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Cayman Funds Preparing for European Passport Extension

In a further step towards achieving European passport-ability for Cayman Funds, the Government of the Cayman Islands published two draft bills (the “**Bills**”) on Friday 10th July which make certain enhancements to the existing Cayman Funds regime in order to provide a mechanism for compliance with the provisions of the European Union’s Directive 2011/61/EU on Alternative Investment Fund Managers (“**AIFMD**”).

The first amendment being proposed is to the Mutual Funds Law and will result in the establishment of a new category of mutual fund, being a 'Regulated EU Connected Fund'. This Regulated EU Connected Fund will allow managers to opt-in to AIFMD style reporting in respect of that fund. In line with AIFMD, this amendment will be capable of being applied to both open and closed end funds. A Regulated EU Connected Fund will be any type of investment fund which (i) is either managed from or marketed in a Member State of the European Economic Area (“**EEA**”) as contemplated under AIFMD and (ii) elects to fall within CIMA’s new regulated EU Connected Fund regime.

The second amendment being proposed is to the Securities Investment Business Law and will provide for the establishment of new category of investment manager, being an “EU Connected Manager”. EU Connected Managers will be subject to regulatory oversight and supervision that is consistent with the requirements of AIFMD. An EU Connected Manager, will be a person who: (i) falls within the existing scope of Securities Investment Business Law; (ii)

For further information on any of the issues discussed in this article please contact:



Derbhil O’Riordan
Derbhil.oriordan@dilloneustace.ie
DD + 1 345 949 0022



Shane Geraghty
Shane.geraghty@dilloneustace.ie
DD + 1 345 949 0022

conducts management, marketing or depositary activities as contemplated under AIFMD; and (iii) elects to fall within CIMA's new EU Connected Manager regime.

These new provisions will in effect afford Cayman Islands based funds and managers the option of electing for an additional layer of regulatory supervision where they are targeting the European market for distribution. The amendments to the Mutual Funds Law and the Securities Investment Business Law provide that the existing supervisory duties and powers of CIMA will extend to EU Connected Funds and EU Connected Managers which opt in to the AIFMD Regimes.

Subject to the recommendation being issued by ESMA this month, (see below) it is expected that these amendments to the Mutual Funds Law and the Securities Investment Business Law be passed into law in August 2015 and will be supplemented by substantive regulations setting out the specific requirements which will apply in the event of a fund or manager opting into the new regime.

ESMA Recommendation to the European Commission

The European Securities Markets Authority (“**ESMA**”) is required to provide its initial recommendation to the European Commission as to which jurisdictions should be considered for a “third country passport” under AIFMD by 22 July 2015. ESMA will issue recommendations on a “country by country” basis, rather than issuing a blanket opinion for all third countries. Once the ESMA recommendation is issued, the European Commission will have 3 months to reach a decision with respect to the extension of the passport to the relevant third countries based on the recommendation from ESMA. Where a positive opinion is issued in respect of the Cayman Islands, it is likely that steps, such as the publication of the Bills, will be required to be taken by the Cayman Islands government to demonstrate a level of supervision over passporting Cayman Funds analogous to that being implemented in the EU currently under the AIFMD regime.

DILLON EUSTACE

Dublin

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

Cayman Islands

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

Hong Kong

604 6F Printing House, 6 Duddell Street, Central, Hong Kong. Tel: +852 352 10352.

New York

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

Tokyo

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

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