

Financial Services update: Busy Autumn Ahead for Asset Managers

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Switzerland: CISA Transition Periods

On 17 May 2013, the Swiss Financial Market Supervisory Authority (FINMA) published a newsletter setting out its interpretation of certain transitory provisions in connection with the partial revision of the Collective Investment Schemes Act (CISA) and the Collective Investment Schemes Ordinance (CISO). In the newsletter, a distinction was drawn between (a) financial intermediaries actively distributing funds to qualified investors in Switzerland before 1 March 2013, and (b) those who were not.

In the case of (a), distributors domiciled in Switzerland had to identify themselves to FINMA before 31 August, and have until 28 February 2015 to file their application to be authorised by FINMA. In addition, foreign investment funds (referred to as Collective Investment Schemes or CIS) must appoint a local representative and paying agent in Switzerland, irrespective of whether that fund has been distributed in Switzerland prior to 1 March 2013.

In the case of (b), distributors commencing operations after 1 March 2013 must satisfy all applicable regulatory requirements under CISA, in addition to appointing representatives in Switzerland.

United Kingdom: FCA deadlines

At the start of August, the Financial Conduct Authority (FCA) in the UK announced a new filing deadline (22 January 2014) for asset managers requiring an authorisation or change of permission in order to comply with the AIFM authorisation requirements under the AIFM Directive.

Asset managers and their advisers in the UK had expected the deadline to be 22 July 2014, and were planning to defer their preparation until next year.

AIFMD Transposition Timeframe

In September, the European Securities and Markets Authority (ESMA) issued an opinion on practical arrangements that will apply in the event of late transposition of the AIFMD by EU member states.

If the AIFMD has not been transposed in the home member state of the AIFM, the competent authority of the host member state of the AIFM (Article 32) or home member state of the AIFM (Article 31) may not refuse a valid notification under the AIFMD on the ground that the AIFMD has not yet been transposed in the host member state. This applies irrespective of whether the marketing is done using the freedom to provide services or by means of a branch.

AIFMs established in a member state that has transposed the AIFMD should be able to manage an EU AIF via the management passport, both using the freedom to provide services or by means of a branch, in a member state where the AIFMD has not been transposed, provided the AIFM is authorised to manage that type of AIF in accordance with Article 33 (1) of the AIFMD. Any local restrictions on AIFMs that are not in accordance with the AIFMD will need to be disapplied.

Cayman & BVI: co - operation agreements approved by ESMA

In May, ESMA announced that it had approved AIFMD co - operation agreements with the Cayman Islands Monetary Authority and the Financial Services Commission in the BVI. This will ensure that managers in Switzerland of Cayman and BVI funds will continue to be able to market those funds in the EU using the national private placement regimes (NPPRs) post 22 July 2013.

Managers in Switzerland have welcomed, in addition, the co - operation agreement that FINMA has agreed with ESMA, which is also a precondition of marketing their funds in the EU.

2014 Outlook

These and other developments in the regulatory space in Switzerland, the UK and across the EU will make for a busy Q3/Q4 2013, with the pace of regulatory announcements and filing deadlines quickening in 2014.

Managers in Switzerland will be keeping a close eye on parallel developments in the UK, and those with funds in third countries like Cayman and

the BVI will be turning once again to the cost – benefit analysis of redomiciliation or codomiciliation: is the EU passport worth the hassle? We are positioned in our Geneva and Zurich offices to assist managers with this exercise.