



December 2012

AIFMD Update: Level 2 Issues and ESMA Consultations

Introduction

On December 19, 2012 the alternative investment funds industry received an early Christmas present from the European Commission in the form of the long awaited Level 2 measures which flesh out the rules for Alternative Investment Fund Managers (“AIFMs”) in accordance with the Alternative Investment Fund Managers Directive (“AIFMD”).

At the same time, the European Securities and Markets Authority (“ESMA”) issued a Consultation Paper entitled “Guidelines on key concepts of the AIFMD” and a set of draft Technical Standards on types of AIFMs, which its press release notes are aimed at ensuring the uniform application of the AIFMD across the EU.

Level 2

The Level 2 measures, formally a Commission Delegated Regulation, supplements AIFMD in a number of areas dealing in particular with operating conditions, organisational requirements, valuation rules, rules concerning the delegation of AIFM functions, depositaries’ responsibilities and liabilities as well as capitalisation and own funds requirements for AIFMs and ancillary matters.

Ireland has been readying itself over the last number of years for AIFMD, drafting/implementing legislation and changes to existing legislation, drafting a detailed Handbook for AIFMs (see Central Bank Consultation Paper CP60) as well as improving procedures around the authorisation processes. Accordingly, in Ireland we think that we are ready for AIFMD and that our proposed Qualifying Investor AIF (“QIAIF”), building off the great success of the QIF product, will prove to be a key structure in delivering on AIFMD for

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managers and investors.

The Level 2 measures are now subject to a three month scrutiny period by the European Parliament and the Council and, unless either objects, will enter into force at the end of the three month period following publication in the Official Journal.

ESMA Consults

ESMA's Consultation Paper entitled "Guidelines on key concepts of the AIFMD" follows on from its Discussion Paper of February this year.

The Consultation Paper raises a series of questions for the industry on the meaning of terms within the definition of AIF (contained within Article 4(1)(a) of AIFMD), focusing in particular on the concepts of "raising capital", of what is a "collective investment undertaking", what is meant by "a number of investors" in the context of the requirement to raise capital from a number of investors and what is meant by "a defined investment policy".

Whilst this is a short Consultation Paper with a relatively limited number of questions, it is important for those interested in the final outcome to respond to the consultation with the closing date being February 1, 2013. This will be of particular relevance to those who wish to avoid being subject to AIFMD.

The draft Technical Standards which ESMA has issued have a similar closing date, February 1, 2013.

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