

## Investment Management Alert

January 13, 2014

### FCA Publishes Update on AIFMD Application Process

This alert will be of interest to U.K.-authorised investment management firms preparing to submit applications for variation of permission (VOP) to the Financial Conduct Authority (FCA) in connection with the implementation of the Alternative Investment Fund Managers Directive (AIFMD).

#### Executive summary

The FCA continues to advise firms to submit their VOP applications in January 2014. There also appears to be a significant emphasis placed on whether or not an application is “complete” until any substantive progress will be made with the approval of the application.

#### The FCA’s VOP process

On Friday, the FCA published its first official guidance on the process that it will follow in connection with the management of VOP applications. The process envisages a different approach to the one followed historically in respect of new applications for authorisation and other VOP applications.

AIFMD-related VOP applications will be subject to a “triage” process, where a dedicated team will assess whether each application is complete, before it is allocated to a case officer.

There are a number of points of interest raised by this process and the guidance itself.

Firstly, the guidance reiterates the FCA’s expectation that firms will submit their applications en masse in January 2014. This is consistent with the FCA’s public comment on the recent Treasury’s proposal to extend the transitional arrangements for U.K. firms, where the FCA has consistently stated that they continue to expect VOP applications in January, in line with their prior guidance.

Secondly, the new process places a significant emphasis on whether or not an application will be deemed “complete.” No substantive progress will be made in respect of an application until it is deemed complete. It is not clear how this approach interacts with the FCA’s previously expressed views that firms could submit their VOPs with information “to follow.”

Many hedge fund managers are experiencing significant obstacles in agreeing even the basic terms of the AIFMD-compliant valuation and depositary services with their service providers. This is particularly significant in respect of the parts of the VOP relating to valuation arrangements and the appointment of a “depositary-lite.” Firms should note that, in an earlier announcement, the FCA stated that VOPs could be submitted before the depositary arrangements have been finalised and that the depositary information was not required for the application to be deemed complete. It is now not apparent where the boundary

lies between submitting an incomplete application and an application which the FCA will process on the basis of “information to follow.”

**Action points for firms**

Firms should continue to aim to submit their VOP applications by January 22, 2014 and redouble their efforts to finalise the principles of their relationships with their service providers in respect of both the valuation role that they will play once authorised as an AIFM and the “depository-lite” construct. There remains a significant amount of work to be done in connection with the offerings of the vast majority of service providers in these areas to ensure that they are compliant with AIFMD.

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