



HM Treasury

Transposition of the Alternative Investment Fund Managers Directive:

response to further consultation

May 2013



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Alternative Investment Fund
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Introduction

1.1 The Alternative Investment Fund Managers Directive¹ (AIFMD) is due to be transposed into national law by 22 July 2013.

1.2 The Directive establishes an EU-wide harmonised framework for monitoring and supervising risks posed by Alternative Investment Fund Managers (AIFMs) and the funds they manage (AIFs); and for strengthening the internal market in alternative funds. The Directive requires the authorisation of AIFM. There are provisions relating to how AIFMs conduct their business, transparency and marketing. The Directive covers the investment managers of hedge funds, private equity funds, retail investment funds, investment companies, and real estate funds among others and is therefore relevant to many different types of asset manager.

1.3 Transposition into UK law requires a number of high-level policy decisions, as well as a considerable number of operational ones. Following an initial consultation published on 11 January 2013, the Treasury published a further consultation paper addressing a number of outstanding issues on 13 March 2013.

1.4 The Government welcomes the responses received and is grateful to all interested parties for their contributions to date.

1.5 Decisions set out here have been informed by responses to the consultation and discussions with stakeholders. All decisions have been made with regard to the guiding principles set out in the consultation document, namely that the expectation that a “copy-out” approach will be adopted wherever possible in order to minimise the regulatory burden on firms. Gold-plating must be supported by strong justification. The Government’s proposed approach is consistent with this and is intended to maintain and enhance the UK’s competitiveness as a centre from which to manage and domicile funds. The approach is also intended to ensure strong consumer protection and to maintain and enhance confidence in the regulatory system.

¹ Directive 2011/61/EU on Alternative Investment Fund Managers

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Summary of responses

2.1 This section summarises responses to all the questions in the consultation and sets out the Government's response.

Treatment of Particular Fund Types under AIFMD

Common Investment Funds and Common Deposit Funds

Question 1: Do you agree with the proposed approach for sub-threshold AIFMs managing CIFs?

Question 2: Do you agree with the proposed approach for sub-threshold AIFMs managing CDFs?

Question 3: Would the proposed approach impose significant costs on businesses and/or charities?

2.2 The Government's analysis was that Common Investment Funds (CIFs) and Common Deposit Funds (CDFs) meet the AIFMD definition of AIFs, except those constituted under church legislation. The Government would not impose requirements on the managers of CIFs and CDFs managing assets below the financial threshold at which the full Directive requirements must apply. As now, the Charity Commission may apply additional requirements.

2.3 A few respondents queried the Government's analysis of scope, arguing that CDFs are deposit-taking entities rather than collective investment undertakings and therefore are not AIFs.

2.4 The Government proposed to amend charities legislation so that charities in the European Economic Area (EEA) would be able to invest in CIFs and CDFs. This was to ensure the AIFMD marketing passport could be used.

2.5 Respondents broadly welcomed this. A number of industry stakeholders noted the importance of ensuring safeguards were in place to protect against abuse given the tax incentives attached to investing in CIFs and CDFs.

2.6 The Government also proposed to maintain the current system of regulation by which managers were regulated by the Financial Conduct Authority (FCA) and the funds regulated by the Charity Commission, rather than consult on requiring funds to obtain FCA authorisation.

2.7 A number of respondents argued that in due course regulation of charity funds for financial services purposes should transfer to the FCA, provided that FCA rules concerning income reserves for authorised funds could be relaxed to permit charity funds to smooth distribution of payments.

2.8 Some respondents were unsure about costs to charities. They did not consider the sub-threshold regime to impose particular costs as no sub-threshold AIFM for CIFs and CDFs was expected to launch schemes. Other respondents highlighted that any additional costs would generally be absorbed by the fund manager as part of their general compliance with AIFMD.

Government response

2.9 The Government maintains its analysis on the scope of the Directive as applied to CIFs and CDFs, as set out in the consultation.

2.10 The Government will amend the regulation to permit investment by EEA charities. We recognise the need to ensure arrangements are not open to abuse.

2.11 The Government will maintain the proposed approach for sub-threshold AIFMs, which does not impose additional requirements above the status quo.

2.12 The Government recognises the desire expressed by some respondents for CIFs and CDFs to be regulated for financial services purposes by the FCA. It has not ruled out such a transfer of regulation in the future, though this will not take place as part of the transposition of the Directive.

Marketing

Question 4: Do you agree with the proposed approach?

Question 5: What are the expected significant business costs as a consequence of the proposed approach? How can they be mitigated?

Question 6: What impact is the change likely to have on choice for UK retail investors?

Question 7: Are there further changes that you would propose to the Section 270 and Section 272 regimes?

Question 8: Are there specific features of the proposed approach that you would support or change? What are they and why should they be changed?

2.13 The Government proposed combining the two marketing routes into the UK through the recognised schemes regime.

2.14 Respondents generally welcomed the proposed reform. Some respondents suggested there would be additional business costs for third country managers but these would be indirect, such as monitoring for changes to FCA rules for retail investors.

2.15 Some respondents have suggested that there could be a reduction in choice for retail investors as a consequence of the possible withdrawal from existing funds within the regime. One industry body queried whether the proposed reforms would impact upon listed funds or in wrappers qualifying for tax reliefs such as ISAs.

2.16 A number of respondents wanted to understand how the FCA would assess the extent to which the third country regime was compliant with the Directive and how it would take this into account. One firm also suggested a longer transitional period.

Government response

2.17 The Government has considered its existing approach and will proceed as proposed with some minor changes to the regulations to take account of technical comments raised. The overall policy intent remains to reform S270 and S272 of the Financial Services Marketing Act 2000 into a single gateway for non-UK fund managers ITS funds managed outside the UK to UK retail investors. This includes funds which are domiciled in the EEA.

2.18 The FCA will assess whether a scheme is in compliance with UK retail investor rules on a case-by-case basis and will set out more details in due course around how it will consider the regime in which the scheme operates as part of this assessment. As proposed in the consultation, there will be transitional arrangements bringing existing recognised schemes into the new regime. The new approach will not alter the tax treatment of schemes subject to the recognised schemes gateway; for example they will still be eligible for inclusion within an ISA wrapper.

Approved Persons Regime

Application of the Approved Persons Regime to Investment Companies

Question 9: Do you agree with the proposed approach?

Question 10: What are the additional business costs of the preferred approach?

2.19 The Government proposed not to apply the Approved Persons Regime to Internally Managed Investment Companies on the basis that they were already subject to oversight by the UK Listings Authority.

2.20 Respondents to this section broadly supported this approach. A minority of responses were concerned this could constitute a competitive advantage to internally managed investment companies though others disagreed and suggested the removal of the Approved Persons Regime would constitute a competitive advantage to non-CIS (Collective Investment Scheme) AIFs.

Government response

2.21 The Government does not propose to apply the Approved Persons Regime to internally managed investment companies. Respondents were broadly content that there were no investor protection concerns raised by not applying it. We also note that individuals at investment companies are subject to obligations and oversight arising from company law that individuals at CIS AIFs would not be.

Investor redress

Application of the Financial Services Compensation Scheme

Question 11: Do you agree with the Government's preferred approach?

Question 12: Are there any significant business costs as a result of our approach?

Question 13: What are the broader costs and benefits of implementing such an approach?

2.22 The Government proposed to apply the Financial Services Compensation Scheme coverage to non-UK EEA managers of UK authorised AIFs, which mirrors the approach taken to the non-UK EEA managers of UCITS (Undertakings for Collective Investment in Transferable Securities) funds.

2.23 There were few comments in relation to this section. The proposed approach was welcomed by industry bodies. One firm highlighted that this could increase the liability of the scheme which could represent an increase in the contingent liability for UK firms.

Government response

2.24 The Government will, as consulted on, apply the Financial Services Compensation Scheme coverage to non-UK EEA managers of UK authorised AIFs. The details of implementation will be for the FCA.

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List of respondents

A.1 The following organisations submitted responses to the consultation:

Association of Investment Companies

BlackRock

Capita Financial Managers Limited

CCLA Investment Management

Central Finance Board of the Methodist Church

Depositaries and Trustees Association

Epworth Investment Management

Guernsey Financial Services Commission

Investment Management Association

Isle of Man Financial Services Commission

Law Society of England and Wales

Louvre Fund Management Limited

Schroders Charities

HM Treasury contacts

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