CAREY OLSEN

Hedge funds in Guernsey

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This flexible and pragmatic approach adopted by the GFSC in relation to investment funds aimed at the institutional or high net worth investor market has helped the significant growth of this sector in Guernsey.

Nowadays, most funds formed in Guernsey tend to be for the institutional or high net worth individual markets, with hedge funds, funds of hedge funds, private equity and property funds being especially popular.

Guernsey is particularly keen to attract high quality hedge fund business. Following consultation with the industry, the GFSC released a guidance note in November 2003 setting out a more relaxed framework for the operation of hedge funds, which included waivers of the various fund rules in four key areas.

Custody

For funds targeted at institutional and expert investors, the GFSC is prepared to waive the requirement for a Guernsey licensed custodian to hold the assets and will be prepared to designate the fund's prime broker as custodian (if the custodian is regulated in an acceptable jurisdiction and has substantial net worth). In addition, the GFSC will not require such a prime broker to take on formal duties of oversight over the fund manager (which is normally required of a custodian).

The GFSC is willing to take the same approach as regards the custody of the assets for funds targeted at retail and less sophisticated investors, but will still expect Guernsey licensed custodian to oversee the fund manager (although it is prepared to consider requests to designate custodians from other jurisdictions provided it can be satisfied that the custodian's role in overseeing the fund manager will be subject to monitoring by the custodian's regulatory authority).

Segregation of assets

For funds targeted at institutional and expert investors, the GFSC will not require the prime broker to offer physical segregation of fund assets from its own, so long as the fund prospectus makes clear the risks of such arrangement.

For funds targeted at retail and less sophisticated investors, the GFSC will require the prime broker to offer physical segregation of surplus fund assets from its own (surplus being the excess of fund assets above the collateral required to be set against any credit extended by the prime broker).

Net asset value

The GFSC recognises that some hedge funds, and funds of hedge funds in particular, may have difficulty in establishing their net asset value with a frequency that corresponds with the valuation and liquidity points of units in such hedge fund or fund of hedge funds.

The GFSC is therefore willing to permit subscriptions and redemptions on the basis of preliminary NAVs, with the final number of shares (for subscriptions) determined at a later date, and interim redemption moneys being paid out pending a later final adjustment, in each case once the NAV is finalised. Full disclosure of the risks of this approach is required.

The GFSC is willing to permit the same approach for funds targeted at retail and less sophisticated investors, provided that any interim redemption payments are set at such a percentage of the estimated NAV that the chance of an overpayment (if the final NAV is significantly lower) is extremely remote (in which case the manager must reimburse the fund any overpayment).

Client money rules

The GFSC is willing to provide waivers from the client money rules to permit the subscriptions on the basis of estimated NAVs, provided that it is satisfied as to the robustness of estimation procedures to be used. This is required because client money rules would normally prevent the release of subscription moneys for use by the fund where the final number of shares subscribed for is not yet determined.

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FIND US

Carey Olsen (Guernsey) LLP
PO Box 98
Carey House
Les Banques
St Peter Port
Guernsey GY1 4BZ
Channel Islands

T +44 (0)1481 727272
E guernsey@careyolsen.com

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