

Insight: Regulatory

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FSA publishes Discussion Paper on implementation of the Alternative Investment Fund Managers Directive

The Alternative Investment Fund Managers Directive ("AIFMD")¹, adopted on 8 June 2011, will have to be transposed in national legislation by EU Member States by 22 July 2013. This gives Member States approximately 18 months to prepare.

The Financial Services Authority ("FSA") launched its policy process to achieve transposition with the publication of a Discussion Paper on 23 January 2012 on the implementation of the AIFMD in the UK.² The Discussion Paper enables the FSA to canvass industry views at an early stage to inform its regulatory approach to AIFMD transposition. At the same time, it presents an opportunity for the industry to engage with the FSA and to influence its thinking.

Structure and content of the Discussion Paper

The Discussion Paper covers the following issues:

- the AIFMD implementation process in the EU and the UK;
- the scope of the AIFMD, including the definition of an alternative investment fund ("AIF") and the treatment of small alternative investment fund managers (AIFMs);
- operating requirements on AIFMs, covering general principles, organisational requirements, risk management, delegation and prudential requirements;
- management requirements on AIFMs, such as the valuation of the assets of each AIF under management, liquidity management, the use of leverage and investment in securitisation positions;
- transparency requirements, including annual reporting, disclosure to investors and reporting to the FSA;
- obligations on depositaries, including in relation to the safekeeping of assets, oversight of administrative functions and the standard of liability;
- requirements for the marketing of AIFs to professional investors and the conditions under which marketing to retail investors should be allowed; and
- other regulatory considerations relevant to certain types of AIF, such as listed AIFs, retail AIFs, Qualified Investor Schemes and charity pooled investment funds.



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¹ Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:174:0001:0073:EN:PDF>

² Available at <http://www.fsa.gov.uk/static/FsaWeb/Shared/Documents/pubs/discussion/dp12-01.pdf>.

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The questions posed in the Discussion Paper are generally kept at a high level at this point in time. Illustrative examples include:

- *“Which aspects of the Directive should we consider applying to small UK AIFMs?”*
- *“What aspects of the proposed requirements for investment in securitisation positions present the most significant challenges and/or create the most significant degree of uncertainty for AIFMs, including in relation to the interaction with the existing requirements applicable to credit institutions and insurance undertakings?”*

However, some questions give an indication of the kind of policy options the FSA is considering, for example:

- *“Do you agree we should develop proposals to ensure that a premium listed fund must itself hold the AIFM permission envisaged under the Directive?”*
- *“What options could be considered for implementing the remuneration requirements of the Directive that would achieve fair and appropriate alignment with the existing Remuneration Code?”*

Responding to the Discussion Paper

The FSA invites comments on this Discussion Paper by 23 March 2012. Responses can be submitted by letter or email to:

Investment Funds Team
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS
E-mail: dp12_01@fsa.gov.uk

Alternatively, you can use an online submission form available [here](#).

Next steps

The FSA plans to publish a Consultation Paper with its policy position on the AIFMD and any proposed rule changes later this year. Only some provisions of the AIFMD will be transposed via FSA rules, others by regulations to be made by HM Treasury under the European Communities Act 1972 to amend primary legislation. Therefore, we also expect an HM Treasury publication on the issues raised by AIFMD implementation later this year. Consultations by authorities in other Member States are likely to be imminent as well.