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.....News Update....

Update on the AIFM Directive and impact on Cayman Funds industry

On 19th October 2010, the European Union Council of Ministers (the “**Council**”) announced that the Council had reached agreement on **compromise text** (the “**Proposal**”) of the controversial Alternative Investment Fund Managers Directive (the “**Directive**”). With the level of consensus reached on this Proposal, it is hoped that the European Parliament will approve the Directive without much need for further amendments or debate.

Briefly, the Directive aims to:

- establish “...a framework for monitoring and supervising the risks that alternative investments fund managers (“AIFM”) pose to their investors, to counterparties, to other market participants and to the stability of the financial system; and
- allow AIFMs to provide services and to market funds throughout the EU single market subject to compliance with strict requirements.”

If approved by the European Parliament when it votes at the plenary session scheduled for Thursday 11th November 2010, the Directive will come into force following a 20 day publication period in the Official Journal of the European Union, potentially as early as January 2011. EU member states will be required to implement the measures into local law within two years of the Directive coming into force (possibly by as early as January 2013).

Assuming that the Directive is implemented based on the Proposal, it will allow EU AIFMs (from the date of implementation by their respective home countries), to obtain an EU-passport from their “home” regulator (“**Passport**”). The Passport will allow EU AIFMs to market funds (“**AIF**”) across the EU, subject to full compliance with the Directive.

- EU AIFMs marketing EU AIFs will no longer need to use private placement regimes;
- EU AIFMs marketing Non-EU AIFs will need to ensure compliance with special conditions relating to co-operation between the supervisory authority of the non-EU AIF (e.g., CIMA) and its home regulator.

When the Directive is implemented, Cayman AIFs would, subject to certain conditions outlined below, continue to utilize the individual EU member countries’ private placement regimes to market themselves to Europe based investors.

Non-EU AIFMs will be unable to apply for a Passport to market their AIFs for at least two years after the Directive is implemented.

Therefore, not before 2015 and then only after technical advice is received by the European Commission from the European Securities and Markets Authority, will a decision be made as to whether the Passport should be made available to non-EU AIFMs. Until such time, the private placement regimes will remain available (unless individual EU member countries opt to discontinue it).

Three years after the introduction of any such Passport for Non-EU AIFMs (i.e., no sooner than 2018), an informed decision is scheduled to be made by the European Commission on private placement regimes, and whether they should be compulsorily phased out.

Impact on Cayman Funds

For Fund managers wishing to market Cayman funds into the EU, the following conditions will have to be met:

- they must continue to use the private placement regime (at least up to 2015);
- they will have to comply with the European Parliament's condition which require a cooperation agreement to be in place between CIMA (i.e., supervisory authority where the AIFM and/ or the AIF is setup) and the supervisory authority of the country into which private placements are being made (e.g., UK FSA); CIMA website holds a [list of current International Agreements](#) with other supervisory authorities.
- the Cayman Islands should not be on the FATF money laundering blacklist (it is not);
- the Cayman Islands will need to have in place a signed [Tax Information sharing agreement](#) (that complies with the OECD Model Tax Convention) with its tax counterparts in EACH EU member state into which the Cayman fund is marketed;
- they will have to comply with the Directive's [Chapter IV](#) -Transparency requirements (Annual report, Disclosure to investors, regulatory reporting obligations) and [Chapter V](#) - Portfolio Company Requirements (notification of acquisition of control, asset stripping, content of annual report).

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