



Alternative Investment Fund Managers Directive: The End of Transitional Relief

July 22, 2014

Certain EU jurisdictions made available a transitional relief period of up to 12-months during which qualifying non-EU fund managers did not have to comply with requirements under the Alternative Investment Fund Managers Directive (the “AIFMD”). This is a reminder that, in these jurisdictions, 22 July 2014 is the final date upon which a qualifying non-EU manager can rely on transitional relief.

WHAT DID TRANSITIONAL RELIEF MEAN?

- If a non-EU fund manager was marketing a fund prior to 22 July 2013, then it may have qualified for transitional relief with respect to marketing to professional investors in those EU jurisdictions where transitional relief was made available.
- Where available, transitional relief permitted a non-EU fund manager to market a fund up to 22 July 2014 in that EU jurisdiction without having to comply with the AIFMD requirements applicable to non-EU fund managers.
- Non-EU managers which relied on transitional relief and which do not want to fall within the scope of AIFMD going forward should not undertake any marketing activities in the EU after 22 July 2014.

WHAT HAPPENS AFTER 22 JULY 2014?

Irrespective of transitional relief having been available previously in one or more jurisdictions, a non-EU fund manager which markets in the EU after 22 July 2014 will be subject to the AIFMD requirements applicable to non-EU fund managers marketing funds in the EU, namely:

1. The non-EU fund manager must comply with applicable private placement rules in each EU member state. A number of EU member states have introduced pre-marketing notification requirements (e.g. UK) or registration requirements including the need to appoint a depositary (e.g. Germany and Denmark). A non-EU fund manager should seek appropriate advice in each EU jurisdiction regarding the applicable notification/registration requirements it must comply with prior to commencing any marketing in such jurisdiction.
2. The jurisdiction of the fund and the fund manager must not be listed as a Non-Cooperative Country and Territory by the Financial Action Task Force¹ and the

¹ The list of Non-Cooperative Countries and Territories is updated on an on-going basis and may be found at: <http://www.fatf-gafi.org>.

applicable regulatory authority in the jurisdiction of the fund and the fund manager must have entered into a "cooperation agreement"² with the applicable regulatory authority in each EU jurisdiction where the fund is to be marketed.

3. The non-EU fund manager will be subject to certain requirements of the AIFMD, namely:
- Pre-investment disclosures (Article 23 AIFMD): EU investors must be provided with certain specific information prior to investing (typically via a PPM Addendum).
 - Annual reports (Article 22 AIFMD): EU investors and applicable regulatory authorities in each jurisdiction where the fund has been marketed must be provided with an audited annual report containing certain specific information.
 - Periodic disclosures to regulators (Article 24 AIFMD): The fund manager must report certain high level information about the fund and its investments to applicable regulatory authorities in each jurisdiction where the fund has been marketed.
 - Disclosures where the fund acquires or disposes of a substantial stake in a company in the EU (Articles 27 and 28 AIFMD): Certain disclosure requirements would apply to any acquisitions/disposals of EU companies by the fund.
 - "Asset stripping" rules (Article 30 AIFMD): If the fund acquires a controlling stake of a company in the EU, then certain types of capital distributions are restricted for a 2 year period.

* * *

If you have any questions or would like additional information, please do not hesitate to contact [Gareth Earl](mailto:gareth.earl@stblaw.com) at + 44 20-7275-6542 or gareth.earl@stblaw.com, [James Reid](mailto:james.reid@stblaw.com) at + 44 20-7275-6378 or james.reid@stblaw.com, or [Amy Fox](mailto:amy.fox@stblaw.com) at + 44 20-7275-6321 or afox@stblaw.com or any member of the Firm's Funds Practice Group.

This memorandum is for general information purposes and should not be regarded as legal advice. Please contact your relationship partner if we can be of assistance regarding these important developments. The names and office locations of all of our partners, as well as our recent memoranda, can be obtained from our website, www.simpsonthacher.com.

The contents of this publication are for informational purposes only. Neither this publication nor the lawyers who authored it are rendering legal or other professional advice or opinions on specific facts or matters, nor does the distribution of this publication to any person constitute the establishment of an attorney-client relationship. Simpson Thacher & Bartlett LLP assumes no liability in connection with the use of this publication.

² The list of co-operation agreements signed by EU member states may be found at: <http://www.esma.europa.eu/content/aifmd-mous-signed-eu-authorities>.

UNITED STATES

New York

425 Lexington Avenue
New York, NY 10017-3954
+1-212-455-2000

Los Angeles

1999 Avenue of the Stars
Los Angeles, CA 90067
+1-310-407-7500

Palo Alto

2475 Hanover Street
Palo Alto, CA 94304
+1-650-251-5000

Washington, D.C.

1155 F Street, N.W.
Washington, D.C. 20004
+1-202-636-5500

Houston

2 Houston Center
909 Fannin Street
Houston, TX 77010
+1-713-821-5650

EUROPE

London

CityPoint
One Ropemaker Street
London EC2Y 9HU
England
+44-(0)20-7275-6500

ASIA

Beijing

3919 China World Tower One
1 Jian Guo Men Wai Avenue
Beijing 100004
China
+86-10-5965-2999

Hong Kong

ICBC Tower
3 Garden Road, Central
Hong Kong
+852-2514-7600

Seoul

West Tower, Mirae Asset Center 1
26 Eulji-ro 5-gil, Jung-gu
Seoul 100-210
Korea
+82-2-6030-3800

Tokyo

Ark Hills Sengokuyama Mori Tower
9-10, Roppongi 1-Chome
Minato-Ku, Tokyo 106-0032
Japan
+81-3-5562-6200

SOUTH AMERICA

São Paulo

Av. Presidente Juscelino Kubitschek, 1455
São Paulo, SP 04543-011
Brazil
+55-11-3546-1000