

# Insight: Funds Regulation

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## The European Securities and Markets Authority Launches a Consultation on new Rules for Fund Managers

The European Securities and Markets Authority – “ESMA” – has launched a two month public consultation on a range of detailed measures that will facilitate the implementation of the Alternative Investment Fund Managers Directive – “AIFMD”. This material will be of great importance to the hedge fund and private equity fund sectors. Fund depositaries and custodians will also have a significant interest in this material.

The consultation began on 13 July 2011 and closes on 13 September 2011\*.

The AIFMD was published in final form on 1 July 2011 and all countries in the European Union must implement the directive by 22 July 2013†. In addition, important provisions in the directive will be the subject of more detailed measures that will be implemented via regulations issued by the European Commission and will be supplemented with guidance from ESMA. The consultation publication by ESMA, which advises the Commission on the detail of its further regulations, is an important milestone in that process. The material contains ESMA’s proposed advice to the European Commission on the following topics:

### Authorisation

- identification of portfolios and the calculation of assets under management
- the influence of leverage on assets under management
- the treatment of potential cases of cross holdings among AIFs
- the treatment of AIFMs whose total assets under management occasionally exceed or fall below the €100 million or €500 million thresholds
- registration by managers of funds valued at or below those thresholds
- opting into the directive

### The Depositary

- the depositary’s functions
- segregation
- liability of depositary
- delegation

### Operating Conditions

- initial capital and own funds
- conflicts of interest
- risk management
- liquidity management
- general principles
- investment in securitisation positions
- valuation
- delegation of AIFM functions
- organisational requirements

### Transparency and Leverage

- defining leverage
- disclosure to investors
- reporting to regulators

Our team at White & Case is ready to assist clients to assess the impact of these draft materials on their businesses and help them prepare for implementation.



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\* A copy of ESMA’s consultation document can be found at: <http://www.esma.europa.eu>

† A copy of the AIFMD is available at: <http://www.eur-lex.europa.eu>

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