

Cooperation Arrangement Would Permit Swiss Alternative Investment Funds to Access EU Market

December 5, 2012

Arrangement is First of its Kind Under AIFMD

On December 3, 2012, the European Securities and Markets Authority (ESMA) approved a cooperation arrangement between the Swiss Financial Market Supervisory Authority (FINMA) and regulators in the EU member states for the supervision of Swiss-managed alternative investment funds, including hedge funds, venture capital funds, private equity funds and real estate funds. The resulting Memorandum of Understanding (MOU) will take effect on July 21, 2013.

Under the Alternative Investment Fund Managers Directive (AIFMD), non-EU states must enter into cooperation arrangements with EU member state regulators. If this is not done by July 22, 2013, the consequences will include that fund managers from the non-EU state will not be able to market their funds to EU investors under any national private placement regimes that otherwise may be available. The MOU between the ESMA and Swiss regulators is the first such cooperation arrangement to win ESMA approval.

The cooperation arrangement applies to Swiss private fund managers that manage or market alternative investment funds in the EU and to EU private fund managers that manage or market alternative investments funds in Switzerland. Under the MOU:

- EU and Swiss regulators may supervise fund managers that operate on a cross-border basis in the EU and Switzerland.
- EU and Swiss authorities may exchange information, cross-border on-site visits and assistance in enforcing the AIFMD and applicable Swiss securities laws.
- EU regulators may share relevant information received from Swiss regulators with other EU authorities, provided appropriate safeguards apply.

ESMA had announced in April 2012 that it had started discussions with non-EU regulators of alternative investments funds subject to the requirements of the AIFMD, with a view to having cooperation arrangements in place before July 2013. Although ESMA is leading the negotiation of cooperation arrangements with non-EU authorities on behalf of EU member state regulators, the final signature of individual MOUs will be the responsibility of each EU member state regulator.

Cooperation arrangements between EU and non-EU authorities are intended to be achieved through a common MOU. Given this approach, it well may be that the Swiss MOU will serve as a template for other agreements signed with other non-EU regulators. ESMA is continuing its negotiations with regulators in other non-EU countries, including the United States.

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