

Investment Management Alert

August 8, 2013

AIFMD Update: U.K. Complies with Remuneration Guidelines

The U.K. Financial Conduct Authority (FCA) has written to the European Securities and Markets Authority (ESMA) to confirm that the FCA will comply with the ESMA guidelines relating to remuneration policies under the Alternative Investment Fund Managers Directive (AIFMD). National regulators of each European Economic Area (EEA) member state are required to notify ESMA that they will comply with the guidelines or explain their reasons for not complying. So far, only Malta has notified ESMA of its intention not to comply.

The FCA AIFMD website states that:

“The guidelines are a statement of best practice for promoting sound and effective risk management in line with the underlying AIFMD objectives. We expect affected firms to make every effort to comply. We have assessed the potential impact of the guidelines and have considered industry views, and the economic and legal aspects of compliance.”

The FCA website also notes that Alternative Investment Fund Managers (AIFMs) may be able to rely on the principle of proportionality as set out in the guidelines, which would allow some AIFMs to disapply certain elements of the guidelines. It will be necessary for any AIFMs that do this to be able to justify such a decision on the basis that full application would be disproportionate. The FCA plans to consult further on how several aspects of the guidelines, particularly the proportionality regime, will be implemented in the U.K. later this year. Following that consultation, the FCA is likely to issue guidance on compliance with the remuneration rules later in the year. It is anticipated that any such further guidance will also clarify certain unresolved issues relating to how the remuneration guidelines will apply to partnership interests.

FCA compliance with the ESMA remuneration guidelines means that an entity to which portfolio management or risk management activities have been delegated by an FCA authorised AIFM should be subject to either (i) regulatory requirements on remuneration that are equally as effective as those applicable under the guidelines or (ii) appropriate contractual arrangements to ensure that there is no circumvention of the remuneration rules. However, any further FCA guidance in respect of proportionality may affect how the remuneration guidelines should, in practice, be applied to certain delegates.

We will update you further when guidance is issued. In the meantime, please address any enquiries to your usual contact at Akin Gump Strauss Hauer & Feld LLP.

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