

## private investment funds lawflash

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## UK Financial Services Authority Releases AIFMD Regulatory Survey

*UK-based alternative investment fund managers should complete the survey, which responds to industry pressure regarding the time line for AIFMD authorisation applications, before the 28 March deadline.*

Last week, the UK Financial Services Authority (FSA) published a survey for UK-based alternative investment fund managers (AIFMs) to help AIFMs comply with the requirements of the Alternative Investment Fund Managers Directive (AIFMD). The deadline for transposition of the AIFMD into UK law—and the laws of all other member states of the European Economic Area (EEA)—is 22 July 2013, and the UK government and FSA fully intend to meet that deadline. From that date, AIFMs must be authorised or registered by the Financial Conduct Authority (FCA) under the AIFMD. FCA comes into existence on 1 April 2013, replacing FSA. AIFMs carrying on business before 22 July 2013 are subject to a transitional provision, which lasts up to 22 July 2014.

Whilst there is still some uncertainty, a number of UK firms operating within the EEA may need to be authorised under the AIFMD from 22 July 2013 in order to (i) continue management activities and marketing of their alternative investment funds (AIFs) in those countries using the AIFMD passport and/or (ii) to access national private placement regimes for the marketing of their non-EEA AIFs. It is possible, but not certain, that some EEA jurisdictions may allow management and marketing without the passport, as well as access to their national private placement regimes, prior to AIFM authorisation during the transition year.

In November 2012, FSA announced that it did not intend to accept applications for authorisation or registration under the AIFMD until 22 July 2013. This caused concern in the industry because FSA's time line effectively deprived UK AIFMs of the ability to choose to become authorised on time, potentially disrupting their business, and was not consistent with the approach of certain other EEA regulators. UK firms whose businesses will potentially be disrupted if the FSA decides not to authorise AIFMs before 22 July 2013 include the following:

- UK AIFMs who manage, or wish to manage, an AIF based in another EEA member state
- UK AIFMs who manage UK AIFs and want to market them to professional investors in other EEA member states under the AIFMD passport
- UK AIFMs who manage non-EEA AIFs and want to market them in other EEA member states under private placement regimes

FSA has responded to industry concerns by rethinking its approach and publishing a survey on its website intended for UK-based AIFMs, in particular those who (i) carry out management activities in the EEA, and/or (ii) market their AIFs in the EEA. The information returned to FSA will be used to understand the likely volume, types, and timings of applications and will help ensure that FSA will be best placed to assist UK firms. The deadline for completing the survey is 28 March 2013.

We recommend all UK-based AIFMs consider completing the survey, which is available at <http://www.fsa.gov.uk/about/what/international/aifmd/uk-aifm-survey>. In particular, FSA has stated that any UK firm that wants to be authorised under AIFMD by 22 July 2013 **must** complete the survey so the firm can manage and/or market AIFs in the EEA using the AIFMD passport.

# Morgan Lewis

We are monitoring developments in this area and will keep you informed.

## Contacts

If you have any questions or would like more information on the issues discussed in this LawFlash, please contact the following Morgan Lewis lawyer:

### London

William Yonge

+44 (0)20 3201 5646

[wyonge@morganlewis.com](mailto:wyonge@morganlewis.com)

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