

## AIFMD

Directive 2011/61/EU of the European Parliament and the Council **on alternative investment funds managers** (the “Directive”)

### 1. Overview

#### **Objective**

The AIFMD aims to create a harmonised regulation framework for alternative funds distributed in the EU.

The AIFMD has the objective of regulating the alternative investment fund managers and the distribution of AIFs in the European Union in order to ensure investor protection and avoid systemic risk.

#### **Scope**

The AIFMD applies to:

- EU AIFMs managing AIFs, irrespective of their country of domiciliation (EU AIFs or non-EU AIF)
- non-EU AIFMs managing EU AIFs
- non-EU AIFMs which market their AIFs in the EU

#### **Key topics covered by the Level 1 (Directive)**

With an objective of harmonisation, the Directive covers key topics:

- authorisation
- capital requirements
- delegation of duties to third parties,
- use of leverage funds,
- valuation requirements by the investment manager itself or by an outside expert,
- conduct of business,
- remuneration policies
- reporting to National Competent Authorities,
- marketing provisions and rules in relation to third countries
- depositary provisions
- passport

#### **Depositary provisions**

For each AIF it manages, an AIF must mandate a depositary who must be subject to a supervisory authority. The Directive includes requirements for firms acting as depositary of AIFs:

- eligible depositary: an EU credit institution, an EU Investment company or a UCITS depositary
- depositary liability regime: the Directive clearly establishes the principle of liability of the depositary with regard to the fund managed in the event of loss of the assets under management, thus obliging the custodian to return identical assets or the cash value of these assets to the fund managed, with the exception of an external event beyond reasonable control;

#### **Passport**

The Directive creates a passport for European fund managers effective as of the application date in 2013.

It should be noted the passport granted by the Directive only allows marketing within the EU for investors that are at least professionals (in reference to the terminology of the MiFID).

On 30 July 2015, ESMA published an opinion on the extension of the passport to non-EU fund managers recommending that the passport be extended to Guernsey, Jersey and Switzerland (subject to conditions for Switzerland). ESMA will extend the passport on a country-by-country basis.

The timing for the extension of the passport to non-EU AIFs and AIFMs is uncertain. The Commission has the power to adopt a delegated act which would extend the passport to non-EU AIFMs. If it does so, a delegated act will have to be adopted.

Until the passport is extended, EU AIFMs who manage non-EU AIFs and non-EU AIFMs who manage non-EU AIFs may continue to use national private placement regimes (“NRPPs”) as it is the sole regime available.

The Timing for termination of “NRPPs” is uncertain. The Commission has the power to adopt a delegated act that would specify the date on “NRPPs” are to terminate if it has received a positive opinion in this regard from ESMA.

**Key topics covered by the Level 2:** calculation of assets under management, method used to calculate leverage, level of additional capital, operating requirements applicable to managers, delegation of financial management duties, risk management, liquidity management, depositaries' responsibilities and reporting requirements

## 2. Chronology of events: key dates

- ✓ 1st July 2011: Directive published in OJ
- ✓ 21 July 2011: Directive entered into force
- ✓ 19 December 2012: Level 2 Regulation published in OJ, applicable on the same date
- ✓ 22 July 2013: Entry into application of the Directive (deadline for transposition), Level 2 applicable on the same date
- ✓ 22 July 2014: Deadline for (existing) AIFM to be compliant with AIFMD
- ✓ 8 October 2014: ESMA's guidelines on reporting obligations under AIFMD apply
- ✓ 30 October 2018: Amendments of Level 2 on safekeeping duties of depositaries
- ✓ 2020: EU Commission is expected to publish its report on the functioning of the AIFMD and could launch consultation on the AIFMD review
- ✓ 1st April 2020: Entry into application of the new safekeeping duties of depositaries: Delegated Regulation 2018/1618

## 3. Reference texts

[Level 1 Directive](#)

[Level 2 Regulation](#)

[Amendments of Level 2](#)