

## ESMA publishes third country AIFMD consultation

24 August 2011 by Simon Danaher

**The European Securities and Markets Authority has published a second consultation paper on the implementation of the AIFMD rules, this time looking specifically at third country funds.**

In the consultation, the ESMA sets out its draft advice on the supervision of alternative investment fund managers (AIFMs) in third countries. This includes suggestions on how to implement the rules on delegation to entities established in a third country and on the “general criteria for assessing equivalence of the effective prudential regulation and supervision of third countries in the context of depositaries”.

Within the section of the consultation which looks at “delegation”, the ESMA suggests that in order to comply with the rules of the AIFMD – specifically Article 20(1)(d) – a written agreement should exist between the regulator of the country from which the AIFM is based and the EU country into which it is passporting. Among other things, this agreement should include provisions which allow for site visits by the EU-compliant regulator, access to information on demand and assurance that action will be taken in cases where there has been a breach of regulation.

On the implementation of the rules around “depository”, the ESMA suggests that the third country’s regulatory regime should be equivalent to those within the EU and that the third country regulatory framework should provide for the “application of sufficiently dissuasive sanctions in cases of violations”.

The implementation of “supervision” regulation for third country AIFMs meanwhile, is similar to the proposed delegation implementation measures, in that an agreement between the EU country and third country is suggested. The ESMA suggests this should take a similar shape to current International Organisation of Securities Commissions standards, with exchange of information for supervisory and enforcement purposes provided for, as well as rights to access and inspect AIFMs’ sites.

The 30 page consultation document also explores a number of other areas, including the implementation of cooperation arrangements between EU and non-EU competent authorities, exchange of information between EU authorities and authorisation of member state AIFMs.

Responses to the consultation, which can be submitted here, should be completed by the 23 September this year. The ESMA is to produce a final recommendation to the European Commission on the implementation of the AIFMD by 16 November 2011.

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