Regulatory brief
A publication of PwC's financial services regulatory practice

July 2013

Asset managers: SEC and European regulators agree to share information and cooperate on oversight

The US Securities Exchange Commission (SEC) and the European Securities and Markets Authority (ESMA) finalized a supervisory cooperation agreement on July 18th to allow regulators to share and access supervisory information about investment advisers and investment fund managers doing business internationally.

Expanded access to supervisory information

The new memorandums of understanding (MOUs) establish the following mechanisms for the flow of supervisory information related to the oversight of global firms and markets:

- Regulators may share routine supervisory information in addition to "information that regulators need to monitor risk concentrations, identify emerging systemic risks, and better understand a globally-active regulated entity's compliance culture," according to the SEC.
- Regulators may also conduct on-site examinations at firms in other jurisdictions.

The following EU and EEA member states are signatories to the new MOUs: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Spain, Sweden, the United Kingdom, Iceland, Liechtenstein and Norway. Asset management firms operating in these jurisdictions should anticipate that regulators will share supervisory information and may coordinate examination oversight.

Prior to these MOUs, the SEC has had cooperation agreements with approximately 80 jurisdictions. However, those cooperation agreements only addressed sharing information regarding enforcement matters. The new MOUs expand the scope of cooperation to include information related to the ongoing monitoring and oversight of global investment firms. Together, the supervisory and enforcement cooperation agreements will provide regulators with increased ability to monitor day-to-day activities of investment advisers while having the authority to also collect additional information necessary to investigate potential securities laws violations.

The new MOUs are largely based on the successes of the SEC's supervisory cooperation agreement with the UK, dating to March 2006, and cross-border supervisory principles developed by an SEC-led international task force. Under those documents, regulators share information concerning asset management firms operating in both countries, and cooperate in performing examinations of such firms. We expect a similar approach to be utilized under the new MOUs.

Continued marketing into the EU

The MOUs are also important because they were required in order for US investment advisers to continue marketing in the EU under the Alternative Investment Fund Managers Directive (AIFMD).[1] Their signing occurred just in time for the implementation of AIFMD on July 22, 2013, which prohibited non-EU asset managers from marketing alternative funds in the EU absent such regulatory cooperation agreements. The Commodity Futures Trading Commission (CFTC), which did not announce a draft agreement with ESMA when the SEC did so earlier this year, also entered into the MOUs. The CFTC's inclusion alleviates concerns some US dual-registrants had about possible impairment of their EU operations without final agreements from both US regulators.

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[1] For more information, see PwC's *Financial Services Regulatory Brief, EU's AIFMD: Impact on US Asset Managers – New regime starts July 22nd* (June 2013).

Additional information

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