

ESMA Updates AIFMD and UCITS Q&As

The European Securities and Markets Authority (“ESMA”) has recently issued updated editions of its “questions and answers” (“Q&As”) documents relating to UCITS (Undertakings for Collective Investment in Transferable Securities) and the Alternative Investment Fund Managers Directive (“AIFMD”). The new clarifications to the AIFMD Q&As pertain to initial capital and the establishment of a branch, respectively, and a further clarification has been issued in relation to UCITS regarding derogations for new UCITS.

Background

ESMA issues a range of Q&A documents on each of the topics it has responsibilities for as the overall securities markets regulator of the European Union. These are updated from time to time as new issues come to light and clarifications sought. Questions may be posed directly to ESMA. The responses are aimed at ensuring consistent application and interpretation of the relevant European legislation across all member states but do not have binding application. While they are persuasive rather than compulsory authority adherence to them would be a good defence for market participants in case of challenge and in most cases local national competent authorities such as the Central Bank of Ireland adopt local measures reflecting the interpretation of ESMA which are in fact binding.

AIFMD Updates

The new Q&A 2227 on AIFMD relates to whether self-managed funds are expected to keep the required “own funds” capital separate from investor assets and to exclude these from the Net Asset Value (“NAV”). ESMA has clarified that the

own funds should be neither invested in accordance with the funds’ investment strategy nor distributed to the redeeming investors, but instead they should be preserved to cover exposures to ensure they always remain within the limits of the minimum capital requirements. Interestingly this is also stated to apply to UCITS.

The second Q&A provided, (Q&A 701) relates to the notification requirements when a new branch of an AIFM is established in another member state. It clarifies that a notification will not generally be required for this where it is only providing ancillary services and not managing local AIFs.

UCITS Update

UCITS are entitled to a derogation from the general investment restrictions applicable for a period of 6 months. The new Q&A 601 clarifies that this runs from authorisation and not from launch.

How Clerkin Lynch Can Help

The asset management team at Clerkin Lynch LLP can assist in advising funds on ensuring ongoing compliance with related legislation. Please feel free to contact us for more information.



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