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Bermuda positions to meet EU fund regime standards

Collaborative approach prepares legislation in readiness for AIFMD recommendations

Hamilton, Bermuda, July 17, 2015 — A collaborative effort by Bermuda’s regulator and government, supported by industry stakeholders and the Bermuda Business Development Agency (BDA), has lined up new legislation to position the Island as a strong contender among jurisdictions vying to meet European standards set for alternative fund managers.

Newly drafted amendments to the Investment Business Act (IBA) reinforce Bermuda’s highly-respected regulatory reputation and place the domicile in a favourable situation to be considered for “third-country,” or non-European Union, passport rights under the Alternative Investment Fund Managers Directive (AIFMD). It is anticipated that non-EU fund managers covered by the passport would generally be allowed to register in one EU member state and market their funds more freely in other states, subject to a regulatory regime that applies on an equivalent basis to EU managers.

The move comes as the European Securities Market Authority (ESMA) is poised to make a decision July 22 on whether to open up the EU market; ESMA is expected to announce a list of jurisdictions that should be considered by the European Commission (EC) for extension of passport rights in the funds business. Bermuda, which is being considered among 44 domiciles worldwide, is home to almost 900 investment funds overseen by a highly-regarded independent regulator, the Bermuda Monetary Authority (BMA).



“This is an important milestone for Bermuda’s funds industry and we applaud the inclusive public-private team approach that has been taken to ensure that our global reputation and regulatory environment support the AIFMD regime and that we are considered in the best possible light,” said BDA CEO Ross Webber. “There are procedural unknowns at this point, and it may be a phased process, but we anticipate Bermuda will now be seen to have a sufficiently rigorous and well-resourced structure for fund managers located in our jurisdiction to operate in line with European rules and requirements. Our hope is that these legislative updates will put us in good standing for favourable AIFMD passport consideration by ESMA and the European Commission.”

The legislative amendments were approved in principle by a special meeting of Cabinet yesterday [Thursday, July 16] and were to be tabled today [Friday, July 17] in Bermuda’s House of Assembly. The bill, to be considered by Parliament this summer, strengthens the framework governing the Bermuda funds industry, essentially allowing a manager to be licensed as an Alternative Investment Fund Manager (AIFM) as defined by the AIFMD. Separate rules addressing specific articles laid out in the AIFMD will be clarified further after next Wednesday’s ESMA announcement, and updated continually by the BMA as needed.

“Bermuda has taken a careful, well thought-out approach to drafting the needed legislation, and we will take into account all the details of ESMA’s announcement and fine-tune our measures as appropriate, depending on the final EC decision within the subsequent three-month period,” said BMA CEO Jeremy Cox, adding the Island’s legislative update would ensure Bermuda-based alternative investment fund managers who opt in under the new regime meet an equivalent range of regulatory supervision standards as set out under AIFMD requirements.

“The amendments will supplement the present licensing and regulatory provisions which apply to any manager issued an investment business licence by the BMA,” Cox said. “But under the amendments, alternative investment fund managers may choose to come under the AIFMD-equivalent regulatory provisions if they wish to market their funds in Europe.”

Members of the BDA’s Asset Management Industry Group and AIFMD sub-committee have worked diligently to encourage and lend input to the new legislative measures.

“Our collaborative view is that investors located in the European Union stand to benefit significantly from inclusion of Bermuda under the AIFM directive, because it offers opportunities to place their



capital with well-supervised fund managers outside their own region,” said BDA Business Development Manager Sean Moran. “It also shows recognition of requirements and standards which the EU has initiated in this area. We trust the EC will recognise Bermuda’s robust regulatory credentials and our long legacy of compliance and transparency that set us apart from many other jurisdictions.”

The AIFMD passport would be extended to the first ESMA and EC-approved jurisdictions by October 15 at the earliest.

“We’ve been working closely with the BMA and government on this,” noted Neil Glass, leader of the BDA Asset Management Industry Group. “It’s been a cohesive effort to bring our regulatory and legislative systems in line with Europe’s evolving compliance landscape, and we’ll continue to do that. We believe the new legislation reflects the prudent approach that has always been the hallmark of our jurisdiction.”

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