

private investment funds lawflash

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ESMA Approves Cooperation Arrangements for Alternative Funds

Arrangements allow EU securities regulators to supervise non-EU alternative fund managers and thereby allow such managers access to the EU.

On 30 May, the European Securities and Markets Authority (ESMA)¹ announced that it had approved cooperation arrangements between EU securities regulators that have responsibility for the supervision of alternative investment funds (AIFs)—including hedge, private equity, and real estate funds—and 34 of the regulators' global non-EU counterparts.² ESMA negotiated the arrangements on behalf of all 27 EU Member State securities regulators as well as the authorities from Croatia, Iceland, Liechtenstein, and Norway.

These cooperation arrangements are a key element for allowing EU securities regulators to supervise the way non-EU alternative investment fund managers (AIFMs) comply with the rules of the EU Alternative Investment Fund Managers Directive (AIFMD), and they are a precondition for allowing non-EU AIFMs access to EU markets and investors or to perform fund management activities on behalf of EU AIFMs. These arrangements will apply to non-EU AIFMs that manage or market AIFs in the EU and to EU AIFMs that manage or market AIFs in third countries. The arrangements also cover cooperation in the cross-border supervision of AIFs' depositaries and AIFMs' delegates.

At its recent meeting, ESMA's board of supervisors approved Memoranda of Understanding (MoUs) with 34 regulators, including jurisdictions such as the United States, Canada, Brazil, India, Switzerland, Australia, Hong Kong, Singapore, the Cayman Islands, and the Channel Islands.³

1. ESMA is an independent EU Authority that was established on 1 January 2011. It works closely with the other European Supervisory Authorities responsible for banking, insurance and occupational pensions, and the European Systemic Risk Board. ESMA's mission is to enhance the protection of investors and promote stable and well-functioning financial markets in the European Union (EU). As an independent institution, ESMA achieves this aim by building a single rule book for EU financial markets and ensuring its consistent application across the EU. ESMA contributes to the regulation of financial services firms with a pan-European reach, either through direct supervision or through the active coordination of national supervisory activity.

2. View ESMA's press release at http://www.esma.europa.eu/system/files/2013-629_esma_promotes_global_supervisory_cooperation_on_alternative_funds_30_may_2013.pdf.

3. ESMA approved cooperation arrangements between securities regulators from the 27 EU Member States, Croatia, the European Economic Area (Iceland, Liechtenstein, and Norway), and the following third-country regulators: Alberta Securities Commission (Canada), Australian Securities and Investments Commission, Autorité des marchés financiers (Québec, Canada), Bermuda Monetary Authority, British Columbia Securities Commission (Canada), British Virgin Islands Financial Services Commission, Capital Markets and Securities Authority of Tanzania, Capital Markets Authority of Kenya, Cayman Islands Monetary Authority, Comissão de Valores Mobiliários (Brazil), Conseil Déontologique des Valeurs Mobilières (Morocco), Dubai International Financial Centre Authority, Emirates Securities and Commodities Authority, Board of Governors of the Federal Reserve System (United States), Financial Services Commission of Mauritius, Financial Supervision Commission of the Isle of Man, Financial Supervisory Authority of Albania, Guernsey Financial Services Commission, Hong Kong Monetary Authority, Securities and Futures Commission of Hong Kong, Israel Securities Authority, Jersey Financial Services Commission, Labuan Financial Services Authority (Malaysia), Monetary Authority of Singapore, Office of the Comptroller of the Currency (United States), Office of the Superintendent of Financial Institutions (Canada), Ontario Securities Commission (Canada), Republic of Srpska Securities Commission, Securities and Exchange Board of India, U.S. Securities and Exchange Commission, Securities and Exchange Commission of Montenegro, Securities and Exchange Commission of Pakistan, Securities and Exchange Commission Thailand, and the Swiss Financial Market Supervisory Authority (FINMA).

The key elements of the cooperation arrangements are as follows:

- EU and non-EU authorities will be able to supervise fund managers that operate on a cross-border basis both within the EU and outside.
- The cooperation between authorities includes the exchange of information, cross-border on-site visits, and assistance in the enforcement of the respective laws.
- EU securities regulators will be able to share relevant information received from non-EU authorities with other EU authorities, ESMA, and the European Systemic Risk Board, provided appropriate safeguards apply.
- The cooperation arrangements are applicable from 22 July 2013 and enable cross-border management and marketing of AIFs to professional investors in the EU.

Steven Maijoor, ESMA chair, commented that

The approval by EU securities regulators of these co-operation arrangements is a significant step towards the successful implementation of the supervision of alternative investment funds by the July 2013 deadline, and their negotiation is a key achievement for ESMA in its co-ordinating role for EU securities markets.

The agreements set high standards for cooperation on the supervision of cross-border alternative funds, thereby strengthening investor protection and the global consistency of supervision.

ESMA continues to negotiate MoUs with additional third countries in order to meet the 22 July deadline.

We will continue to monitor the implementation of AIFMD and will keep you up to date.

Contacts

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