

SEC/CORPORATE

SEC to Consider Adoption of Pay Ratio Disclosure Rules at August 5 Opening Meeting

On July 29, the Securities and Exchange Commission, pursuant to a “Sunshine Act” notice, stated that it will hold an open meeting on Wednesday, August 5, to consider, among other things, whether to adopt proposed rules for pay ratio disclosure as required by Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. As discussed in the September 20, 2013 edition of the [Corporate & Financial Weekly Digest](#), the pay ratio disclosure rules were proposed by the SEC in September 2013.

EU DEVELOPMENTS

AIFMD Marketing Passport: ESMA Provides European Commission With Advice on Its Possible Extension to Non-EU Jurisdictions

On July 30, after a one-week delay, the European Securities and Markets Authority (ESMA) published its long-awaited Opinion to the European Parliament, Council and Commission and responses to the call for evidence on the functioning of the Alternative Investment Fund Managers Directive (AIFMD) EU passport and of the National Private Placement Regimes (the “Opinion”) and its Advice to the European Parliament, the Council and the Commission on the application of the AIFMD passport to non-EU alternative investment fund managers (AIFMs) and alternative investment funds (AIFs) (the “Advice”).

The requirement for ESMA to publish the Opinion and the Advice was originally set forth in the AIFMD itself, and it mandated that ESMA should come to a view as to whether the cross-border marketing of EU AIFs by EU AIFMs was functioning well during the first year since the AIFMD took effect across the EU on July 22, 2014. If the EU passport was deemed to be effective, then ESMA was further mandated with the task of advising the European legislative authorities when, how and if to extend the passport to non-EU AIFMs and non-EU AIFs.

In the Opinion, ESMA has assessed the functioning of the EU passport and has found that, overall, it seems to be working—though ESMA does identify that only one year of passport use is insufficient to allow for a full analysis and suggests that a better view might be formed over a longer period of time, after which a new Opinion should be prepared.

In the Advice, ESMA explains that it has conducted a country-by-country assessment, taking into account the different circumstances of each non-EU jurisdiction regarding the regulatory issues to be considered (i.e., investor protection, competition, potential market disruption and the monitoring of systemic risk). Significantly, in this first round of jurisdiction reviews (ESMA will conduct several such reviews), ESMA only assessed six jurisdictions: Guernsey, Hong Kong, Jersey, Singapore, Switzerland and the United States.

Those initial countries were chosen due to a number of factors, including (1) the level of activity already being carried out by entities from those countries under EU national private placement rules (NPPRs, which are the only means by which a non-EU AIF managed by a non-EU AIFM can currently be marketed in EU countries), (2) EU national authorities’ and regulators’ knowledge and experience of dealing with their counterparts in the non-EU

countries and (3) the level of engagement by market participants, including AIFMs, from those countries with ESMA's review process. The authorities in Jersey, Guernsey and Switzerland have been very engaged with ESMA regarding their desire to receive the benefit of the EU passport, whereas other countries, including the United States, seem not to have engaged with ESMA, lobbied or actively participated in the review process.

In brief, the Advice that ESMA gives to the European Parliament, the Council and the Commission is that:

- there are no apparent obstacles to the passport being extended to AIFMs or AIFs established in Guernsey, where many private equity funds are established, and Jersey, where many real estate funds are established and which has a developing hedge fund community; and
- other than an amendment to the Swiss Federal Act on Stock Exchanges and Securities Trading, which becomes effective on January 1, 2016, there are no obstacles to the passport being extended to AIFMs or AIFs established in Switzerland.

However, ESMA was unable to reach a conclusion regarding Hong Kong, Singapore and the United States because of concerns regarding competition, regulatory issues and a lack of sufficient evidence to properly assess the relevant criteria. ESMA stated that it will finalize its analysis of Hong Kong, Singapore and the United States as soon as is practicable. It will also consider other non-EU countries in due course, including the Cayman Islands, where the majority of the world's hedge funds are established.

The Advice and Opinion are currently being considered by the European Commission, Parliament and Council, which will offer their views in due course as to whether they believe that EU law needs to be amended to extend the passport to Guernsey, Jersey and Switzerland, and to other non-EU countries that subsequently satisfy ESMA's requirements and for which ESMA provides further advice.

ESMA's Opinion is available [here](#).

ESMA's Advice is available [here](#).

ESMA Consultation on New Remuneration Rules for EU UCITS Managers and EU AIFMs

On July 23, the European Securities and Markets Authority (ESMA) published a consultation paper assessing new guidelines on sound remuneration policies under the UCITS V Directive and the Alternative Investment Fund Managers Directive (AIFMD). The proposed guidelines in the consultation paper are based on those that ESMA issued in 2013 under the AIFMD—and the proposals for UCITS V management firms are broadly comparable. The consultation paper includes various proposals for EU-based UCITS managers, including:

Management companies as part of a group. ESMA has proposed that in a group context, non-UCITS sectoral prudential supervisors of group entities may deem certain staff of the UCITS management company that is part of that group to be identified staff for the purpose of their sectoral remuneration rules.

Defining performance fees. ESMA has proposed a common definition of performance fees based on an IOSCO final report on elements of international regulatory standards on fees and expenses of investment funds.

Application of different sectoral rules. ESMA has made proposals on how different rules, such as those set out in the AIFMD and in the CRD IV, should apply where employees or other categories of personnel perform services subject to different sectoral remuneration principles.

Application of the rules to delegates. ESMA proposes that management companies should be prevented from circumventing the remuneration rules through the delegation of activities to external service providers.

Payment in instruments. ESMA has given guidance on how to comply with the rules on the payment of variable remuneration in instruments under the UCITS Directive.

Proportionality. ESMA has included scope for EU jurisdictions to use the principle of proportionality to disapply certain of the rules in exceptional circumstances, in line with the AIFMD approach.

Annex V of the Consultation Paper also includes proposals from ESMA for revisions to the remuneration guidelines for EU-based AIFMs, and includes a focus on circumstances where an AIFM is part of a wider corporate group structure.

The consultation period closes on October 23. ESMA has stated that it intends to publish finalized UCITS remuneration guidelines by the first quarter of 2016 (i.e., approximately three months in advance of the March 18, 2016 deadline by which EU countries must have UCITS V transposed into national law across the EU).

ESMA's consultation paper and associated press release are available [here](#).

For more information, contact:

SEC/CORPORATE

Mark J. Reyes	+1.312.902.5612	mark.reyes@kattenlaw.com
Mark D. Wood	+1.312.902.5493	mark.wood@kattenlaw.com

FINANCIAL SERVICES

Janet M. Angstadt	+1.312.902.5494	janet.angstadt@kattenlaw.com
Henry Bregstein	+1.212.940.6615	henry.bregstein@kattenlaw.com
Kimberly L. Broder	+1.212.940.6342	kimberly.broder@kattenlaw.com
Wendy E. Cohen	+1.212.940.3846	wendy.cohen@kattenlaw.com
Guy C. Dempsey Jr.	+1.212.940.8593	guy.dempsey@kattenlaw.com
Kevin M. Foley	+1.312.902.5372	kevin.foley@kattenlaw.com
Jack P. Governale	+1.212.940.8525	jack.governale@kattenlaw.com
Arthur W. Hahn	+1.312.902.5241	arthur.hahn@kattenlaw.com
Christian B. Hennion	+1.312.902.5521	christian.hennion@kattenlaw.com
Carolyn H. Jackson	+44.20.7776.7625	carolyn.jackson@kattenlaw.co.uk
Ross Pazzol	+1.312.902.5554	ross.pazzol@kattenlaw.com
Kenneth M. Rosenzweig	+1.312.902.5381	kenneth.rosenzweig@kattenlaw.com
Fred M. Santo	+1.212.940.8720	fred.santo@kattenlaw.com
Christopher T. Shannon	+1.312.902.5322	chris.shannon@kattenlaw.com
Peter J. Shea	+1.212.940.6447	peter.shea@kattenlaw.com
James Van De Graaff	+1.312.902.5227	james.vandegraaff@kattenlaw.com
Robert Weiss	+1.212.940.8584	robert.weiss@kattenlaw.com
Lance A. Zinman	+1.312.902.5212	lance.zinman@kattenlaw.com
Krassimira Zourkova	+1.312.902.5334	krassimira.zourkova@kattenlaw.com

EU DEVELOPMENTS

Neil Robson	+44.20.7776.7666	neil.robson@kattenlaw.co.uk
--------------------	------------------	-----------------------------

* [Click here](#) to access the *Corporate and Financial Weekly Digest* archive.

Attorney advertising. Published as a source of information only. The material contained herein is not to be construed as legal advice or opinion.
©2015 Katten Muchin Rosenman LLP. All rights reserved.

Katten

Katten Muchin Rosenman LLP www.kattenlaw.com

AUSTIN | CENTURY CITY | CHARLOTTE | CHICAGO | HOUSTON | IRVING | LONDON | LOS ANGELES | NEW YORK | ORANGE COUNTY | SAN FRANCISCO BAY AREA | SHANGHAI | WASHINGTON, DC

Katten Muchin Rosenman LLP is an Illinois limited liability partnership including professional corporations that has elected to be governed by the Illinois Uniform Partnership Act (1997).

London: Katten Muchin Rosenman UK LLP.