

ALERTS

US Private Fund Advisers Likely to Have Another Year to Comply with the AIFM Directive for Marketing in the UK

2 May 2013

Summary

HM Treasury, which is the legislative body responsible for implementing the Alternative Investment Fund Managers Directive (“AIFM Directive”)[1] into UK law, has just published a Q&A document on proposed amendments to the draft regulations “for the implementation of the AIFM Directive in the UK (the “Q&A Document”).[2] The Q&A Document clarifies that HM Treasury will amend the current draft of The Alternative Investment Fund Managers Regulations 2013 (the “Regulations”)[3] and will enable non-UK AIFMs[4] to take advantage of a 12-month transitional provision such that the AIFM Directive rules will not apply to marketing in the UK until 22 July 2014.

Proposed Changes

The Q&A Document covers a wide range of issues pertaining to the implementation of the AIFM Directive in the UK, but the most important development for non-UK managers is the statement in the Q&A Document that the Regulations, which are the draft rules implementing the AIFM Directive into UK law, will be amended to extend the 12-month transitional period for UK AIFMs that are in existence on or before 22 July 2013 to *all* AIFMs in existence on that date, irrespective of where they are established.

Under the current draft of the Regulations, only UK AIFMs that manage funds before 22 July 2013 will have the benefit of the proposed 12-month transitional period, allowing such AIFMs to delay authorisation and compliance with the AIFM Directive until the end of that 12-month period. By announcing that it intends to extend the relevant Regulation to all

AIFMs, including US AIFMs, HM Treasury has effectively pushed back the start date for the AIFM Directive in the UK for existing AIFMs until 22 July 2014.

Assuming that the final Regulations are consistent with the Q&A Document, US AIFMs will be able to market their funds in the UK until 22 July 2014 without having to register with the Financial Conduct Authority (“FCA”) or comply with any of the requirements otherwise imposed by AIFM Directive. All AIFMs marketing their funds in the UK must still comply with the UK’s existing marketing rules during that period.

The proposed transitional period will only apply to those AIFMs that are managing a fund or carrying out other activities^[5] before 22 July 2013. Any managers (whether established in the UK or elsewhere) that come into existence after 22 July 2013 must comply with the AIFM Directive for any UK marketing activities conducted after 22 July 2013. For non-EU AIFMs that come into existence after 22 July 2013, this will mean that prior to marketing in the UK they will need to notify the FCA, update all marketing materials for compliance with the AIFM Directive (make the required “pre-investment disclosures”), make quarterly or semi-annual risk report filings with the FCA^[6] and make the annual and other filings required under the Directive.

The Q&A Document states that existing AIFMs will not be required to comply with any procedure to benefit from the 12-month transitional period in the UK.

Marketing in Other EU Jurisdictions

As the Q&A Document is UK-specific, a US AIFM or other non-EEA^[7] AIFM that wishes to market its funds in other EU jurisdictions (pursuant to such jurisdictions’ private placement rules) will still have to comply with the AIFM Directive requirements in such jurisdictions from 22 July 2013 (unless those jurisdictions implement a similar transitional period). As of the date of this *Alert*, it is unclear whether other EU countries will implement similar transitional periods.

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For more information on the issues set forth in this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

[1] For more information on the AIFM Directive, please refer to our Briefing Notes in our SRZ AIFM Directive Resource Center at: http://www.srz.com/AIFM_Directive_Resource_Center/.

[2] We understand that the Q&A Document was initially distributed to those firms with whom HM Treasury has engaged on the AIFM Directive. The Q&A Document contains answers to a number of questions received in response to the HM Treasury consultation published in January 2013.http://www.hm-treasury.gov.uk/d/consult_transposition_of_the_alternative_investment_fund_managers_directive_11011

Further questions will be addressed in a follow-up policy statement, and it is understood that the Q&A Document will be available on the HM Treasury website shortly.

[3] The Regulations are an annex to HM Treasury's January 2013 consultation paper: "Transposition of the Alternative Investment Fund Managers Directive." http://www.hm-treasury.gov.uk/d/consult_transposition_of_the_alternative_investment_fund_managers_directive_11011

[4] For more information and analysis as to which manager or adviser is an AIFM in a particular fund structure, see the SRZ *Briefing, AIF, AIFMs and EU Authorisation Requirements*.

[5] The Q&A Document does not specify what these other activities are. We anticipate that HM Treasury's forthcoming policy statement, which will include revised Regulations, will provide more guidance with respect to which non-UK AIFMs may be able to take advantage of the extended transitional period.

[6] For more information on the general marketing rules under the AIFM Directive, see the SRZ *Briefing, Marketing Requirements*.

[7] The European Economic Area ("EEA") comprises the countries of the European Union (Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK) together with Iceland, Liechtenstein and Norway.

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