

ALERTS

AIFM Directive — Publication of Final Text

July 5, 2011

The final agreed text of the Alternative Investment Fund Managers Directive (“AIFM Directive”) was published in the Official Journal of the European Union on 1 July 2011[1]. Its publication comes after 26 months[2] of intense debate and negotiations between the European Commission (“Commission”), the European Council of Ministers, the European Parliament and numerous trade bodies and lobbying groups.

The significance of its publication in the Official Journal is that the AIFM Directive will enter into force across the European Union after a further 20 days have passed (i.e., on 22 July 2011). Under EU legislative processes EU Member States will then have two years to transpose the AIFM Directive’s provisions into national law. Therefore, we are now able to confirm that the new regulatory regime for alternative investment fund managers (“AIFMs”) operating within the EU will commence on 22 July 2013.

However, the AIFM Directive’s publication is by no means the end of the legislative process as the AIFM Directive is merely a framework (or “Level 1”) directive, setting out the core principles of the new regulatory regime. Much of the detail for the new regime is still to be decided and will be set out in subsidiary legislation — which will likely take the form of implementing directives (known as “Level 2” measures)[3]. It is these “Level 2” measures, which build on the text of the AIFM Directive itself, which will contain the critical rules with which AIFMs will have to comply when the regime comes into force in 2013.

It is expected that the European Securities and Markets Authority (“ESMA”) will commence a two-month consultation on the Level 2

measures in the next two weeks. This consultation will set out ESMA's proposals for recommendations to the Commission on each area of the AIFM Directive. The consultation will give industry participants an indication of ESMA's thinking in each area and opportunity to comment on what will become ESMA's final advice to the Commission on the Level 2 measures. The Commission has set ESMA a deadline of 16 November 2011 for its final advice. However, the final text of the Level 2 measures will not be known until it is published by the Commission in early 2012, giving EU Member States approximately eighteen months within which to transpose the AIFM Directive and the associated Level 2 measures into their national laws by 22 July 2013.

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If you have any questions concerning this *Alert*, please contact one of the authors or your attorney at Schulte Roth & Zabel.

[1] For the full text please see: <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2011:174:SOM:EN:HTML> or <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:174:0001:0073:EN:PDF>.

[2] The original proposal for the AIFM Directive was initially published on 30 April 2009. For more information please refer to our *Client Alert*: http://www.srz.com/files/News/24a7b7d5-a365-4371-aa1d-13685b3f25b3/Presentation/NewsAttachment/1b0ef524-e99d-4eb3-8c40-17c8f1512cc6/071509_Proposed_European_Union_Directive.pdf.

[3] The Commission could also issue some of the Level 2 measures in the form of EU regulations, which provide for "maximum harmonisation" of rules in all EU Member States, since, unlike directives, regulations have direct effect in each Member State and do not need to be transposed into national laws.

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