming in and being a lot more involved than maybe in the past. It's a lot harder to find the returns so investors need to be more involved in doing the due diligence to make sure it is the right investment manager that they want to put their money with.

Spencer: Tammy, are Cayman-based directors finding that there is an increased appetite for independence on the general partner board in PE fund structures?

Jennissen: Yes, we are also seeing more interest from PE. It's a lot easier to implement the advisory board role and they're actually quite happy to have someone else take control of those functions.

Collins: Governance in the alternative asset space has been an evolution, Europe was first in terms of having robust independent governance at the fund level, next to follow was the US for their funds structured as Cayman companies.

The next phase which we are in now is the appointment of advisory boards on limited partnerships acting as master funds and even some domestic funds. This is a first sign that the North American market is really embracing the value of independent oversight. The next logical step will be independent oversight in the PE space.

MacKay: It's important to recognise that the oversight in PE is different from the oversight in hedge. The oversight in hedge is all encompassing; it's performance as well as structure and contractual consistency. In the PE space, the partnership structure likely includes an investment committee and a limited partner advisory committee (LPAC) which combine to focus on investment decisions and investment performance.

The independent governance intrusion into the PE space is because the members of the LPAC want to avoid assumed fiduciary responsibilities to their co-partners, so the independent piece is relatively limited in scope. There's growing interest in PE but I don't think it's a dam that's about to break. There is an opportunity to be involved but we'll see over time, it's already been a slow burner.

Smith: With the enhanced focus on corporate governance being investor-driven, it'll take some key investors on the PE side to push it along.

MacKay: You can actually see the evolution in this room—10 years ago Richard wouldn't be the only lawyer in the room. That itself demonstrates the way the industry locally has shifted in terms of the inputs into discussions with government, CIMA, etc.

Jennissen: With the introduction of the new limited liability company (LLC), you'll again see a broader scope of the people being brought on to boards because it now offers the managing member a system more aligned with the US model. People like the model in the US and they're very comfortable with it.

Cook: For the benefits that independence brings—whether it's overcoming conflicts or just providing oversight that investors can't do themselves—the relative cost is minimal compared with the dollars involved for the funds. It's one extra cost certainly that needs to be borne and overcome but relatively speaking it's not that great a cost either way and the fact that we're able to speak with one another and interact with the regulator regularly means that corporate governance isn't just about the directors on the board. It's about the directors interacting with the auditors and the administrators and the lawyers and making sure that everyone collectively is aware of what they need to be aware of so that the investors' interests are protected.

Whenever I'm pitching for new business and people say, 'we're speaking to others as well' I always say, 'that's great, we all have different backgrounds and perspectives but essentially whatever you do, someone here is going to be better than someone from overseas or someone who's not in this space generally'.

Scott: There's a lot of opportunity for Cayman to help move the needle. It's taken maybe six years of slow crawl to get more concise,

consistent messaging about the real value of Cayman directors and how the governance structure in Cayman adds to it. The feedback I get is those who are familiar with it really see the excellence provided by the Cayman Islands governance sector and a lot of that comes from the varied depth and experience that exists here.

What we don't always do a great job of is explaining how that diversity of structure and service providers and size of entities and governance models works in conjunction with the nature and complexity of the clients they're serving. Sometimes it is quite confusing and it sounds as though one's better than the other but really as a jurisdiction we are figuring out how to manage and actually run the whole gamut, to provide the full selection that works best for each of our clients to maintain that high standard of excellence.

What about talent? Does the industry have a potential problem looming?

Scott: We're uniquely placed and as Monette shared earlier, we're actually a great place to do business and live. The quality of life here is tremendous and we're going to get better in communicating that and continuing to attract the top talent that's out there. We're also working on initiatives, for example, we're going to be launching a fintech working group because when we look at not only where we are now, but where the industry's moving forward, fintech is going to become a very important part of the future.

On the one hand the talent is finding us but we're also collectively doing a lot more work in connecting with the talent, and attracting them to the jurisdiction. With fintech for example, there's a tremendous amount of desire to look at the legislative framework in Cayman, the legislation that's been put through to protect IP, copyrights, etc. What I'm seeing is we're going to be a prime jurisdiction for attracting and retaining that talent.

> "Part of our role is to help the international finance community better understand Cayman's position." *Jennifer Collins*

Collins: Our distance from the larger centres can be a driver for companies retaining talent longer here. Cayman is a great place to live and people want to stay here. If you talk to service providers in big cities, they often lose their talented staff to investment managers where people can be on the other side of the deal.

In Cayman, for the most part, we are largely service providers and there are fewer opportunities to move into investment management. Because of this, we have much less turnover and our staff tend to have more experience than their counterparts elsewhere. We end up with great senior people in positions here in Cayman, people who stay because of the attraction of the lifestyle and because their peers in their firms and at the other service providers are also senior, bright people they enjoy doing business with.

This raises the quality of talent you're dealing with when you talk to a service provider based in Cayman versus an equivalent service provider based in a large centre onshore.

Jacob: I presented to a director's organisation that's not represented here—of the 10 people in the room, eight of them were former EY. I thought 'what's happening here, why are all these people ex-EY?'. It gets back to the point that Jennifer and Jude have raised which is that Cayman's a great place to live and work.

> “The infrastructure that was put in place for FATCA has given us the opportunity to build on that for CRS.” *Duncan Nicol*

When you look at our firm, the one thing we have to continually refresh when we have people who initially plan to come to Cayman for only two years is the perspective of ‘what is your professional growth path, how can you continue to develop as an individual and stay focused on being better at your job?’.

Your job’s going to change, but whether it be PE or hedge funds, the heart of it all is keeping people focused on the fact that we will help you grow professionally, we’ll help you have a rewarding career and if you’re a Millennial we’ll find ways to keep you motivated to come into the office every single day.

I had a managing partner whose habit every afternoon was to walk around the office and say, ‘thanks for coming in today, I appreciate you making the decision to come to work, I look forward to seeing

> “Corporate governance isn’t just about the directors on the board.” *Mark Cook*

you tomorrow’. It was corny but to him our people were the most important assets to the firm.

To keep them coming back to work is the biggest challenge I have, so letting them see the big picture on this job is very important. It will change in the future because we’re going to involve fintech and involve other ways of technology helping out, we will use resources from places like India to support us using a 24/7 clock to get through the work.

As you move up as a professional with more experience and responsibility, we’ll have you do more intellectually demanding things, tasks that we have to focus on to ensure that when Dan comes calling to convince our professionals to leave public accounting and go into fund administration, it’s not as attractive for our staff to leave as it is for them to stay and continue their career with EY.

Smith: We too will lose people to the industry but we tend to look at the positive side which is more people going into the industry who understand the regulatory framework, so when they encounter something or have a request from CIMA they’re able to give some perspective as to why it is that CIMA is requesting that information.

We’ve found it a benefit, we don’t want to continue to lose staff to industry of course, but people tend to stay locally even if they’re moving around, so you bring in the talent gained in one organisation to another and you continue to deepen that talent pool overall.

Within the same small area that in itself is talent management, it doesn’t have to be within a specific company or even a specific industry. We’ve had ex-auditors join our team who say ‘we understand better now what CIMA is requesting and why it is being requested’.

They’re then able in discussions with their colleagues in industry to communicate the message of what the regulator expects.

Allard: The whole point of all this is that because you have so many different options here in Cayman, people are moving around but you’re retaining this talent on the Islands. We’ll continue to do so as we have those professional options for people. ■