TRAVERS SMITH

Investment Funds

Annual Review and Preview

This briefing note summarises developments affecting the investment funds industry from 2011 and previews what can be expected in 2012. This note will be relevant for managers and investors in a wide range of alternative asset investment funds. If you require any further details or would like to discuss further, please feel free to contact us.

COMMENTARY ON THE MARKET

Fund-raising. Conditions remain challenging. In **private equity**, the overall trend has been a sustained fall in the amount of capital raised but some managers with stable teams and a good track record have still had a positive response from investors and fundraising targets have been achieved. Global fundraising figures for private equity have been falling for the last three years and the aggregate capital raised in 2011 was over 50% down from the peak. For **real estate funds**, industry figures indicate that gross asset values for UK property funds have been static at around €250 billion since 2007 and the number of new fund launches in 2011 was significantly down from the boom years between 2004 and 2006. Similarly, **hedge funds** have had a difficult year with managers pointing out that Europe's debt crisis, a slower-than-expected economic recovery in the US and unforeseen events like Japan's nuclear disaster all came together to create a tricky trading environment in 2011 that was characterised by big and often unpredictable swings in asset prices. Generally, average performance has been down but total assets under management has increased as investors try to find alternatives to the public markets.

Legal, tax and regulatory changes. The changes we are currently witnessing will shape the investment funds industry for a generation. The most obvious example is the Alternative Investment Fund Managers Directive, which is due to be implemented across the European Union in July 2013 with much preparatory work expected this year. From a tax perspective, one important development in 2011 was that private equity funds should now find it easier to stay outside the UK's offshore fund rules. Less welcome was a new set of anti-avoidance rules commonly referred to as "disguised remuneration" which mean that fund structuring for managers' interests is now more complicated. Looking forward, there are likely to be further developments around VAT that will affect the way funds are structured. From the US, the rules implementing the proposed punitive withholding tax on payments of US source income under FATCA have caused much consternation and will affect financial institutions globally.

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PRIVATE EQUITY: ILPA AND NO-FAULT DIVORCE CLAUSES

ILPA – revised principles. January 2011 saw the Institutional Limited Partners Association issuing a revised version of the "Private Equity Principles" (the "Guidelines"). There are three guiding principles set out in the Guidelines – alignment of interest, governance and transparency – and a number of more detailed provisions. Whilst the publication of the Guidelines has not heralded an era of collective bargaining by LPs, the provisions suggested by the Guidelines have been extensively discussed in recent fund-raisings. Given the challenging nature of the fund-raising market in the period since the Guidelines were first published in 2009, it is difficult to empirically quantify their impact; however, the strength and relevance of the Guidelines will be tested further when market conditions improve and the balance of power between GPs and LPs shifts. More detail can be found here.

First no-fault divorce of fund manager. Italian firm BS Private Equity is believed to be the first European fund manager to be removed from a private fund under so-called "no-fault divorce" provisions. This mechanism allows a specified majority of investors in the fund to agree to remove the general partner in circumstances where there has been no "cause" on the part of the general partner and to either terminate the fund or appoint a new general partner in its place. It is reported that the investors were led by an advisory committee of HarbourVest Partners, Adams Street Partners and Danske Private Equity.

Historically, although the majority of fund agreements have contained provisions allowing for a no-fault divorce, it has been extremely rare for investors to seek to enforce these provisions due to the perceived difficulties. However, there is no doubt that current market conditions encourage investor activism – it is no longer enough for investors to seek to protect their position through the negotiation of fund terms on the way in to the fund, instead they should be monitoring the performance of their investment portfolio on a continual basis and looking to address issues with any of their general partners at an early stage. The enforcement of no-fault provisions is the ultimate expression of investor activism and, accordingly, it may well be that in the future there will be an increasing number of examples of general partners being removed in these circumstances.

DUTIES OF INDEPENDENT DIRECTORS OF INVESTMENT FUNDS

In August 2011, the Grand Court of the Cayman Islands provided a judgment in the case brought against the directors of the Weavering Macro Fixed Income Fund Limited (the "Fund"). More details of the case can be found here, but the directors were found to have failed to perform their duties of supervision. It is particularly interesting for the judge's comments about the minimum standards of attention and diligence that a court should be able to expect from fund directors, including:

- proper preparation for board meetings - circulating an agenda of matters of be discussed which is compiled after consultation with service providers and the directors;

- analysing, or ensuring that someone with sufficient expertise of a fund's investment criteria and restrictions analyses, the fund's investments and performance - all investment fund directors should understand audit procedures and be able to read and interpret a balance sheet. Directors are not expected to have the technical expertise to monitor sophisticated investment strategies but should be able to understand and interpret financial results;

- requesting regular updates from any appointed investment manager or administrator in order to assess the fund's performance and financial condition and to satisfy themselves that the investment manager is operating within the scope of its remit. Delegation to service providers should not constitute a dereliction of responsibility; and

- proper understanding of the scope of work to be undertaken by any investment manager or other service provider in relation to financial reporting and the determination of the NAV. Directors' duties are not met just by appointing reputable and experienced service providers, the directors should still engage with them on an ongoing basis.

The directors are appealing this judgment and it is worth noting that the Serious Fraud Office has dropped its investigation into the activities of the investment manager.

PRIVILEGE – THE FUNDS CONTEXT

A recent case (BBGP Managing General Partner and Others v Babcock and Brown Global Partners) deals with issues of privilege in the context of investment funds and, in particular, illustrates the difficulties which can arise where a director of a general partner company has a number of interests to take into account.

The director in question ran the affairs of the management company which acted as the general partner of a fund. When the performance of the fund weakened, the director sought legal advice as to the potential claims which could be made against both the general partner and its shareholder. In doing so, he asked that the advice be kept private to him as a director. Subsequent events led to the discovery of the advice by the general partner's legal advisers. On the face of it, the advice appeared to be privileged but it was not clear for whose benefit the advice was given. Therefore, directions were sought from the High Court as to how the advice should be treated. The Court held that the advice was not privileged, making two principal submissions:

(i) the retainer under which the legal advice was sought allowed all the partners of the limited partnership to have access to the advice. Although it was the general partner who entered into the contract with the law firm providing the advice, the general partner did so as an agent of the fund and, therefore, privilege could not be asserted against any of the other limited partners of the fund. Drawing on case law, the Court also held that the general partner's immediate shareholder should have access to the advice to the extent that it had a common interest in the advice; and

(i) the Court's second submission was that, although the director in question sought the advice in the interests of the investors and there is little doubt that his intentions were good, he proceeded without regard to the fiduciary duties which he owed to the general partner company itself. These duties included acting honestly and in good faith, yet he failed to disclose to the general partner a number of plans which were in the interests of the investors but at the expense of the general partner. More generally, he preferred the interests of the limited partners over the interests of the general partner and did so under a "cloak of secrecy".

The case highlights the care that directors and partners must take where there are various interests at play such as those of their general partner company and of investors. In the event of conflict, it is important for directors to recognise which interest should take priority and not to overlook their fundamental fiduciary duties. Directors should also remember that, in a complex structure, sharing information with other members of the team might lead to a waiver of privilege, for example where information is shared with an investment manager which otherwise would be privileged to a company or the partners of a partnership.

VAT DEVELOPMENTS IN 2011

Insurance and financial services. On 15 December 2011 the Council of the European Union published a progress report on the proposal for a Council Directive and Regulation on VAT in the insurance and financial services industries. The VAT treatment of fund management is not consistent across the EU and one proposal under discussion is for all fund management services to become exempt from VAT, although it is clear from the report that this is an area where Member States disagree on the best way forward.

VAT groups. The UK has been referred to the EU over the question of which companies can join a VAT group. The EU contends that only companies who are taxable persons should be permitted to join groups. The outcome of this could have implications for groups (including investment management groups) who are VAT grouped with companies with limited or no activity.

Pension funds. The European Court of Justice ("ECJ") is expected to reach a decision on questions referred to it by the VAT and Duties Tribunal in the course of the long running dispute between HMRC and the National Association of Pension Funds / Wheels Common Investment Fund over whether the exemption from VAT on investment management fees following the ECJ decision in JP Morgan Claverhouse should be extended to investment management fees charged to pension funds. If the ECJ finds against HMRC, the pensions industry could save around £100 million a year. Many pension funds and managers have already submitted protective reclaims of VAT.

OTHER UK TAX DEVELOPMENTS DURING 2011

Private equity. One piece of welcome news was the introduction of an exemption from the tax consequences of the offshore funds rules for most private equity funds. Although most limited partnerships are not themselves offshore funds, concerns were raised that HMRC's interpretation of rules meant that a limited partnership combined with an offshore holding SPV might be caught. The government introduced a specific exemption from tax charges under the offshore funds rules where the fund invests in trading companies or trading groups.

Disguised remuneration. 2011 saw the introduction of a new range of anti-avoidance measures aimed at taxing employment income provided through third parties. Although the genesis of the legislation was primarily to attack schemes using trusts (favoured by certain footballers), the legislation is very broadly drafted and has created additional worries for UK managers who invest in their

funds or who acquire carried interest. There are exemptions within the legislation which it should be possible to use in most circumstances but because of the complexity of the rules great care needs to be taken. More details can be found here.

Partnership accounts rules. Currently most investment funds structured as UK partnerships fall outside of rules which require them to produce accounts as if they were companies and file them with Companies House. Under pressure from the EU, the UK government has produced draft amending regulations that would potentially bring many more private equity, real estate and carried interest partnerships with corporate general partners within the rules. If adopted, the regulations are expected to come into force for accounting periods beginning after 1 April 2012. Compliance with the regulations raises issues of public disclosure of potentially sensitive information and the impact of unsuitable accounting standards in a funds context. More details can be found here.

Authorised investment funds. New regulations allow an alternative investment fund which is a master fund to take into account the intended investors in its feeder fund in determining whether it meets the 'genuine diversity of ownership' condition i.e. it does not treat the feeder fund as a single investor. The new regulations also disapply the charge on offshore income gains where the underlying fund tracks a recognised market index. These changes should help alternative investment funds compete with offshore funds.

Controlled foreign companies regime reform. In publishing draft legislation for the reform of the UK controlled foreign companies regime in the Finance Bill 2012, the government has indicated that further consultation will take place in 2012 on the application of the new controlled foreign companies regime to investment funds. The extent of the reform is not yet clear, and though investors will clearly not want to feel any negative impact from any such reform so far the government has merely said that "further work is still to be done to ensure that the CFC rules apply in an appropriate manner to funds".

Non-domiciled investors. In 2011, the government proposed a relaxation of the rules on remittances for non-domiciled investors which would allow them to invest monies in UK trading or real estate companies (although residential real estate is only permitted if the company is developing the property and provided also that the property is not the non-dom's own home) without being deemed to have remitted the funds so invested. Most, but not all types of UK listed companies are excluded. However, in order to take advantage of these relaxed rules the shares in the relevant company must be issued directly to the investor, which may create pressure on funds wishing to attract high net worth individuals as investors to offer structures which comply with this requirement.

UPDATE ON AIFMD

On 16 November 2011 ESMA published its final report setting out its technical advice to the European Commission on possible implementing measures of the Alternative Investment Fund Managers Directive ("AIFMD").

There has been some progress since the two consultations issued in the second half of 2011, although any optimism has to be tempered by the fact that (a) in the time available to it (roughly two months from closure of the consultation periods) ESMA had not made as many changes on substantive/technical issues as might have been hoped for (there were over 150 responses to the consultation, many of them quite detailed), (b) the Commission has clearly signalled its aversion to a number of positions which ESMA had adopted and the industry had welcomed and (c) the Commission is not in any event bound to follow the ESMA advice.

The European Commission is now engaged in the process of preparing the implementing legislation in the light of ESMA's advice. We expect the implementing measures to be adopted by the middle of this year. A significant issue will be the extent to which the European Commission decides to adopt implementing measures by way of directly applicable Regulation, rather than a Directive.

It should be noted that ESMA's work as regards the AIFMD is by no means finished. In particular, ESMA has started (or will shortly be starting) a number of work streams including the development of detailed guidelines to complement: (i) the rules on the combination of additional own funds and PII; (ii) the advanced method for the calculation of leverage as set out in its final advice and (iii) the development of guidelines on sound remuneration policies.

On 23rd January, the FSA published its Discussion Paper on AIFMD implementation with responses required by 23rd March 2012. Proposed policy positions and rules will be published in a Consultation Paper later in 2012.

Member States will be required to implement the Directive and its implementing Directives by **July 2013**. Alternative Investment Fund Managers will be required to comply with the AIFMD from **July 2014**.

We continue to be involved actively in the AIFMD process on behalf of trade associations representing the private equity, real estate and hedge fund industries.

AIFMD-LITE: EUROPEAN VENTURE CAPITAL REGULATION

On 7 December 2011, following a consultative process last summer, the European Commission published its proposal for a Regulation on European Venture Capital Funds. The European Commission believes that it can be difficult for small- and medium-sized enterprises ("SMEs") to obtaining funding and that creating uniform rules for the marketing of venture capital funds across Europe will make it easier for venture capitalists to raise funds on a cross-border basis.

In outline, the draft Regulation proposes a uniform "single rulebook" governing the marketing of certain qualifying venture capital funds to eligible investors using the designation of "European Venture Capital Fund". The Regulation will apply to fund managers established in the European Union who are not subject to registration in their home member state under AIFMD and who manage portfolios of "qualifying venture capital funds" whose assets under management in total do not exceed EUR 500 million. The precise interaction with the AIFM Directive is unclear where a firm manages both qualifying venture capital and other funds. A qualifying venture capital fund means a collective investment undertaking that invests at least 70% of its aggregate capital contributions and uncalled committed capital in assets that are qualifying investments (i.e. broadly, equity or quasi-equity investments issued by unlisted SMEs).

If the above criteria are satisfied, the venture capital fund manager will be entitled, subject to certain conditions, to use the designation "European venture capital fund" in marketing a relevant fund throughout Europe by way of a "passport".

The draft Regulation – which will apply with direct effect in all Member States - currently provides that it will apply from **22 July 2013** (although the provisions empowering the European Commission to adopt delegated acts will apply as and when the Regulation enters into force). The proposal now passes to the European Parliament and the Council for negotiation and adoption.

MIFID II AND MIFIR

The Markets in Financial Instruments Directive ("MiFID") was introduced in November 2007. The European Commission, partly as a response to the financial crisis, has decided that MiFID "exhibits the need for targeted but ambitious improvements". Accordingly, in October 2011, it published a proposed replacement Directive ("MiFID II") and a new Regulation ("MiFIR"). Whilst many fund managers in the alternative space will be outside the scope of MiFID (and will instead have to consider the application and implementation of AIFMD), the changes will of course be significant for those entities which have business lines falling within the scope of MiFID. The new proposed legislation does also clearly reflect the direction of travel of the European regulatory environment.

Key themes are: enhanced powers for European regulators; additional requirements and limitations on firms established outside of the European Union providing services into European jurisdictions; further conduct of business rules; and an extension of the scope of activities caught by the European regulatory regime. A full briefing on MiFID II and MiFIR can be found here.

EUROPEAN REGULATION AFFECTING FUND INVESTORS

A number of regulatory developments will affect institutional investors in private funds.

In Europe, there is a raft of changes to regulatory capital and solvency rules, most of which have the effect of making private equity and real estate fund commitments less attractive from the perspective of regulated investors:

- the Solvency Directive will affect insurers – the implementation is proving complicated and has been somewhat postponed;
- the CRD IV package of amendments will affect banks and investment firms;
- UK headquartered banks are subject to changes to FSA policy on: (a) the categorisation of substantial commitments to any fund; and (b) the approach to determining the credit risk weightings for income producing real estate exposures; and
- the European Commission has proposed to extend the principles of Solvency II to occupational pension schemes.

SEC REGISTRATION

One consequence of the US Dodd-Frank legislation is that many UK and EU fund managers and advisers will be required to register, or to make public filings, with the US Securities and Exchange Commission, even if they are already authorised by the FSA or another regulator. If full SEC registration is required, the deadline for applications is, in practice, **14 February 2012**.

The SEC's final rules on the registration requirements, clarified the scope of three important new exemptions: (i) the Foreign Private Adviser exemption; (ii) the Private Fund Adviser exemption; and (iii) the Venture Capital Fund exemption. The Private Fund Adviser exemption is likely to be the key exemption for non-US firms that do not manage any assets from a US place of business and whose only US clients are private funds.

Many non-US managers of, and advisers to, private investment funds have concluded that they will be able to benefit from the exemptions. However, two of the exemptions contain conditions requiring firms to make public filings with the SEC. This needs to be done on or before **30 March 2012** for the exemption to apply. Many exempt firms will also be subject to limited reporting and compliance obligations and may be subject to SEC inspections. Firms providing segregated investment management or advisory services to US clients may not be able to rely on the exemptions at all. Further information is available here.

PROPRIETARY TRADING – VOLCKER RULE

The closing date for public consultation on the implementation of the 'Volcker Rule' (the section of the US Dodd-Frank Act that bars banks from undertaking proprietary trading) has been extended to **13 February 2012**. The extension was announced on the back of growing concern from lawmakers and lobbying groups that the rule in its current form is confusing and will be difficult to implement. It is intended that the rule take effect from July 2012 with banks having until July 2014 to comply.

Following the release of the draft rule in October 2011 it became apparent that the rule may have greater scope than first envisaged, with the bar on proprietary trading extending to non-US banks with US branches or subsidiaries. While it is not intended for this restriction to apply to the business of non-US banks conducted outside the US, there is a lack of clarity in the current draft as to the scope of this exemption.

BRIDGE FINANCING

Equity bridge facilities to funds secured by the limited partners' uncalled commitments are a very specific type of product but one that is becoming increasingly popular in the UK loan market. An increasing number of banks and financial institutions are now providing this product and a market position on some of the more significant legal issues is now being established. Our experience, having recently advised lenders and borrowers on a number of recent transactions involving this product, identifies the following as broadly market practice:

- deals are generally structured on a bilateral or "club" basis, with a strong preference for bilateral deals unless the quantum of the debt is very significant;
- pricing varies, but generally we see: (i) margin spreads of 175 bps to 250 bps; (ii) up-front fee spreads of 50 bps to 125 bps; and (iii) commitment fee spreads of 20 bps to 80 bps;
- generally, debt lines are made available on a committed basis but some are made available on an uncommitted basis;
- security is usually in the form of an assignment by way of security of certain of the rights of the manager, general partner or fund in relation to the uncalled commitments;
- notification of the underlying security package is usually made to investors, but investor consent letters are rare in the private equity space; and
- banks run the product out of different groups: for example, the Financial Institutions Group, the Funds Group, the Private Bank or the Real Estate Group, but rarely out of "leveraged" groups."

CRC UPDATE

In 2010 the UK's Carbon Reduction Commitment Energy Efficiency Scheme ("CRC") was introduced. It seeks to force non-energy intensive businesses and organisations, in both the private and public sectors, to consider their energy efficiency. The CRC does this through a range of financial and reputational drivers as well as more traditional criminal and civil penalties.

The Government acknowledged that the scheme required simplification to improve its workability and, in the summer of 2011, the Government released its first meaningful statement of how the current CRC scheme might be changed. The main proposals relevant to specific challenges facing the private equity and funds sector are:

- The CRC will not be scrapped and replaced by a straight carbon tax.
- Rules on organisational structures will be simplified – the top parent organisation will still be required to notify the Environment Agency of its overall group structure at the beginning of each phase, but the group will have the option to more easily split into "natural business units", which will be responsible for their own monitoring, management and reporting of emissions. For private equity firms, the proposals, if implemented, mean the general partner of each fund will still need to assess whether its investee companies form part of its "group" for CRC purposes. Likewise, qualification for the scheme will still be based on the overall usage of the delineated group as a whole. However, it will be possible to more easily split the group as a whole so that each investee group will be responsible for its own participation in the CRC.
- Trusts will be treated differently - responsibility for CRC is to lie with the entity that has a genuine commercial interest in the relevant property.
- The timing and mechanisms for the sale of allowances have also been updated. Crucially, revenues from the sale of allowances will no longer be recycled back to participants (i.e. the scheme is no longer simply a cash flow issue).

It is anticipated that the draft legislation will be consulted upon in the next few months. Once the draft legislation is released we should have increased certainty as to how the new scheme will actually look.

A fuller briefing can be found here.

BRIBERY ACT

The Bribery Act 2010 came into force on 1 July 2011. This Act introduced several new offences into English law including a corporate offence of "failure to prevent bribery" for organisations which are incorporated in the UK and/or carry on business in the UK that fail to prevent bribery by "associates" working on behalf of the business, regardless of whether the bribery takes place in the UK or in another jurisdiction. Further information can be found here.

The Government published guidance on 30 March 2011 which assists in understanding the liability of private equity firms for bribery at portfolio company level. It is unlikely that the corporate offence of "failure to prevent bribery" will arise simply through ownership or investment in a company which commits bribery in furtherance of its own business without the knowledge or involvement of the private equity firm or its directors. However, there may be reputational issues for a private equity firm and, if a fine were to be imposed on the portfolio company, there could also be financial repercussions for the private equity firm and the investing fund. It would therefore be advisable that, as part of good practice and standard, private equity firms ensure that each of their portfolio companies (UK-based or otherwise) has an appropriate policy in place which is implemented, enforced and reviewed regularly by the board of the portfolio company and such expectation should be reflected in the anti-bribery policy of the private equity firm.

The international scope of the corporate offence also exposes investment managers to a high degree of risk. They are likely to be responsible for the conduct of their administrators, placing agents, any other third party service providers and any of their sub-agents or "associates".

Most recently, the Serious Fraud Office has used proceeds of crime laws to recover dividends from a shareholder in a company convicted of bribery.

AND FINALLY…TAX DEVELOPMENTS FOR 2012

Many of the expected tax changes in 2012 are intended to improve the operation of regulated and listed funds. This suggests a particular direction of travel for HM Treasury, with significant improvements to the REIT and Investment Trust rules to make these regimes more attractive. Most interesting is the consultation paper published this month (January 2012) on a new tax transparent regulated investment fund with HM Treasury asking expressly whether such a vehicle might tempt some investors and fund managers away from their existing unauthorised fund structures. As the AIFMD brings additional compliance burdens to the managers of unauthorised funds, and with the relaxation of rules on remittances for non-domiciled investors investing directly in certain shares, we would expect investment managers to be looking at all structuring options carefully.

Property authorised investment funds. The government intends to make regulations in 2012 to improve the tax efficiency of property authorised investment funds ("PAIFs") by allowing investors in a dedicated PAIF feeder fund to exchange their units for units in an underlying PAIF and *vice versa* without triggering a charge to tax on capital gains.

Investment trust companies. Regulations introduced in 2011, which will apply to accounting periods of investment trust companies beginning on or after 1 January 2012, will, in conjunction with proposed changes to the Companies Act 2006 for the qualifying conditions and the rules on distributions for investment companies, make significant improvements to the two regimes and bring the corporate regime for investment companies more into line with the tax regime for investment trust companies. These measures are intended to remove unnecessary restrictions on investment trust companies' commercial activities, provide increased certainty for investors, reduce costs to business and provide a more flexible framework that prevents unintended tax advantages being gained through investing in an investment trust company while ensuring a proportionate approach for minor inadvertent breaches.

Real estate investment trusts. As part of the government's efforts to support expansion of and investment in the property sector and so stimulate the construction industry, the Finance Bill 2012 contains improvements to the tax regime for real estate investment trusts ("REITs"). Measures intended to encourage new REITs include the abolition of the 2% entry charge, the relaxation of the restrictions on what sorts of assets may be held in a REIT, allowing REITs to be listed on AIM and a relaxation of the requirement that the REIT's shares be widely held. In addition, it is intended that the cost of compliance with the REIT regime is reduced by relaxing the rules regarding the REIT's assets to reduce the likelihood that commercial decisions are being influenced by the conditions of the REIT legislation and simplifying the condition regarding the level of borrowing for a REIT.

Tax transparent funds. HM Treasury has launched a consultation to introduce a new tax transparent regulated open-ended fund. Its primary purpose is intended for UCITS master funds with the aim of attracting more of this business to the UK. HM Treasury propose that managers can choose to use a contractual scheme or a limited partnership, although the issue of how a limited partnership vehicle can accommodate redemptions is not addressed in any detail. HM Treasury is particularly interested to know whether assets invested in unauthorised funds might, in the future, be held in these new vehicles particularly if, under the NURS and QIS regulatory regimes, the frequency of redemption dates is less than for regulated UCITS funds.

EU financial transactions tax. The proposed new EU tax on financial transactions which made the news in 2011 could impact the funds industry if implemented. The UK government appears to be aware of this potential and has made clear its intention to oppose it.

FATCA. Further details of the proposals by the US administration to introduce a punitive 30% withholding tax on payments of US source income (including interest, dividends, royalties and gross proceeds of disposal of US assets) are expected early in 2012. These details should reveal more about exemptions from the regime and the mechanism for avoiding the withholding tax by complying with, what are widely expected to be onerous, reporting obligations. The application of the exemptions and reporting obligations in the context of investment funds is of particular concern.

For further information on these issues please contact one of the partners in our Investment Funds Group, Financial Services and Markets Group or your usual contact at Travers Smith. Contact details are set out on the next page.

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