

Investment Funds Alert

The Long and Winding Road - European States Approve Form of AIFM Directive

October 21, 2010

On October 19, 2010, significant progress in the passage of the draft EU Alternative Investment Fund Managers Directive was made when, after several months of negotiations, the EU Economic and Financial Affairs Council (“EcoFin”) of the various member states agreed on the form of the directive to be submitted to the European Parliament for approval.

One of the most contentious issues in the directive has been non-EU funds or “third-country” funds, particularly given a recent French draft of the directive that made it almost impossible for third-country funds to market to EU investors and that had led to several accusations of European protectionism. However, the EcoFin draft will follow the European Commission’s suggested approach, setting out minimum standards to be followed in order to market third-country funds to EU investors and opening the way for such funds to eventually obtain a pan-European marketing “passport.” In the meantime, third-country funds will be allowed to use the existing private placement regime (up until 2018 at the earliest).

Other controversial provisions, such as controls on leverage employed by alternative investment funds and controls on remuneration, will be retained, but the final approach to these is dependent on the implementation of detailed secondary legislation over the next year.

The general response to EcoFin’s draft has been positive, describing the text as an improvement on the original European Commission draft, but concerns regarding the detailed implementation of the directive remain. It is anticipated that the Parliament will approve the directive during November 2010; the directive will become law at the start of 2013.

We will provide updates as further detail becomes available.

CONTACT INFORMATION

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