



## Joint Committee

**Date of Meeting:** 16<sup>th</sup> January 2018

**Report Title:** Border to Coast Regulatory Update

**Report Sponsor:** BCPP CEO – Rachel Elwell

### **1 Executive Summary:**

- 1.1 The purpose of this document is to outline to Joint Committee the requirements of the FCA for authorising firms and to describe the steps taken by the project team to complete the application process.
- 1.2 Good progress is being made towards the submission to the Financial Conduct Authority of the request for approval of BCPP Ltd as an Alternative Fund Investment Manager. This is expected by the end of January, with approval typically taking up to 3 months (as long as the submission answers the questions raised by the FCA). See section 3 for details.
- 1.3 As part of the submission, BCPP Ltd will be confirming that it will not be caught by the client money provisions, CASS. In order for this assertion to be valid, the local authorities will be asked to provide a waiver in respect of these provisions. Legal advice has been sought on this on behalf of the local authorities (provided by Squires, independent from the advice provided to BCPP Ltd by Eversheds). See section 4 for details.
- 1.4 Approval for the sub-funds that are to be established in order to allow the pooling of assets will follow later in 2018. This approval typically takes up to 30 days.

### **2 Recommendations:**

- 2.1 The Joint Committee is asked to note this regulatory update and progress towards the filing of the regulatory application for approval by the Financial Conduct Authority of BCPP Ltd as an Alternative Fund Investment Manager.
  - 2.2 The Joint Committee is asked to note and recommend for approval by the local authorities the provision of a waiver for BCPP Ltd in respect of the client money provisions under CASS.
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### 3 FCA Requirements

- 3.1 The FCA threshold conditions represent the minimum conditions for which the FCA is responsible, which a firm is required to satisfy, and continue to satisfy, in order to be given and to retain overall Part 4A permission (permission to carry on regulated activities). The FCA will ensure a firm meets the threshold conditions for all of the regulated activities for which it will have permission. The Threshold Requirements are:
1. **Location:** must carry out business in the UK.
  2. **Effective Supervision:** must be capable of being effectively supervised by the FCA having regard to; the nature and complexity of the regulated activities, the complexity of products provided, the way in which the business is organised, membership of any groups and close links with other persons.
  3. **Appropriate Resources:** resources must be appropriate in relation to the regulated activities carried out having regard to; the nature and scale of the firm, the risks to the continuity of services provided and membership of any group.
  4. **Suitability:** must be fit and proper having regard to the nature (including the complexity) of any regulated activity, the firm's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system, whether those who manage the firm's affairs have adequate skills and experience and act with probity, and whether the firm's business is being managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner.
  5. **Business Model:** the firm's business model (that is, the strategy for doing business) must be suitable for carrying on the regulated activities that the firm carries on or seeks to carry on. This includes; whether the business model is compatible with the affairs being conducted, and continuing to be conducted, in a sound and prudent manner, the interests of consumers and the integrity of the UK financial system.
- 3.2 The FCA application being made by BCPP Ltd to the FCA is intended to demonstrate how it meets, and will continue to meet, these Threshold Conditions.
- 3.3 In order to deliver the objectives of the LGPS pooling initiative, the services that BCPP Ltd will provide its Clients that require FCA permission are:
1. Managing UK Authorised Investment Funds (the ACS) that do not qualify as UCITS,
  2. Managing UK Unauthorised Investment Funds, and
  3. Activities permitted by article 6(4) of AIFMD

### 4 Application Approach

- 4.1 The project to form and launch BCPP Ltd has followed a logical process of requirements definition, decision making and operating model design. The approach taken to the FCA application has followed the same principles of logic and clarity.
- 4.2 The approach to completing and submitting the required FCA application has 3 phases: Design, Iterations and Submission
- 4.2.1 Design:** the operating model design decisions from the previous stages of the project will determine the complexity of the application and the permissions required from the FCA. During the Design phase key aspects of the operating and business model will be confirmed, including; types of services to be offered, capital regime, governance and organisation structure, and ownership and key relationships.
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**4.2.2 Iterations:** the key activities during the Iterations phase are documenting the details deriving from the outcome of the Design. Stakeholders will be consulted to sign-off the key decisions from the iterative sub-phases:

1. The Regulatory Business Plan
2. Key compliance arrangements including the final governance structure and individuals performing controlled functions
3. Compliance policies and documented Compliance Monitoring Programme
4. Confirmation of the applicable FCA fee block based on the proposed authorised business
5. Obtaining/producing the necessary financial statements and forecasts

**4.2.3 Submission:** this phase will ensure that the application is complete and ready to be submitted to the FCA. This will include signed-off documents, FCA forms and the supporting/supplementary information (required to be ready but not submitted at the time of application).

## 5 Application Status

5.1 The principle activities of the project to this point have been on the Design and Iteration phases, with the aim of getting the project to a point where BCPP Ltd has a defined operating model, proposed investment structure and suitable governance and oversight.

5.2 The Iterations phase of the application process is currently underway and the policies and documents required for BCPP Ltd to adequately demonstrate its model and be granted the necessary FCA permissions are being drafted. The principle documents of the application are outlined below:

Document	Description
Core Details Form	This form is required by the FCA so that they can contact BCPP appropriately during the application and thereafter, as well as ensuring that BCPP meet the threshold conditions (COND 2.2).
Variation of Permissions (VoP)	This form is required by the FCA to outline the permissions being sought by BCPP and the controls, resources and personnel in place to manage the business. There is significant overlap with the Supplement, but VoP takes precedent.
Supplement for Investment Managers	This form is required to inform the FCA of the nature of the business BCPP intends to carry out so that BCPP is authorised for the correct regulated activities, investment and client types as well as ensuring the adequacy of BCPP's resources.
Detailed IT Controls Form	This form is required by the FCA to demonstrate that BCPP's IT systems and controls meet the standards and requirements set out in SYSC (particularly SYSC 1) of the FCA handbook.
Schedule of AIFs	This form is required to give details of the funds being created and offered by BCPP, including legal wrappers and asset class mix.
FUND 3.2.2R Disclosure Checklist	A checklist to ensure BCPP have the required information available to provide to investors, for each AIF managed. This refers to the other documents and should be completed after the rest of the application.
Checklist & Declaration	This form is required by the FCA as an attestation by BCPP that all required documents are included in their application and that all information provided is correct. This form outlines the FCA fees applicable to BCPP.
Compliance Monitoring Programme	A programme of tests carried out to establish and maintain compliance with policies and procedures relevant to the regulated activities undertaken by the firm.

5.3 The information required to complete these forms is being gathered and produced both internally from the BCPP project team and from Alpha's external team of consultants and regulatory SME's. It is the current target of the project is to submit BCPP Ltd's application to the FCA in January 2018, which is in line with the overall launch date of June 2018.

- 5.4 There are several outstanding items, other the drafting of documentation, that are required to be completed on order for the FCA application to be sufficient for submission. These are outlined below along with the target timeline for their completion:

Item	Description	Target Date
Confirmation of Usual Place of Business	BCPP will need to list a usual place of business in their application. The office selection process is being led by the BCPP project team and heads of terms should be in place by January.	January 2018
Financial Resources	The revenue model for BCPP Ltd as well as draft financial statements for the first 12 months of trading and regulatory capital need to be included in the application. This is being provided by BCPP Ltd and Deloitte.	January 2018
Appointment of External Auditor	BCPP Ltd will need to give the FCA details of its external auditor	January 2018

- 5.5 The final full FCA application will be available for officer and members if desired, but we note that completion of the document is a BCPP Ltd responsibility and is a highly technical document.

## 6 CASS Waiver

- 6.1 Under the Client Money Rules, a “professional client” within the meaning of the FCA Handbook of Rules and Guidance may “opt out” of the protections which it would otherwise receive under the Client Money Rules. BCPP Ltd will only accept as Unitholders Eligible Investors whom it classifies as professional clients.
- 6.2 BCPP Ltd is not requesting approval from the FCA to hold money under the Client Money Rules (the controls and processes required are significant and will require further resource to manage them that are not within the budget submitted to the Board or shareholders for approval). Therefore, unless a Unitholder elects to “opt out” of the Client Money Rules, BCPP Ltd will not be able to accept any subscription from that Unitholder or pay the proceeds of any redemption to that Unitholder.
- 6.3 When a Unitholder “opts out” of the Client Money Rules, it will have to consent in writing that it understands that:
- any money which it has paid to the ACS Manager or any money that is due to the Unitholder from the ACS Manager will not be subject to the protections conferred by the Client Money Rules;
  - as a consequence, this money will not be segregated from the money of the ACS Manager in accordance with the Client Money Rules and may be used by the firm ACS Manager in the course of its own business; and
  - the Unitholder will rank only as a general creditor of the ACS Manager.
- 6.4 Given the particular circumstances of the relationship between BCPP Ltd, the shareholders and its customers, it is felt reasonable to ask for such a waiver. In particular, the insolvency of BCPP Ltd will only occur if the shareholders trigger it, in which case there is a protection against the risk of funds’ cash positions on insolvency. Legal advice on this has been sought and will be circulated to the shareholders to gain agreement in principle to providing the waiver.
- 6.5 The waiver itself can only be signed once BCPP Ltd has been approved by the FCA.

## **7 Conclusion**

- 7.1 The Joint Committee is asked to note this project update and to provide agreement to the recommendations in section 2.

## **8 Author:**

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8 January 2018

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