

OnPoint

Dechert  
LLP



## Financial Services Monthly Update on Regulatory Developments

### Part B – Regulation of Investment Management

#### Alternative Investment Fund Managers Directive

The Alternative Investment Fund Managers Directive (AIFMD) came into force on 21 July 2011. Implementation by Member States is required by 22 July 2013. Compliance with the Directive by EU managers is required following implementation, although there is a one year grace period (until 23 July 2014) for EU managers to obtain authorisation as an “AIFM” under the Directive.

The Commission has still not published the final Level 2 Regulations, which are the detailed implementing measures underlying various parts of the Directive. The Level 2 Regulations will have direct effect in each Member State.

The FSA has published a discussion paper and will issue a more detailed consultation paper, followed by draft regulation, later this autumn.

The Directive affects all EU managers of funds other than UCITS funds, and all non-EU managers of funds seeking to market in the EU (regardless of whether the fund is based in or outside the EU).

An EU manager may not manage an alternative investment fund unless it has been authorised under the Directive. A manager must obtain authorisation as an “AIFM”, which it may not hold concurrently with a MiFID authorisation. An authorised AIFM of a fund established in the EU may market the fund to professional investors in the EU on the basis of the EU passport. The EU passport may be extended in 2015 to non-EU managers and non-EU funds. The Directive allows marketing under private placement regimes in parallel to the EU marketing passport, to the extent such regimes continue to exist. Private placement is not available to EU managers of EU funds.

An authorised AIFM will need to observe restrictions on delegation of its functions to third parties, and other conduct of business rules, such as liquidity and risk management. It will be responsible for ensuring compliance by the funds which it manages of the rules relating to appointment of a depositary and valuer. There are rules relating to remuneration policies and disclosure of aggregate remuneration amounts.

*Timing and recommended actions:* EU managers are required to be authorised by 23 July 2014. Depending on timely implementation by Member States, the EU marketing passport for EU managers of EU funds will become available 22 July 2013. There is no requirement for a non-EU manager to be authorised under the Directive from 2013. If the EU marketing passport is extended in 2015, a non-EU manager will need to be authorised to manage an EU fund, irrespective of whether the fund is marketed in the EU or whether EU investors invest in the fund. Until the EU marketing passport is extended, there is no benefit for a non-EU manager to be authorised, and no framework for it to be.

AIFMD will have a substantial impact on authorisation of fund managers, their structure, their operations and the manner in which their funds are run. Firms should consider whether they are in scope, which entity

should be authorised as the AIFM, the required new compliance policies and procedures and the required additional regulatory capital. Firms will need to consider whether they want to use the passport and the additional compliance burden involved.

Following publication of the Level 2 Regulations, Dechert will issue a detailed client guide to AIFMD. AIMA is also planning to produce a manual for fund managers, which should be available early next year.

## Proposed MiFID II Directive

The Commission published in October 2011 a proposed directive and regulation to amend MiFID (MiFID II).

The proposals include (i) creation of a new type of trading venue within the regulatory framework, the organised trading facility (OTF), capturing all forms of organised trading that do not match existing categories; (ii) significantly increased regulation of commodities trading, including introducing a position reporting obligation and powers for regulators to intervene in trading activity; (iii) new powers for regulators to ban or restrict types of financial products; (iv) new safeguards on algorithmic and high frequency trading activities (mainly to address market volatility); (v) a new regime for 3<sup>rd</sup> countries which abolishes the UK's overseas person exemption and replaces it with a requirement for overseas firms providing services into Europe to obtain a form of authorisation and (vi) new pre and post trade transparency rules for non-equity products, including bonds and commodities, similar to the transparency rules which apply to regulated equity markets.

*Timing:* MiFID II is currently subject to negotiation between the European Parliament and the Council of the EU. ESMA will need to produce a large number of related Level 2 measures. It is not anticipated that the implementation date will be before 2015.

## Proposed Capital Requirements Directive IV

The Commission published in July 2011 a proposal for new capital requirements for credit institutions and MiFID investment firms (CRD IV). The existing Capital Requirements Directive will be replaced with a regulation and a directive: the Capital Requirements Regulation (CRR) and the CRD IV Directive.

Investment firms currently subject to CRD will be faced with higher capital requirements and new governance requirements.

*Timing:* CRD IV is currently subject to negotiation between the European Parliament and the Council of the EU. The Commission's aim was for CRD IV to come into force on 1 January 2013. The FSA's view is that it does not appear feasible that the legislation can enter into force in line with the implementation date of 1 January 2013. The FSA has stated that it will not publish a consultation on CRD IV before the final text of the legislation has been agreed. The FSA has, however, published a webpage on its approach to implementing transitional provisions in the CRR on own funds requirements, the grandfathering of capital instruments, and the application of regulatory adjustments to own funds.

---

[Return to table of contents](#)

[Part A – Regulation of Financial Markets](#)

[Part B – Regulation of Investment Management](#)

[Part C – Regulation of Investment Funds \(Retail\)](#)

© 2012 Dechert LLP. All rights reserved. This publication should not be considered as legal opinions on specific facts or as a substitute for legal counsel. It is provided by Dechert LLP as a general informational service and may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome. We can be reached at the following postal addresses: in the US: 1095 Avenue of the Americas, New York, NY 10036-6797 (+1 212 698 3500); in Hong Kong: 27/F Henley Building, 5 Queen's Road Central, Hong Kong (+852 3518 4700); and in the UK: 160 Queen Victoria Street, London EC4V 4QQ (+44 20 7184 7000).

Dechert internationally is a combination of separate limited liability partnerships and other entities registered in different jurisdictions. Dechert has more than 800 qualified lawyers and 700 staff members in its offices in Belgium, China, France,

Germany, Georgia, Hong Kong, Ireland, Kazakhstan, Luxembourg, Russia, the United Arab Emirates, the UK and the US. Further details of these partnerships and entities can be found at [dechert.com](https://dechert.com) on our [Legal Notices](#) page.