

Financial Services and Markets

Countdown to AIFMD – UK Treasury's implementation Q&As

In response to a number of concerns raised by industry participants arising out of the first of the Government's two consultations on implementation of the Alternative Investment Fund Managers Directive ("**AIFMD**" or "**the Directive**") (January 2013), HM Treasury has now published a set of brief Q&As in advance of its final policy statement. In the Q&As, the Government appears to be adopting a helpful and constructive approach in its interpretation of the transitional provisions of the Directive and is proposing to make some further amendments to the draft UK Regulations in order to give effect to that interpretation. However, the precise impact in all cases will not be clear until we see the revised wording of those Regulations. Furthermore, the Q&As do not answer all outstanding questions about the regime. In particular, the Q&As do not alter the position for UK AIFMs of UK AIFs seeking to market in the EEA (outside the UK) from 22 July 2013. A copy of the paper is available [here](#).

Summary

Particular points of note to emerge from the Q&As include the following:

- **Non-EEA AIFMs (managing EEA or non-EEA AIFs):** for non-EEA managers of EEA and/or non-EEA AIFs, there will be an opportunity to defer the effective date of implementation of the Directive in the UK to 22 July 2014. The UK Government plans to adopt a wide interpretation of the transitional provision in the Directive with the effect that a non-EEA AIFM marketing fund interests in the UK before 22 July 2013 will not be required to comply with the minimum harmonisation requirements of the Directive until summer 2014. In particular, this means that marketing in the UK can continue as before even if, for example, supervisory cooperation agreements are not in place between the FCA and the authority in the non-EEA jurisdiction of the AIFM and/or the AIF. However, it should be noted that it is not clear that all Member States will take the same view, so it may still be necessary to prepare AIFMD-compliant offering documents in order to market in at least some other EEA jurisdictions from 22 July 2013.
- **Non-UK EEA AIFMs:** Similarly, AIFMs in EEA Member States other than the UK are to be allowed to market in the UK for up to one year, prior to obtaining authorisation in their home state and obtaining an inward passport to market into the UK.
- **UK AIFMs managing funds in run-off or with limited life:** the Treasury confirms that, once a UK AIFM has become authorised under the Directive, it will not need to apply AIFMD compliance to AIFs which have fallen within the exemptions concerning run-off (i.e. no further investments from 22 July 2013) and limited life (fully raised before 22 July 2011 and scheduled to end their life before 22 July 2016). Such exempt AIFs will be outside the Directive entirely and forever, even if the manager subsequently obtains authorisation to manage one or more "live" funds. This cures an anomaly in the drafting of the UK implementing Regulations. In addition, such run-off/limited life AIFs will not be counted towards the manager's AUM for the purposes of calculating whether the AIFM's total assets fall above or below the *de minimis* thresholds.
- **Depositaries:** the Treasury is proposing to add a new transitional provision which would enable depositaries to act for AIFs during the period during which an AIFM is taking advantage of the transitional period before obtaining Part 4A permission (to manage AIFs). Pending publication of the revised text of the UK Regulations, the precise implications of this new transitional provision are unclear. It may be that it will enable new, so-called "PE depositaries" (which are neither credit institutions or investment firms), to offer their services up until 22 July 2014 without requiring authorisation from the FCA.
- **Marketing restriction:** there is confirmation that the Treasury will amend the draft implementing UK Regulations to make it clear that the restriction on marketing AIFs will only bite where the marketing takes place at the initiative, or on behalf of, the AIFM. This helps to address a concern that the restriction could have impacted upon secondary market transfers.

HMT/FCA town hall event

On the afternoon of 17 May 2013 (2:30 p.m. to 5:00 p.m.), the Treasury and the FCA will be hosting a meeting on AIFMD implementation at the Guildhall in London. With little more than two months until the July implementation date, this will provide an opportunity to question the Government and the regulator on key aspects of Directive implementation. Any firms which wish to attend the meeting are asked to send an e-mail to jonathan.gee@hmtreasury.gsi.gov.uk with names of attendees.

Our other recent briefing notes on the countdown to AIFMD

[The countdown to AIFMD – \[the first\] Treasury consultation](#)

[The countdown to AIFMD - Second Treasury consultation](#)

[The countdown to AIFMD implementation: FSA consultation](#)

[The countdown to AIFMD – Second FSA consultation](#)

[Countdown to AIFMD – Level 2 Regulation](#)

[Countdown to AIFMD – two ESMA papers on scope](#)

For detailed advice in relation to the implementation of the Directive, the implication of the Q&As or any other aspect of AIFMD, please contact any of the financial services partners named below.

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