



Final FCA Rules implementing the AIFMD

Background

On 28 June 2013 the FCA published a **Policy Statement** containing its final rules for implementing the Alternative Investment Fund Managers Directive (AIFMD) and providing the FCA's response to two consultations on the FSA's implementation of the AIFMD (CPs 12/32 and 13/9). The rules also take account of directly applicable European legislation creating two new forms of European-wide collective investment undertaking (European venture capital funds (EuVECFs) and European social entrepreneurship funds (EuSEFs)) - to reflect their position within the current regulatory framework.

Who is the policy statement relevant to?

The paper will be relevant to:

- fund managers (including managers of UCITS schemes);
- service providers to the fund management industry, such as depositaries, custodians, prime brokers, valuers, administrators and outsourcing specialists;
- listed and unlisted investment companies not currently subject to FSMA authorisation; and
- investors (both retail and professional).

Initial observations

Some initial points of note are:

- in general terms the FCA appears to have kept changes to the rules to a minimum;
- there is additional guidance on certain scope related issues;
- the FCA has changed its approach to UK firms carrying out depositary services for non-EEA AIFs, to make the rules more flexible and encourage competition;
- the FCA has greatly simplified its guidance around what constitutes "passive marketing" (ie marketing at the initiative of the investor) of an AIF;

- there is further work to be done regarding the rules applying to remuneration of an AIFM's key personnel. In particular, the FCA has not yet decided whether it will comply in full with ESMA's guidelines for the application of AIFMD remuneration rules. The guidelines allow an AIFM to disapply certain rules (eg deferral of variable remuneration) where it is proportionate to do so. The FCA intends to consult on a proportionality framework but in the meantime expects firms to consider their situation against the proportionality criteria in the ESMA guidelines and be able to justify any disapplications.

What next?

The rules will come into force on 22 July 2013 - although firms that are already carrying on management of AIFs or providing services as a depositary, custodian or valuer may be able to take account of the transitional provisions set out in HM Treasury's AIFMD UK regulation until 21 July 2014.

If there is anything here you would like to discuss further please contact your usual Burgess Salmon contact or one of our senior financial services specialists:



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