



March 2013

Cayman Islands on Track for AIFMD

The Government of the Cayman Islands has issued a statement confirming its continuing implementation of measures to ensure that the Cayman Islands Monetary Authority (“**CIMA**”) will have in place the required intergovernmental agreements on time for the 22 July 2013 implementation of the Alternative Investment Fund Managers Directive (the “**Directive**”) in Europe.

Why does AIFMD affect Cayman Funds?

The Directive aims to provide for an internal market for Alternative Investment Fund Managers (“**AIFMs**”) within the EU. Unless a complete or partial exemption is available however, the reach of the Directive extends not only to EU funds, but also, to a lesser extent, to Non- EU funds managed by Non-EU Managers (a “**Non-EU AIFM**”), marketing to EU investors. Non-EU AIFMs will be required to comply with certain provisions of the Directive by 22 July 2013 where they are marketing Non- EU (including Cayman Islands) funds within the EU.

What needs to be in place by July 2013?

As defined in the Directive, the activity of “marketing” is any direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM, of units or shares in a fund it manages to or with investors domiciled in the EU. The definition of marketing does not include reverse solicitation and any reverse solicitation will generally not be considered to be marketing under the Directive.

Non-EU AIFMs marketing Cayman funds into the EU on a private placement basis will, subject to the individual private placement rules of each Member State, be permitted to continue to market such

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Cayman funds to Professional Investors¹ on a private placement basis in that Member State under the Member State's own private placement rules after 22 July 2013 only where the following pre-conditions are in place:

- ❑ The country in which the AIF is established is not listed as a non-cooperative country and territory by the OECD's Financial Action Task Force on anti-money laundering and terrorist financing – the Cayman Islands is not on this list.
- ❑ The Non-EU AIFM must comply with the transparency requirements ("**Transparency Provisions**") of the AIFMD (please see below).
- ❑ There must be in place a cooperation arrangement for the purpose of systemic risk oversight between:-
 - ❑ The regulators of the EU member states in which the Cayman Fund is marketed;
 - ❑ Those member states and the home jurisdiction of the Non-EU AIFM;
 - ❑ Those member states and the Cayman Islands.

On 15th March 2013 the Cayman Islands Government passed The Monetary Authority (Amendment) law, 2013, which enables CIMA to enter into memoranda of understanding with its EU counterparts, using a model MoU developed by the European Securities Markets Authority ("**ESMA**"). Further, in a statement dated 25th March 2013, the Cayman Island Government confirmed continuing implementation of measures to ensure that CIMA will have the relevant co-operation agreements in place by the 22nd July deadline.

What are the AIFMD Transparency Provisions?

The AIFMD Transparency Provisions cover three areas:

- ❑ **Annual Reports** including disclosure on financial statements, fund activities, fund manager remuneration and any material changes to key operational, risk and management features of the Cayman Fund;
- ❑ **Disclosure to Investors** including information to be made available in advance of investment in the Cayman Fund, and information to be made available on any material change to that information. Descriptions of liquidity risk management, existence of side letters or preferential treatment must also be made available periodically, as well as the latest NAV and historical performance of the Fund, together with valuation procedures and risk profile and management procedures; and
- ❑ **Reporting to Competent Authorities** to be made in the form set out in Annex IV of the EU Commission's Regulation implementing the AIFMD. This, the most onerous of the Transparency Provisions obliges the AIFM of the Cayman Fund to report on many items including the principal markets and instruments traded by it on behalf of the Cayman fund, the percentage of fund

¹ A "Professional Investor" is an investor which is considered a professional client, in accordance with Annex II of Directive 2004/39/EC (the "MiFID Directive").

assets subject to special arrangements arising from their illiquid nature, arrangements for managing liquidity, the risk management systems employed, the current risk profile of the Cayman Fund, the main categories of assets invested in, and the results of stress tests performed in line with the Directive.

What should Non-EU AIFMs of Cayman Funds do next?

Non-EU AIFMs will need to establish whether their Cayman Fund is within the scope of the Directive, and if so, whether it is being marketed within the EU.

AIFMs within scope of the AIFMD will need to ensure that systems are in place to allow them to comply with reporting requirements in their home jurisdiction, in the Cayman Islands, and in the EU member state in which the Cayman Fund is marketed.

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