

Neil Robson Comments on a Proposed AIFMD II and Brexit

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Financial Services partner Neil Robson was quoted in *HFMWeek* on the European Commission's continued efforts to pursue a successor directive to the Alternative Investment Fund Managers Directive (AIFMD). Neil stated, "AIFMD II is, I think, far more than a possibility—it is a certainty in my mind." The original AIFMD was widely viewed as challenging to hedge fund managers, as fund and marketing regulations differed among EU Member States. In terms of new AIFMD, Neil stated, "A lot of managers would like to see 'proper' harmonization, so that they don't have to work within the myriad variances and nuances of AIFMD interpretation in each EU/EEA member state. Ideally there would be a consistent approach to what is pre-marketing and marketing. However, given its usual restrictive nature in continental Europe and the FCA's more 'permissive' approach, if the commission chooses to use a narrow definition it could actually make life harder to market funds in Europe." Neil added, "I do not think that there is an appetite for private placement regimes to be abolished and for the pan-European marketing passport, brought in by AIFMD for EU AIFs with AU AIFMs, to be extended to non-EU AIFs and non-EU AIFMs."

Negotiating Brexit has resulted in many delays in AIFMD passport expansion. Neil compared the issue to a "political football" that has been kicked off the agenda for now. "I don't think that any non-EEA countries will be assessed as of equivalence for regulatory purposes so that they can have the passport. Because Brussels wants to restrict the UK as much as possible, they can't say that Jersey or Switzerland is of equivalence and therefore gets the passport as the UK is also going to be of equivalence, so until Brexit is dealt with the passport will remain a hypothetical aspiration—meaning that private placement rules will have to remain in place in the EU for some years yet." ("AIFMD II: Will the sequel be worse than the original?," March 13, 2018)

CONTACTS

For more information, contact your Katten attorney or any of the following attorneys.



Neil Robson
+44 (0) 20 7776 7666
neil.robson@katten.co.uk

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