

Publication of AIFMD Level 2 measures bring regulated alternative investment fund industry in Europe closer to reality

On 19 December 2012, the European Commission published the so-called "Level 2 measures" to supplement certain elements of the Alternative Investment Fund Manager Directive (AIFMD).

Marc Saluzzi, Chairman of ALFI, comments: "The publication of the 'Level 2' measures finally allows a 3 year-long painful legislative process to near completion. The development of a regulated alternative investment fund industry in Europe is nearing reality."

The measures published cover:

- conditions and procedure for the determination and authorisation of alternative investment fund managers (AIFMs), including the capital requirements applicable to AIFMs;
- operating conditions for AIFMs, including rules on remuneration, conflicts of interest, risk management, liquidity management, investment in securitisation positions, organisational requirements, rules on valuation;
- conditions for delegation;
- rules on depositaries, including the depositary's tasks and liability;
- reporting requirements and leverage calculation;
- rules for cooperation arrangements.

A key measure of the AIFMD involves the introduction of a European passport for alternative investment fund managers who wish to access the entire European market. Given Luxembourg's position as the European leader in the cross-border space, ALFI expects that implementation of the AIFMD will further enhance Luxembourg as a leading domicile for fund and management companies in the alternative sector.

ALFI actively contributed to the draft law on the implementation of the AIFMD into Luxembourg law that was submitted to Parliament on 24 August 2012. The legal and regulatory certainty stemming from the publication of the Level 2 measures will enable the national legislative procedure in Luxembourg to be finalized, giving a clear framework for AIFMs to develop their offerings. ALFI believes that two major features of the draft law are likely to present a particular interest to the Alternative Investment Fund community: First, the creation of a Limited Partnership structure, which will add a flexible and secure partnership structure to Luxembourg's fund product offering and which might be particularly appealing to investors familiar with such a structure based on the anglo-saxon model. Secondly, the draft Bill provides for additional clarifications regarding the taxation regime of the carried interest.

In advance of the law entering into force in Luxembourg, ALFI will continue to work with the industry to put in place the necessary operational requirements in compliance with the Delegated Regulations.

Mr Saluzzi concluded: "ALFI is confident that pragmatic solutions can be found within the given regulatory framework, to combine investor protection with well-established industry practices."

(N.B. The Delegated Regulation adopted today is subject to a three-month scrutiny period by the European Parliament and the Council.)