Jersey Financial Services Commission

Jersey Private Funds Annual Compliance Returns

Following another successful year for Jersey Private Funds (**JPFs**). We are sharing findings and best practice as we approach the next annual return period.

General

We would like to remind Designated Service Providers (**DSPs**) that it is their responsibility to complete the JPF Annual Return accurately and in full. DSPs need to ensure compliance with the JPF Guide as part of performing their role for a JPF. Best practice is demonstrated by DSPs with a clear understanding of their responsibilities to JPFs under the JPF Guide.

Material Issues

Material Issues should be notified to us in the prescribed online form within 28 calendar days' of becoming aware of the issue. DSPs should not wait until the annual return to make a notification.

Material issues which were notified to us on the annual return included:

- the JPF was winding up
- professional or eligible investors had not received the investment warning and disclosure statement as required by Part D, Paragraph 5 of the Eligibility Criteria of the JPF Guide.

We would like to remind DSPs, and other service providers to JPFs, that only investors who have confirmed receipt and accepted the disclosure statement and investment warning are eligible to invest in a JPF. These are tools which, if publicised and understood correctly, provide an additional layer of comfort and protection to investors.

Equally, if the JPF is relying on the Financial Services (Investment Business (Restricted Investment Business - Exemption)) (Jersey) Order 2001 and/or the Financial Services (Trust Company Business (Exemptions No.5)) (Jersey) Order 2001 (together the **Orders**), there are additional requirements that relevant warnings are received and acknowledged in writing by investors – all of whom have to be professional investors as determined by the Orders.

Due Diligence on Service Providers

DSPs should fulfil their obligations under Part G Paragraph 6(ii) of the JPF Guide to carry out all necessary due diligence and ensure that the promoter of the JPF has put in place reasonable measures to ensure that all service providers to the JPF are fit and proper and can fulfil the tasks in a responsible, professional and suitable manner.

Issues with the annual return included:

- negative confirmation that DSPs had completed all necessary due diligence
- omission of confirmation due to ongoing remediation

Unless agreed in advance and in writing with the DSP's supervisor, it is unacceptable for the DSP not to be able to confirm their compliance with this requirement due to ongoing remediation. Without such confirmation from the DSP, we are not provided with sufficient comfort that the promoters or any other service providers are able to perform their duties with regards to servicing the JPF or its investors.

We would expect DSPs which have entered into a Deed of Covenant and Indemnity with the Promoter to be able to explain how the DSP 'ensures' that the promoter has put in place appropriate measures. We would expect a further level of investigation (such as reviewing those appropriate

measures) to be comfortable that the promoter has the ability to perform its duties under the Deed of Covenant and Indemnity.

AML/CFT Requirements

DSPs should be able to confirm positively that they are performing their duties in line with the requirements of the JPF Guide and their obligations under the Money Laundering (Jersey) Order 2008 (**MLO**).

Issues with the annual return included:

- negative confirmation that DSPs had performed their duties due to insufficient time to prepare for the annual return
- omission of confirmation due to ongoing remediation

Unless agreed in advance and in writing with the DSP's supervisor, it is unacceptable for the DSP to be unable to confirm compliance with these requirements. Not having sufficient time to make the declarations within the Annual Return (or being unable to confirm) indicates a lack of oversight and a potential failure of internal controls. Non-compliance with Jersey's AML/CFT requirements may be a criminal breach of the MLO and therefore needs to be remedied immediately and/or referred to the Attorney General.

Launch Date of the JPF

We received a number of returns where the launch date of the JPF had been left blank as an oversight. We would like to remind DSPs to complete this question, having particular regard to whether the JPF has admitted investors or has collected capital contributions.

JFSC Official