

## AIFMD Alert

### Briefing: ESMA's Final Advice

The European Securities and Markets Authority (ESMA) published its final advice to the European Commission on the detailed rules that are applicable to firms within the scope of the Alternative Investment Fund Managers Directive (AIFMD) on 16 November 2011. ESMA had previously sent its advice out to consultation in July and August: there were over 150 responses – has ESMA listened?

During the consultation period the European Commission, and separately the European Parliament commented that they did not like many proposed aspects of ESMA's advice. It remains to be seen to what extent the Commission will make changes between now and the middle of next year, which is the expected date for it to turn this advice into Regulations (directly applicable) or Directives (requires transposition into national law which permits greater flexibility for national interpretation).

Investment Managers should be aware that ESMA's advice represents a positive step forward on the road to implementation, however significant concerns remain. It is important to note that this advice does not contain guidance on remuneration policies applicable to AIFM and this will be the next big piece of work for ESMA.

This briefing note sets out the high level answers to selected key questions that have been answered by the ESMA advice and will be useful reading for investment managers that manage and / or market funds in the EU, administrators, depositaries, prime brokers and sub-investment managers.

#### Key areas of impact in the final ESMA advice includes:

##### Calculation of AUM for Sub-threshold Managers

- The calculations proposed by ESMA cause challenges with the netting of positions and treats derivatives in such a way that many managers, who would be below the €100m or €500m (no leverage with five year lockups from the date of investment) thresholds on a Net Asset Value basis, may be brought into the scope of the AIFMD.

##### Leverage Calculations

- Leverage must be disclosed to investors in addition to regulators. The methodology proposed could result in the disclosure of figures that do not properly represent the true leverage of the fund and cause confusion to investors.

**Risk Management**

- The risk management provisions reflect those applicable in the UCITS Directive and it is likely that many real estate and private equity managers will find applying these within the alternative space challenging.
- The imposition of mandatory independence safeguards may lead to additional cost with minimal benefit.
- There are no specific rules for private equity or real estate managers.

**Liquidity Management**

- ESMA elaborates on the framework for liquidity management and specifically requires AIFM to set out, in detail, what redemption restrictions they will use and under what scenarios they will apply.
- Depending on the current level of disclosure, AIFM will need to consider how they are going to manage investor relationships if this results in a significant amount of new information being provided.

**Other Operating Conditions**

- There have been minimal changes to the general requirements for AIFM, which have been based on those contained within the UCITS Directive and MiFID.

**Valuation**

- Under current practice the fund's governing body determines pricing policy and retains responsibility for valuations. That practice may continue if the governing body acts as AIFM pursuant to Article 5 of the Directive. Otherwise the portfolio manager acting as the AIFM will assume responsibility for valuations which is a change from existing practice.
- The valuation provisions at level 1 meant there were always going to be some changes in responsibilities between fund boards and the AIFM.
- The ESMA advice approaches valuation at a principals based level which should make these easier to apply in practice.
- ESMA has clarified that administrators, subject to certain caveats, are not to be considered as "external valuers". This means the extent to which AIFMs have financial recourse to administrators is limited.

**Depositary**

- The depositary provisions have taken a positive step forward in relation to how they should exercise their oversight and safekeeping obligations.
- Depositary liability is a very technical area and there has been little change from the draft advice. It is still unclear exactly when the depositary is liable to the AIF for lost assets. However it is clear that ESMA does not distinguish between affiliated and unaffiliated sub-custodians which means that the depositary cannot escape liability for actions of any sub-custody providers.
- Increased uncertainty and / or liability will invariably lead to increased costs being passed onto the AIF.

**Reporting to Regulators**

- The draft advice had a blanket quarterly reporting frequency for all firms. ESMA has now decided that the frequency and content of reporting to regulators should be on a sliding scale which will be a benefit to mid market AIFM.

**Annual Report (inc. Remuneration)**

- ESMA's final advice does not impose a consolidation requirement on private equity firms.
- In general the advice is sufficiently flexible that it sits within current practice.
- The final advice retains the flexibility in relation to how remuneration is disclosed in the AIF's annual report.

**Third Country Provisions**

- ESMA's initial draft advice on third country arrangements was considered by many commentators to be unworkable, due in particular to equivalence and enforcement requirements. ESMA's final advice is less prescriptive and provides a framework for more workable third country cooperation agreements.

Detailed notes on the key questions answered by the ESMA advice can be found below.

## Sub threshold AIFM

### **How do AIFM calculate the regulatory assets under management (RAUM) to determine if they are above the relevant thresholds and therefore must comply with the full Directive?**

AIFM must calculate their RAUM at least annually, but can use historical asset valuations if these are within 12 months of the calculation date. In practice we expect figures from the latest annual report to be used.

ESMA is not using the familiar Net Asset Value (NAV) approach when calculating the €100m and €500m (no leverage and 5 year lockups from date of initial investment) thresholds. In calculating RAUM we understand that the following adjustments (to NAV) will be required:

1. Convert derivatives into the absolute value of the equivalent underlying position in accordance with the CESR guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS (CESR/10-788).
2. Do not convert derivatives using the above method if those are used for FX and Interest Rate hedging purposes and are “not used to generate a return”.
3. Add assets that have been acquired through leverage.
4. Deduct assets that would otherwise be counted twice i.e. master / feeder arrangements.

This approach does not permit netting and will therefore lead to a significant number of AIFM being caught by the Directive even if their NAVs are below or significantly below the thresholds.

### **What are the registration requirements for sub-threshold AIFM?**

ESMA provides limited advice in this area and we expect that this will be determined by local regulators.

### **What if AIFM subsequently fall above / below the thresholds?**

Below threshold: ESMA suggests AIFM notify their regulator and, should they require a revocation of authorisation, demonstrate why they expect to remain below the threshold.

Above threshold: AIFM will have to comply with the full Directive unless they can demonstrate that it is temporary in nature. ESMA considers temporary should not be over 3 months.

## Own Funds and Professional Indemnity Insurance

### **Do AIFM need to take out additional Professional Indemnity Insurance (PII)?**

AIFM must cover professional liability risks but can choose to hold either PII, additional capital or a combination. Where AIFM choose PII they must ensure that, at a minimum:

- the risks and parties covered by the PII is aligned with what has been set out in ESMA’s advice
- the aggregate\* and per claim~ cover of those policies is higher than a calculated amount.

\* A minimum of €2.5m, or if higher, 1 % of the amount by which the value of the portfolios of the AIFM exceeds €250 million up to a maximum of €25 million.

~A minimum of €2m or if higher, 0.75 % of the amount by which the value of the portfolios of the AIFM exceeds €250 million, up to a maximum of €20 million.

We expect that some AIFM will need to, and currently do, hold amounts higher than the calculated output. Additional cover is likely to be required where this is not sufficient to address “the potential liabilities arising from professional negligence”.

**If AIFM decide to cover professional liability risks via additional capital rather than PII, what is the requirement?**

AIFM must hold additional own funds equal to 0.01% of the value of the portfolios of AIF. If certain conditions are fulfilled national regulators have the option to lower the percentage to 0.008%. This leads to a manager of a €1bn fund being required to hold only €100k of additional own funds. ESMA has provided example calculations which indicate that they had intended for such a fund to hold €1m of additional capital which would mean rates of 0.1% and 0.08% and may imply that the above percentages are a clerical error.

**Will insurers provide cost effective insurance policies that cover the risks listed by ESMA?**

Deloitte understands that insurers will need to give further thought to the extent of an AIFM’s vicarious liability to third parties when pricing this cover, however in the main we understand that insurance will still be priced competitively.

**Can AIFM hold a combination of own funds and PII?**

Yes, on a pro-rata basis.

## Calculation of Leverage

**What is the methodology for calculating leverage?**

The method to calculate leverage is broadly similar to that proposed within the consultation. AIFM must calculate leverage as a ratio of “exposure” to NAV, with “exposure” calculated in accordance with a “gross” and “commitment” method and, after notification to their regulator, an “advanced” method.

The “commitment” method would lead to a similar result compared to applying the CESR guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS (CESR/10-788). The “gross” method is similar to the “commitment” method but removes the ability for AIFM to take into account netting or hedging arrangements which may reduce exposure.

Although duration netting is permitted for the commitment approach it is still likely that both of these methods will provide erroneous information to investors as they do not adequately take into account the impact of hedging and netting arrangements which reduce overall exposure.

**How are bridging loans reflected in the leverage calculation?**

Where temporary borrowings are “covered” by capital commitments from investors this would not lead to a fund being considered “leveraged”. Capital commitments are defined as “the contractual commitment of an investor to provide the AIF with agreed amount of investment on request by the AIFM”.

**How is financing within holding companies accounted for?**

ESMA consulted on several options to explain how such financing is accounted for but none have found their way into the final advice. However, ESMA clearly excludes financing within target companies. Although generally unclear, there are several indications within the text that suggests ESMA does not think borrowings within holding companies should be considered as increasing the exposure of the AIF - this is an area to watch.

### **Is there flexibility to use an alternative model?**

ESMA has an “advanced” method for calculating leverage which is broadly at the discretion of the AIFM but ESMA has specified criteria that the method should meet. It is not clear if this permits a relative VaR approach to be used – unfortunately further clarification is required before the impact can be properly assessed.

### **What leverage figures must be disclosed to investors?**

The resulting leverage figures from the “gross” method and either the “commitment” or “advanced” method must be disclosed to investors. This will lead to confusing information being provided to investors and AIFM will need to effectively manage the resulting queries.

## **Risk Management**

### **Are the risk management requirements similar to UCITS?**

The requirements are very similar to UCITS with of course the caveat that the risk management function covers the manager and the manager’s activities per se, and indirectly the product. UCITS concentrates on Product.

ESMA’s advice requires the member state competent authorities to apply a principle of proportionality, taking into account the operational structure and corporate governance arrangements. This recognises the diverse structures of entities that may be authorised as AIFMD, and extends the principle of “comply or explain” with the Home State Competent Authority the final arbiter on such explanation. Further flexibility would have been welcomed.

### **What are the independence requirements of the risk management function?**

The Level 1 Directive recognised that not all AIFM could meet the above requirement and should instead demonstrate that specific safeguards for independence are implemented. ESMA’s advice continues and clarifies the purpose and structure of risk management as regards independence. It draws the distinction between an independent risk management function and the responsibility for ensuring that independence. The responsibility for ensuring this independence is with the AIFM’s governing body.

### **What safeguards must be put in place to ensure independence of the risk management function?**

The specific requirements are stated as:

- procedures to ensure that the data used by the risk management function in making decisions is reliable and subject to an appropriate degree of control by the risk management function so as to allow for the independent performance of its duties;
- that staff members engaged in risk management are compensated in accordance with the achievement of the objectives linked to the risk management function, independent of the performance of the business areas in which they are engaged;
- that risk management function is subject to an appropriate independent review to ensure that decisions are being arrived at independently;
- that there is a review of the risk management function by an independent external party or, where applicable the internal audit function;
- segregation of conflicting duties; and
- an appropriately resourced risk committee that reports directly to the AIFM’s governing body where the non-independent members of such a committee do not have undue influence over the process.

### **What risk management activities need to be disclosed to investors?**

ESMA's advice looks to enhance the governance structures envisioned under the UCITS Directive to ensure that there are robust controls that ensure the risk profile disclosed to investors is aligned with the actual risk profile of the AIF which includes qualitative and quantitative risk limits covering specified risks. The structures, nature of risks, measurement of risks and the resulting measures are to be disclosed to investors at least in the annual report of the AIF but may also be in the instruments of incorporation, prospectus and offering documents.

## **Liquidity Management**

### **What processes need to be put in place to monitor asset liquidity?**

AIFM need to adopt appropriate liquidity management policies and procedures for each AIF managed that is not an unleveraged closed-ended AIF. These should enable them to monitor the liquidity risk of each AIF and comply with their underlying obligations to investors, counterparties, creditors and other parties and should take into account the investment strategy, the liquidity profile and the redemption policy of each AIF.

### **What must be disclosed to investors?**

The Level 1 measures state that the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature should be periodically disclosed to investors.

AIFM should implement appropriate policies and procedures to ensure that the redemption terms applicable to a particular AIF are disclosed in sufficient detail to investors before they invest and in the event of material changes. This could include disclosure of notice periods in relation to redemptions, details of lock-up periods, an indication of circumstances in which normal redemption mechanics might not apply or may be suspended, together with details of any measures which may be considered by the governing body such as gates, side pockets, lock ups or penalties.

The redemption terms of the AIF should be disclosed to investors, in sufficient detail, before they invest in the AIF and in the event of material changes.

### **What is the impact on redemption terms?**

The redemption terms should include disclosure of notice periods in relation to redemptions, details of lock-up periods, an indication of circumstances in which normal redemption mechanics might not apply or may be suspended, together with details of any measures which may be considered by the governing body such as gates, side pockets, lock ups or penalties.

## **Valuation**

### **What are the AIFM's obligations in relation to valuation?**

The Level 1 Directive clarified that the AIFM is ultimately responsible for the proper valuation of the fund's assets but may delegate to an "external valuer" who is liable in turn to the AIFM. The AIFM will be responsible for ensuring that written valuation policies and procedures are established which clarify valuation methodologies and the roles and responsibilities of the parties involved.

Under current practice the AIF's governing body, i.e. the Board of Directors, determines pricing policy and retains responsibility for valuations and that practice may continue if the governing body acts as AIFM pursuant to Article 5 of the Level 1 Directive. Otherwise the portfolio

manager acting as the AIFM will assume responsibility for valuations which is a change from existing practice.

#### **What are the key valuation controls?**

Valuation models should be appropriately documented and independently validated before use and approved by senior management. Valuation methodologies should be applied consistently across AIF while taking into account the investment strategy, type of assets and use of different external valuers. Valuation policies and procedures should be reviewed periodically and at least annually and should include appropriate escalation measures to address differences. The NAV calculation documentation and its publication should be subject to regular verification by the AIFM.

#### **What is an “external valuer”?**

The Level 1 Directive clearly distinguished between the valuation of assets and the calculation of the net asset value as separate tasks but the exact meaning of the term “valuation function” and hence the term “external valuer” has been the subject of discussion. Under the Level 1 Directive the “external valuer” cannot limit its liability to the AIFM in relation to its negligence or intentional failure to perform its tasks.

ESMA’s final advice has clarified that a third party administrator incorporating values obtained from the AIFM or other sources is not the “external valuer” by virtue of this activity alone, nor is the pricing provider regarded as the valuation agent. ESMA’s clarification means that a third party fund administrator may not automatically assume the role of “external valuer” and the AIFM, which may be the fund’s governing body or the portfolio manager, may retain the valuation function, determine the fund’s pricing policy and delegate calculation of the NAV in accordance with the pricing policy to the fund administrator. It is likely that contractual arrangements between the various parties will need further consideration.

### **Delegation**

#### **The Level 1 / ESMA advice lists activities that must be performed prior to delegation – when are these provisions applicable?**

The AIFM must comply with all the provisions in article 20 of the AIFMD (i.e., the Level 1 measures) prior to a third party taking on the delegated activities. This is assessed under the principle of proportionality in relation to the importance of the task delegated. The AIFM must in particular satisfy itself of the sufficient resources and experience and sufficient good repute of the delegate which is satisfied by the authorisation and regulation of the entity.

#### **What the “objective reasons” that must be fulfilled prior to delegation occurring?**

The AIFM should be able to demonstrate that a delegation is carried out for “objective reasons”. To comply with this the AIFM should be able to demonstrate that the delegation is done for the purpose of a more efficient conduct of the AIFM’s management of the AIF.

ESMA suggests that objective reasons for delegating tasks include but are not limited to:

- Optimising of business functions and processes;
- Cost saving;
- Expertise of the delegate in administration/specific markets/investments;
- Access of the delegate to global trading capabilities;
- Generally ESMA has adopted a similar approach as under the UCITS Directive; and
- How much can an AIFM delegate i.e. when does it become a “letter box entity”?

The AIFM would become a letter-box entity and could no longer be considered to be the manager of the AIF where:

- the AIFM no longer retains the necessary expertise and resources to supervise the delegated tasks effectively and manage the risks associated with the delegation; or
- the AIFM no longer has the power to take decisions in key areas which fall under the responsibility of the senior management or no longer has the power to perform senior management functions, in particular in relation to implementation of the general investment policy and investment strategies.

#### **What are the AIFM's obligations in relation to the appointment of prime brokers?**

The AIFM is responsible for the selection and appointment of a prime broker where such appointment is appropriate. This extends to due diligence requirements to ensure that the prime broker is adequately authorised and has the required processes, procedures and substance.

The appointment of a prime broker would in general be subject to a two part procedure involving in the first instance the pre-selection of a number of "acceptable" prime brokers by the governing instances of the AIFM, from which the AIFM may then select the appropriate candidate.

The AIFM is further obligated to ensure that any prime broker appointed provides all information required by other related parties, and most notably the depositary for the complete and efficient discharge of its statutory obligations.

### **Other operation conditions**

#### **What is the fair treatment of investors definition?**

Fair treatment by an AIFM includes that no investor may obtain a preferential treatment that has an overall material disadvantage to other investors. ESMA explicitly avoids defining the meaning of fairness.

### **Depositary functions**

#### **What are the depositary's duties in relation to cash monitoring?**

ESMA has not required depositary's duties to extend beyond cash held within or cash receivable by the fund. ESMA requires depositaries to focus on the controls (whether at the AIFM or service provider to the fund) surrounding cash reconciliations to check that they are sufficient to identify, in a timely fashion, cash flows that are "inconsistent with the AIF's operations".

ESMA has not required the depositary to mirror cash transactions but instead to "check the consistency of its own records of cash positions with those of the AIFM".

ESMA requires depositaries to monitor discrepancies and report back to the AIFM as required. In the explanatory text they suggest that monitoring of procedures should be weekly if the reconciliations occur daily – it is difficult to see how this is consistent with the general reliance on controls approach expressed elsewhere in the advice.

**Which assets should be held in custody by the depositary and are therefore those which fall under the strict liability clause?**

If financial instruments meet all of the following requirements they must be held in custody:

- Transferable securities, money market instruments and units of collective investment schemes (as defined under the MiFID)
- Are not provided as collateral (title transfer collateral agreements or security financial collateral agreements)
- They are registered or held in an account directly or indirectly in the name of the depositary.

Shares in investment funds may meet the above definition, however ESMA has specifically said that where the shares are directly registered with the issuer or its agent in the name of the AIF they should not be regarded as being held in custody. It is our understanding that where shares are held by a nominee who is also the depositary they would fall within the custody obligation.

ESMA recommends that the above tests should also apply to assets received by the AIF as collateral.

Title transfer and security financial collateral are precise terms defined within previous EU Directives, we understand it may be difficult to assign US collateral into either of the above two categories.

**Does the depositary need to “look through” holding structures to the underlying target companies or properties?**

The advice does not appear to be internally consistent; however it does appear that this was ESMA’s intention.

**What are the depositary’s duties in relation to assets not held in custody?**

Examples of these assets are derivatives, shares in investment funds (subject to caveat above) and non-listed companies and issuers.

The depositary must ensure that it “possesses sufficient and reliable information for it to be satisfied of the AIF’s ownership right or of the ownership right of the AIFM acting on behalf of the AIF over the assets”.

The advice stops short of suggesting that the depositary mirror accounts for transactions but does suggest that it should have timely access to transaction documents and asset registers.

In general this is an improvement from the draft advice.

**What is the impact for prime brokers?**

ESMA requires prime brokers to report daily positions to depositaries; broadly this is similar to the UK’s current reporting requirements.

**What are the depositary’s oversight duties?**

ESMA has set out specific duties for depositaries in each of the 5 areas set out by the Level 1 Directive. In general the requirements are controls focused and include:

- Adjusting the level of depositary oversight to the operational risks within the AIF;
- Reviewing the appropriateness of controls around certain key activities; and
- "Periodically" checking the proper performance of those activities.

ESMA implicitly suggests that the depositary may not rely solely on controls in relation to the AIF's compliance with applicable national laws, regulations, rules and instruments of incorporation. There is a positive obligation to verify compliance which will place AIFM under additional and time consuming scrutiny by depositaries.

#### **What is the depositary's liability?**

This is a very technical area and there has been little change from the draft advice. It is still unclear exactly when the depositary is liable to the AIF for lost assets. However it is clear that ESMA does not distinguish between affiliated and unaffiliated sub-custodians which means that the depositary cannot escape liability for actions of any sub-custody providers.

Increased uncertainty and / or liability will invariably lead to increased costs being passed onto the AIF.

### **Disclosures to Investors**

#### **What does ESMA's advice say about periodic and regular disclosures to investors?**

The Level 1 Directive provides for "periodic" reporting of liquidity and "regular" reporting on the use of leverage to investors. ESMA has clarified these disclosure obligations.

The percentage of assets subject to special arrangements, the risk profile of the AIF and the risk management systems are periodic disclosures that must be included in the annual report. AIFM shall immediately notify investors where they activate new liquidity management arrangements such as gates and side pockets. A material change with respect to the use of leverage shall trigger a disclosure requirement and the specified information must be provided in a "timely manner". The total amount of leverage employed shall be disclosed as part of the periodic reporting and shall, at a minimum, be disclosed in the annual report.

### **Annual Report (inc. Remuneration)**

#### **How must the AIFM's staff remuneration be disclosed within the AIF's annual report?**

The Level 1 Directive required reporting of (1) the total amount of remuneration for the financial year, split into fixed and variable remuneration, paid by the AIFM to its staff, and number of beneficiaries, and, where relevant, carried interest paid by the AIF; and (2) the aggregate amount of remuneration broken down by senior management and members of staff of the AIFM whose actions have a material impact on the risk profile of the AIF.

ESMA's advice provides AIFM with a choice to include in the disclosure either (1) all staff of the AIFM (2) only those staff "involved" with the AIF or (3) proportion staff's remuneration by the percentage attributable to the AIF.

#### **What is the impact on the line items disclosed in the AIF's balance sheet / income statement?**

ESMA's advice sets out the minimum line items and disclosures that must be present within AIF's annual report. In the main this is quite flexible and we expect it will require only limited changes to the current practice.

#### **The Level 1 Directive lists information that must be disclosed to investors prior to investment – when must changes to this information be disclosed within the annual report?**

The Level 1 Directive requires prior disclosure of information such as investment strategy and objectives, descriptions of policies and procedures and fees. Any material changes to this information during the financial year must be disclosed in the annual report.

A material change has been defined as "changes in information if there is a substantial

likelihood that a reasonable investor, becoming aware of such information, would reconsider its investment in the AIF, including for reasons that such information could impact an investor's ability to exercise its rights in relation to its investment, or otherwise prejudice the interests of one or more investors in the AIF".

Material changes should be disclosed in line with the requirements of the accounting standards and accounting rules adopted by the AIF together with a description of any potential or anticipated impact on the AIF and / or investors of the AIF.

## Reporting to regulators

### **What information should be disclosed to regulators?**

ESMA requires detailed reporting to competent authorities in relation to the fund's investment profile, risk, liquidity and leverage. ESMA has set out in Annex V of the document a template for the information that the AIFM will need to submit for each AIF. The final reporting template takes into account comments to facilitate harmonisation of reporting obligations to competent authorities on a global basis.

### **What is the frequency of reporting to regulators?**

Where previously quarterly reporting was mandated for all AIFM, ESMA's has revised its approach to the frequency of regulatory reporting according to the scale of the AIFM. The reporting frequency is dependent on (i) the amount of assets managed by the AIFM for information to be reported at the level of the AIFM and (ii) on the size of each fund for AIF-related information. AIFM that meet the de minimis €100 million threshold (leveraged) or €500 million threshold (unleveraged) shall report annually. AIFM above the de minimis thresholds but below €1.5 billion AUM shall report semi-annually while AIFM with more than €1.5 billion AUM shall report on a quarterly basis.

## Third country provisions

### **What are the key third country provisions addressed by ESMA?**

In a number of provisions, the Level 1 Directive requires cooperation arrangements between EU competent authorities and supervisory authorities from the country of origin of the non-EU AIFM or non-EU AIF are put in place.

The arrangements will be signed by the national competent authorities, however, ESMA is proposing to centrally negotiate one memorandum of understanding with each country of origin, which would be desirable in order to avoid inconsistencies involved with 27 potential arrangements.

For non-EU AIF/AIFM using the EU passport, these arrangements would be used not only for supervisory but also for enforcement purposes. For example, the arrangements would allow EU competent authorities to perform on-site inspections in third countries directly.

### **What is the impact for non-EU sub-investment managers and depositaries?**

ESMA's initial draft advice on third country arrangements was considered by many commentators to be unworkable due in particular to equivalence and enforcement requirements. ESMA's final advice is less prescriptive and provides a framework for more workable third country cooperation agreements.

## Next steps

The European Commission expects to issue its final implementing measures by mid-2012 following dialogue with the European Council and Parliament. Member states will be required to transpose the Directive by 22 July 2013 while AIFM in scope and in operation prior to the transposition date will have until 22 July 2014 to comply with the requirements. During the consultation period the Commission, and separately the European Parliament, expressed opinions conflicting with aspects of ESMA's advice. The extent of changes between now and the final implementing measures is unknown.

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