

Investment Funds Alert

November 19, 2012

FSA AIFMD CONSULTATION

On 14 November 2012, the UK's Financial Services Authority (FSA) published its first consultation paper on the implementation of the EU Alternative Investment Fund Managers Directive (AIFMD). This consultation paper follows earlier discussion papers published by the FSA and marks the first occasion on which draft rules dealing with implementation of the AIFMD in the UK have been published.

The consultation will be relevant to hedge fund and private equity fund managers:

- based in the UK;
- based outside the UK, but with an office in the UK; and
- based outside the UK, but marketing funds to UK investors.

The consultation period ends on 1 February 2013.

The FSA has proceeded with consultation in spite of ongoing delays in the publication of the draft Level 2 implementing measures by the European Commission. The FSA acknowledges that much of the detail on implementation remains unclear, pending publication of the Level 2 measures, and has sought to address discrete areas where there is sufficient certainty to enable meaningful draft rules to be produced. A further consultation paper is anticipated for the spring of 2013, addressing other areas.

Key highlights from the paper include:

- the FSA expect relevant firms to commence work on preparing for implementation now, rather than deferring planning until all of the relevant legal texts are final;
- the FSA does not expect to be in a position to accept applications for managers to be authorised as AIFMs under the AIFMD until after it is implemented (although managers have a transitional period, expiring on 22 July 2014, to obtain authorisation);
- managers whose only clients are funds and who do not manage managed accounts will not need to obtain (or retain) separate authorisation as a "MiFID manager". It is unclear whether the FSA will allow managers to obtain authorisation as MiFID managers in anticipation of securing managed account mandates; and
- the FSA has reiterated HM Treasury's view that non-EU managers who wish to continue to market their funds under the existing UK private placement regime will need to comply with the full

transparency requirements of the AIFMD. This will likely require non-EU managers wishing to market in the UK to adapt existing offering and marketing documentation to conform with FSA rules on transparency to investors, and to submit to ongoing reporting to the FSA.

We will continue to monitor developments and keep our clients updated in due course.

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