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United Kingdom Aims to Minimise the Transition and Marketing Requirements For AIFMs Under AIFMD

May 21, 2013

INTRODUCTION

On 13 May 2013, HM Treasury published a response document to its earlier consultation regarding transposition of the Alternative Investment Fund Managers Directive (AIFMD) in the UK, along with amended draft regulations and brief Q&As. In what will be seen as welcome developments by AIFMs both in the UK and outside of Europe, HM Treasury has indicated that it now intends to revise its draft implementing legislation to:

- extend the reach of the AIFMD's one-year transitional provisions to AIFMs based inside or outside of the European Economic Area (EEA) and that manage non-EEA alternative investment funds (AIFs); and
- eliminate the need to wait for approval from the Financial Conduct Authority (FCA) before marketing into the UK under the private placement regime.

The HM Treasury documents may be found at this link: https://www.gov.uk/government/consultations/transposition-of-the-alternative-investment-fund-managers-directive--2.

Taken together with the earlier FAQs issued by HM Treasury on 30 April 2013, the current proposals for transition and marketing processes in the UK with respect to UK AIFMs and non-EEA AIFMs can be summarised as set out below.

TRANSITION IN THE UK

UK AIFM

We are a UK AIFM intending to manage and market an AIF in The UK after 22 July 2013. What does this mean for us?

You will be able to manage and market AIFs in the UK from 22 July 2013 for up to 12 months, without complying with the additional requirements imposed by the AIFMD and UK implementing legislation, provided that you meet the condition **(EEA AIFM Condition)**.

What is the EEA AIFM Condition for qualifying to use this transition period?

You must be managing an AIF immediately before 22 July 2013.

If we manage a non-EEA AIF, is there a notification process before we can market an AIF into the UK during the transition period?

No, provided that you fulfill the EEA AIFM Condition. During the transition period you will not need to:

- submit notification to the FCA in relation to marketing the AIF in the UK; and
- comply with the applicable requirements under AIFMD.

In other words, until 22 July 2014 you may market the AIF into the UK by complying only with the UK's national private placement regime in its current form.

If we manage a non-EEA AIF, do cooperation agreements need to be in place before we can market into the UK during the transition period?

No, provided that you meet the EEA AIFM Condition. For example, if you are a UK AIFM marketing a US AIF into the UK, until 22 July 2014 you will not need to wait for cooperation arrangements to be in place between the FCA and the US Securities and Exchange Commission in order to market the AIF under the UK's national private placement regime.

However, if you submit an application to become authorised as an AIFM before 22 July 2014, a cooperation agreement would need to be in place with the UK in respect of the country where the AIF is located, in order to continue marketing the AIF in the UK.

What if we want to launch a new AIF after 22 July 2013, but during the transition period?

If you meet the EEA AIFM Condition, you will still be covered by the transitional provisions.

What if we are a UK fund manager, but do not fulfil the EEA AIFM Condition and therefore do not qualify to use the transition period?

The fund manager will need to submit an application to the FCA to become authorised before it can manage and/or market an AIF in the UK during the transition period.

If a non-EEA AIF is involved, cooperation agreements will also need to be in place between the UK and the country where the AIF is located, in order for the AIF to be marketed in the UK.

NON-EEA AIFMS

We are a non-EEA AIFM intending to market an AIF into the UK after 22 July 2013. What does this mean for us?

You will be able to market AIFs into the UK from 22 July 2013, for up to 12 months, without complying with the additional requirements imposed by the AIFMD and UK implementing legislation, provided that you meet certain conditions **(Non-EEA AIFM Conditions)**.

What are the Non-EEA AIFM Conditions for qualifying to use this transition period?

You must be managing an AIF and marketing the AIF in the EEA immediately before 22 July 2013. You do not, however, need to be marketing the AIF into the UK specifically.

Is there a notification process before we can market our AIF during the transition period?

No, provided that you meet the Non-EEA AIFM Conditions. During the transition period you will not need to submit a notification to the FCA in relation to marketing the AIF in the UK. Additionally, you will not have to comply with the AIFMD's requirements.

In other words, until 22 July 2014 you may market the AIF into the UK by complying only with the UK's national private placement regime in its current form.

Do cooperation agreements need to be in place before we can market into the UK during the transition period?

No, provided that you meet the Non-EEA AIFM Conditions. For example, if you are a US AIFM marketing a US AIF into the UK, until 22 July 2014 you will not need to wait for cooperation arrangements to be in place between the FCA and the US Securities and Exchange Commission in order to market the AIF under the UK's national private placement regime.

However, if you submit a marketing notification to the FCA before the end of the transition period, the cooperation arrangements will need to be in place in respect of the country of the AIFM and the AIF (if different) in order for you to continue marketing into the UK, even if the transition period is still running.

What if we want to launch a new AIF after 22 July 2013, but during the transition period?

If you meet the Non-EEA AIFM Conditions, you will still be covered by the transitional provisions.

What if we are a non-EEA AIFM and want to market an AIF into the UK after 22 July 2013, but do not meet the Non-EEA AIFM Conditions and therefore do not qualify for the transition period?

The AIFM will need to submit a notification to the FCA before it can market an AIF into the UK: see further below.

Cooperation agreements will also need to be in place in respect of the country of the AIFM and the country where the AIF is located.

UK NOTIFICATION PROCEDURES FOR EEA AIFMS OF NON-EEA AIFS AND NON-EEA AIFMS OF AIFS

Who will need to comply with the notification procedures?

EEA AIFMs of non-EEA AIFs and Non-EEA AIFMs of AIFs that:

- do not fulfill the EEA AIFM Condition or the Non-EEA AIFM Conditions, as the case may be, and therefore cannot use the transition period; or
- market AIFs into the UK after 22 July 2014.

What does it mean to submit a "notification" to the FCA in relation to marketing an AIF? Does it mean that the FCA must give its approval before marketing?

HM Treasury has revised its earlier position on marketing in the UK by non-EEA AIFMs and EEA AIFMs of non?EEA AIFs. Under HM Treasury's amended draft regulations, rather than undergoing an approval and registration process, the AIFM must only submit a written notification to the FCA. The notification must confirm that the AIFM is the person responsible for complying with the relevant provisions of the AIFMD and that the AIFM complies with those provisions. The details of the notification and the documents that must accompany the notification are to be published in due course, and will likely involve submitting certain fund documents and memoranda.

Once an AIFM has submitted the notification to the FCA, it may begin marketing the relevant AIF into the UK; it will not be necessary to await approval from the FCA before marketing may take place.

Material changes to the information submitted must still be notified to the FCA, but it is not intended that notification of such changes will interrupt the marketing process.

Will other EEA countries follow the UK's approach in relation to the transitional provisions and marketing process?

It should not be assumed that other EEA countries will take the same view as HM Treasury. Indeed, it is expected that several EEA countries will further limit access to their national private placement regimes for AIFMs outside the EEA as the AIFMD is implemented.

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