



WINTER NEWSLETTER 2015

The JAG Winter Newsletter has been put together by the JAG Capital Advisors team for both managers and investors (the “**Newsletter**”).

From a know-how perspective, our Corporate Report covers an article on certain regulatory changes in Switzerland as of March 1st 2015.

We look forward to any comments, feedback and/or questions you might have.

The Team

JAG Capital Advisors

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1. SWISS LEGAL REPRESENTATIVE AND PAYING AGENT REPORT

From 1st March 2015, foreign hedge fund looking to raise assets in Switzerland from qualified investors are required to appoint a Swiss legal representative (“SLR”) and paying agent. Qualified investors are defined under the Collective Investment Scheme Act (“CISA”) as including corporates, individuals and pension funds with at least CHF5million in financial assets. Foreign funds will not come under any regulatory oversight by FINMA which is probably a good reason for which to appoint an SLR. The SLR will effectively take responsibility for the fund and act as the point of contact with FINMA, the Swiss regulatory body. The appointed legal representative’s name will be included in any and all fund marketing materials and offering documents.

Appointing a paying agent is mandatory under the new rules as well, but it’s up to the hedge fund investor to decide if they want to use the Swiss paying agent. The average time it takes, from start to finish, to get the SLR in place, is two to three weeks. Managers that did not have the representative in place on 1 March 2015, cannot carry out any fund marketing activity, even if it involves sending a newsletter to existing Swiss investors, as this will be deemed as illegal and carry the threat of criminal charges. Managers outside of Switzerland must become aware of this. This is not just for funds that are actively marketed, it’s for all funds. Going forward, all fund documentation will need to go through a SLR.

Also it is important to note the difference between the way FINMA describes “marketing” from other jurisdictions. In the UK, for example, handing over a fund prospectus is the point of sale. Beforehand, the manager can have discussions with investors etc. In Switzerland, any activity that promotes a CIS is considered distribution; a phone call, an email, a meeting.

There are essentially four positions available to managers at the moment:

- 1) avoid Switzerland altogether.
- 2) rely on reverse solicitation, which legally is becoming a very “grey” area and one cannot run a business that way.
- 3) work with private banks.
- 4) put in place the SLR.

If one markets to investors after the deadline without a representative in place you will be breaking the law. The Swiss definition of “marketing” includes sending of fact sheets. It remains to be seen if managers decide to stop sending materials altogether.