

AIF MARKETING INSTRUCTION

JUNE 30, 2014

Finally! The long-awaited French “marketing instruction” for alternative investment funds (AIFs) (AMF Instruction 2014-03) was issued by the French Monetary and Financial Authority (AMF) on June 30th, along with an AMF Guide explaining the French marketing regime for all types of funds.

Not only does the Instruction clarify the marketing rules for EU funds and managers intending to use a “marketing passport” under the AIFM Directive, but we also now have quite a bit more clarity as to how a third country “AIF” / third country “AIFM” could obtain approval to market in France, despite the EU marketing passport not being available for such entities until at least 2015.

The Guide makes clear that such marketing in France – which is limited to professional investors only -- would be “without passport”, i.e. subject only to French national rules, pending ESMA’s guidance in 2015 as to extending the AIFMD passports to third country funds/managers.

Under Section III of the Instruction, non-EU fund managers can request authorization to market EU/non-EU funds in France, subject to the following conditions (which happen to be identical to those laid out in the Directive):

- naming a depositary pursuant to the “depositary-lite” regime set out in Article L.214-248 of the French Monetary and Financial Code,
- having a cooperation agreement in place between the foreign home state and France, and
- ensuring that the foreign home state is not on the list of FATF blacklisted countries.

The Instruction’s Annex 3 (which constitutes the request for authorization) goes on to require that the manager applying for authorization certify and provide proof that it meets the various substantive requirements incumbent on European AIFMs (capital requirements, risk and liquidity management, evaluation, delegation rules, remuneration rules, reporting requirements...),

along with a panoply of documents relating to the AIF to be marketed. A 2000€ fee must also be paid to the AMF.

Once filed, the AMF has two months to respond (though, if past experience holds, additional documents may be requested which could extend this deadline).

Kramer Levin’s Asset Management team is available to answer your questions and accompany third country managers in requesting such authorization.

Link to AMF website

- <http://www.amf-france.org/Reglementation/Dossiers-thematiques/Epargne-et-prestataires/Commercialisation/Commercialisation-des-FIA-et-information-des-investisseurs---publication-d-un-guide-et-de-deux-instructions.html>

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