

Extending the AIFMD marketing passport to non-EU AIFMs: no decision – yet

ESMA published, on 19 January 2016, a letter from the European Commission in response to its opinion on the functioning of the EU passport and national private placement regimes (NPPRs) and its advice on extending the AIFMD marketing passport.

ESMA's advice and opinion was issued in July 2015, and recommended that the marketing passport could be extended to Guernsey, Jersey and, provided certain domestic legislation was passed, to Switzerland. The USA, Hong Kong and Singapore were also assessed, but ESMA delayed its advice on those countries, pending finalisation of its assessment. ESMA planned to assess other countries 'in batches beyond 2015', although no timetable for this assessment was given.

Supporting the approach adopted by ESMA of analysing the grant of the AIFMD passport to managers and funds on a country-by-country basis, and that ESMA could deliver its advice in respect to 'waves' of countries, the Commission has decided to defer its decision on extending the marketing passport until ESMA has completed an assessment of what it describes as a 'sufficient number' of countries. The Commission has not stated that it agrees that the passport could be granted on a country-by-country basis.

The Commission has set out a timetable by which the assessments of those countries in the 'first wave' and 'second wave' must be completed.

country being assessed, including those in the first wave; and secondly, the market disruption and competitive impact in the EU of granting the

Key issues

- No extension to marketing passport for non-EU countries at present
- ESMA must complete by 30 June 2016 its review of Hong Kong, Singapore and the USA and also Japan, Canada, Isle of Man, Cayman Islands, Bermuda and Australia
- The decision on whether to extend the passport to non-EU countries to be deferred until ESMA completes its assessment of more countries
- ESMA to deliver a second opinion on the functioning of the EU marketing passport and NPPRs ahead of the Commission's review of AIFMD which starts in 2017

By 30 June 2016, ESMA has to have completed the assessments of the US, Hong Kong and Singapore and its assessment of the other six countries that have been selected for the 'second wave' – Japan, Canada, Isle of Man, Cayman Islands, Bermuda and Australia.

The Commission has also requested ESMA undertake further analysis in two key areas: first, the capacity of the supervisory authorities and the enforcement record in the non-EU

passport to the non-EU country, including a preliminary assessment of the expected inflow of funds, by type and size, into the EU from the non-EU country in question.

Aside from advice on the possible extension of the marketing passport, in July 2015 ESMA provided an opinion on how well the EU marketing passport and NPPRs had functioned in the period since the AIFMD came into force. This task was hampered by the fact that, at the time of its

assessment, not all EU countries had transposed AIFMD into their national laws, or else, had only recently done so. This meant that there was insufficient information on which to

form a conclusive opinion. ESMA therefore suggested that it produce a second opinion on the functioning of the EU passport, and the Commission has agreed with that suggestion,

noting that a further opinion on these issues would be 'particularly helpful' before the scheduled review of the AIFMD, which is to commence in 2017.

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