



CUMMINGS

lawyers for alternative investments

Gaining FCA
Authorisation in
the UK– Q and A



Gaining FCA Authorisation in the UK– Q and A

Q What were the reasons for the Financial Conduct Authority (“FCA”) being set up originally?

A In 1986 when the investment market opened up to a wider investor universe, which included making it possible for retail investors to make direct investments, it was perceived that these investors needed a form of protection and so regulatory bodies were established, which were later combined into one regulator, the Financial Services Authority (“FSA”). Largely as a result of the FSA’s failing performance during the financial crisis in 2008, the FSA was abolished with effect from 1 April 2013 and the majority of its roles and functions are now carried out by the Financial Conduct Authority (“FCA”), which adopted the legal corporate identity of the FSA.

Q Do investment firms have to give the same levels of regulation to all clients?

A No. Firms which deal with retail investors are subject to a greater regulatory burden than those who deal only with professional investors.

Similarly, capital requirements are greater for firms holding client money and greater still where that money comes from retail investors.

Furthermore, the type of service offered by a firm attracts different levels of regulatory burden with those firms only advising professional investors being subject to a less onerous regulatory burden than for those holding the assets of retail investors.

In addition, use of the appointed representative/ tied agent regime is possible for certain restricted activities, such as providing investment advice and making arrangements in investments.

Q Who is regulated?

A Both the investment firm (generally a partnership or company) and those in the firm who conduct regulated activities in relation to

regulated investments must be authorised by the FCA, subject to certain loopholes established by legislation.

In addition, those who own enough of the investment firm to have influence over it must also be approved by the FCA as fit and proper to hold such a position.

Q What are these regulated activities and regulated investments?

A These are listed in financial services legislation and a firm and its relevant staff will be required to be authorised if he/she conducts specific activities in relation to specific investments. Thus, it is a two-limbed test.

Regulated activities include:

- accepting deposits;
- dealing in investments;
- arranging deals in investments;
- managing investments;
- safeguarding and administering investments; and
- advising on investments.

Regulated investments include:

- shares;
- debt instruments;
- futures and options;
- units in collective investment schemes; and
- contracts for differences.

Q How does a potential investment firm or person apply to become authorised?

A Application is made by the completion of certain specific forms produced by the FCA plus supporting information such as financial forecasts, terms of business and offering documents. Applicants are required to demonstrate they have full knowledge of all FCA requirements and suitable systems in place.



Capital requirements must be met and maintained and each firm will calculate its own requirement using FCA set levels as the starting point.

Only staff who are both competent and fit and proper will be authorised. These conditions may be met by experience and/or examination.

Certain specific roles must be filled by suitable personnel, for example the compliance officer and anti-money laundering officer.

External professional firms may make the application and continue in their roles as advisers after authorisation.

The application is time-consuming and quite complex and thus it is very common for lawyers to be instructed to prepare the application pack.

Q What are the on-going requirements?

A All FCA rules must be met at all times and regulatory capital must be maintained at all times.

The firm must make regular reports on compliance and financial issues and inform the FCA of certain changes, some of which will require advance approval.

The firm must maintain full compliance documentation and a business continuity plan as well as conducting and documenting stress testing exercises on an annual basis.

All staff who are regulated must remain competent and receive regular anti-money laundering training.

**This document is for general guidance only. It does not constitute advice.
February 2014**



CUMMINGS
lawyers for alternative investments

42 Brook Street, London W1K 5DB +44 20 7585 1406 | Neuhofstrasse 3d, CH-6340 Baar +41 41 544 5549

Regulated by the Solicitors Regulation Authority