2013: The AIFMD Becomes Reality

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IN THIS ISSUE

Where Are We Now?

The European Union's Alternative Investment Fund Managers Directive (AIFMD or Directive) will finally come into force on July 22, 2013. That is the date by which regulators in EU member states must have implemented the Directive. It had been expected that by now the European Commission would have promulgated the second-tier regulations (Regulations) that will flesh out the underlying provisions of the framework Directive itself. The Regulations are not anticipated to be published until 2013, leaving a less than optimal time for fund managers to absorb the details and analyze the effect that the Regulations may have on their businesses.

Indeed, so late are the Regulations in appearing that the United Kingdom Financial Services Authority (FSA) has released its first Consultation Paper on the implementation of the AIFMD without being able to specify what its final rules will be in certain areas to be covered by the Regulations. It is hoped that the FSA's second AIFMD Consultation Paper, expected in the first quarter of 2013, will be able to fill in the gaps.

In any case, as the FSA points out, as the AIFMD is a maximum harmonization Directive, there is little scope for the FSA to adapt the Directive to the UK market. For that reason, the text of the Directive will be largely copied into new FSA rules in the shape of a new single sourcebook called "FUND," which will combine the requirements for alternative investment funds (AIFs), Undertakings for Collective Investment in Transferable Securities (UCITS) and the companies that manage them, and which will replace the Collective Investment Schemes sourcebook.

UK Regulatory Changes

As if the introduction of the AIFMD in and of itself were not enough, its implementation will coincide with the change of regulatory regime in the UK on April 1, 2013, when the FSA will be split into the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA). Hopefully, that change will not be as significant as it sounds, given that it is intended for the provisions in the existing FSA Handbook to be adopted or designated by the FCA, such that the majority of the provisions in the Handbook will be carried forward to the new regulators and their respective rulebooks. For investment managers, only the FCA, and not the PRA (which is essentially the new banking regulator), will be relevant.

Authorization of AIFMs

The AIFMD allows alternative investment managers (AIFMs) that are already managing or marketing AIFs before July 22, 2013 a transitional period of 12 months to comply with the relevant laws and regulations and to apply for authorization. As a consequence of this, a firm managing one or more AIFs as of July 22, 2013 will be "grandfathered" through to the new regime. However, all firms must be AIFMD-compliant by July 22, 2014 and must have submitted an application for authorization as an AIFM by that date. The Directive requires national regulators normally to decide applications for authorization within three months of their submission. In the case of the UK, the FSA expects firms to submit an application for an AIFM authorization or a variation of permission (VoP) by July 22, 2014 (but will not accept and such application before July 23, 2013). A UK firm that wishes to begin managing an AIF for the first time after July 22, 2013 will not benefit from any transitional provision. It will first have to apply to the FCA for authorization and be fully compliant with the Directive before it can begin to manage an AIF.

For firms applying for authorization now, the FSA application pack remains as it has been for the last few years, with references to the Markets in Financial Instruments Directive (MiFID) remaining but with no reference to the AIFMD. We cannot, therefore, expect an FSA application pack that caters expressly to the AIFMD to be in place until the middle of next year.

AIFMD and MiFID

The FSA Consultation Paper casts some light on the interplay between the AIFMD and MiFID. The background to this is that a firm authorized under the AIFMD cannot be a MiFID firm. However, under the AIFMD, an AIFM is able to carry out ancillary activities relevant to managing an AIF, including managed account business and non-core services, including investment advice, safekeeping and administration in relation to interests in collective investment schemes, and reception and transmission of orders in relation to financial instruments. These additional activities require the consent of the local regulator in each member state.

However, an AIFM that does avail itself of these extra activities must comply with certain MiFID capital, organizational and conduct-of-business requirements. The FSA acknowledges in its Consultation Paper that there is some uncertainty about whether an AIFM that carries out these extra MiFID services has the right to "passport" them to other member states. The FSA's view is that they do have that right, while some other member states think that they need to be authorized under either MiFID or the UCITS directive to do so; but the FSA implies that from its reading of the legislation that UK AIFMs are likely to be able to provide those services elsewhere in the EEA. (NB an AIFM may also act as a UCITS management company provided it is authorized to do so in accordance with the UCITS Directive).

MiFID firms that are not AIFMs will not need authorization under the AIFMD to provide MiFID investment services, such as discretionary portfolio management services to an AIF that has its own AIFM, and so there is some competitive disadvantage for AIFMs who may need to follow both the AIFMD and MiFID (as above). However, such MiFID firms may only offer to place (directly or indirectly) units in an AIF with investors in the EU to the extent that the units in question are able to be marketed in accordance with the AIFMD.

MiFID and AIFMD do therefore overlap, with both making some provision regarding:

- Authorization for investment managers
- Capital requirements
- Conduct of business and investor protection provisions
- Outsourcing/delegation requirements
- Organizational requirements
- Third-country equivalence provisions

Delegation under the AIFMD

One of the most anxiously anticipated parts of the Regulations concerns the ability of AIFMs to delegate their functions. The Directive provides that an AIFM may delegate its activities, provided that it does not do so to the extent that it becomes a "letterbox" entity. However, drafts of Regulations that have been in circulation have indicated that in the view of the Commission, an AIFM cannot delegate more of its functions than it in fact retains. If that was to be followed through in the final Regulations, it would cause significant problems for fund managers, and this issue is known to be one of the reasons for the now significant delay in publishing the Regulations.

Preparing for the Directive

One thing that is clear is that the "phony war" is now over, and all AIFMs will need to perform an AIFMD gap analysis to ensure that they comply with, and are not disadvantaged by, the advent of the new legislation. The purpose of that gap analysis is to identify necessary corporate, structural, compliance and operational changes which could, for example, include:

- Consideration of the substance of existing management arrangements and whether avoidance of the Directive is a viable option

- Consideration of whether to move offshore, migrate existing funds, or establish an offshore manager with adequate substance (see **Delegation under the AIFMD** above)

- Group restructuring

- Applications for authorization or variation of permission

- Identifying and contracting with a depositary where one is required under the Directive (especially relevant in scope to private equity advisers whose structures have rarely required a depositary)

- Reviewing and, if necessary, amending fund documentation (are any amendment and investor consents needed?)

- Reviewing service provider arrangements for any adjustments needed in light of the Directives' delegation provisions

- Updating compliance manuals and operational procedures.

Marketing AIFs

By way of reminder, the AIFMD impacts all fund managers who market alternative investment funds into the EEA, wherever they are based. Consequently, for example, a US fund manager who markets funds in the EU will need to be aware of the limitations and conditions that will apply to the continuation of that activity from July 2013 onward. A non-EU AIFM will not be able to use the passport under the Directive until 2015, having to rely on private placement exemptions in individual member states, as is the case currently. Nevertheless, some member states are likely to restrict their current private placement regimes once the Directive is in force, and also the marketing of AIFs by non-EU AIFMs is subject to meeting various conditions including concerning regulatory supervision and co-operation.

Non-EU AIFMs of EU funds will effectively be subject to the requirements of the Directive from 2015 when they will be regulated via their "member state of reference," being the member state by reference to which they are most closely aligned. For example, a US manager managing an Irish fund would be likely to need to be regulated by the Irish Central Bank until 2015. Non-EU AIFMs in that position should decide whether they wish to maintain their EU fund or migrate it outside of the EEA, or whether they would prefer to have their member state of reference in a different member state from that of the fund, for example, by establishing an AIFM in the UK to take full advantage of the passport and other Directive benefits from July 2013 onward.

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2013: A Busy Year

The new year therefore promises a flurry of activity with the publication of the Regulations and the unavoidable imperative for AIFMs counsel can advise EU and US clients who are, or affected by the Directive wherever located to assess and deal with its impact. Experienced may be, affected by the Directive of its impact on their business and the options available to them.

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Real Assets—Do Infrastructure Investments Cater to the Requirements of Global Institutional Investors?

Economic developments both in the US and Europe will likely be characterized by moderate growth rates and considerable uncertainty for the near future. As a result, a growing number of global institutional investors may feel hesitant to explore alternative investments. Although government and corporate bonds—with their sometimes deceptively high ratings—can seem attractive in this economic climate, they might not prove fruitful when future payment and pension obligations are taken into account. A negative return after inflation will not, for example, feed considerable retirement obligations built up over several decades. Can infrastructure investments serve as a viable alternative for institutional investors hoping to achieve higher risk-adjusted returns?

As the global population rises, mainly in cities in the developing world, a vast amount of infrastructure must be built and retrofitted in the coming decades. Infrastructure (maintenance) in developed countries has to be brought to an acceptable level and new technology, such as low-carbon energy and transport systems and state-of-the-art water systems, requires new infrastructure.

What are some considerations for an institutional investor courageous enough to explore these kinds of "alternative investments"?

Pros:

- **Relatively High Returns.** Markets for infrastructure services are often characterized by oligopolies because of heavy government regulation and a limited number of concessions. Unlisted infrastructure funds generally target a net internal rate of return of between 10–20 percent. Preqin, the UK research provider, analyzed 104 infrastructure funds launched in 1993–1999 and 2000–2004. On an average, these funds performed far better than private equity, venture capital and property funds of the same vintage years. It should be noted, however, that the funds launched in/after 2000 performed significantly better than those launched in/after 1993. One reason for this is higher leverage used for the investments of the second fund generation.

- **Relatively Low Risks.** The performance of infrastructure facilities is exposed only to moderate economic fluctuations. Restricted competition and a lack of elasticity in demand are two reasons for this manageable risk profile. Among infrastructure investments, greenfields, i.e., project developments, bear a potentially higher risk than brownfields, i.e., existing facilities.

- **Steady Cash-Flows.** The profiles of most infrastructure assets are dominated by operating assets with distributable cash-flows. The volatility in cash-flows is relatively low due to fixed prices and the fact that infrastructure customers generally have little or no bargaining power. Usage does not decline significantly with price increases or during recession periods. Predictable cash-flows may effectively help to achieve high credit ratings that can translate into relatively low borrowing costs.

The profiles of most infrastructure assets are dominated by operating assets with distributable cash-flows.

- **Little Correlation with other Asset Classes.** A portfolio of infrastructure assets generally has low correlation to other major asset classes (see J.P. Morgan Asset Management, “Infrastructure Investing: A Portfolio Diversifier with Stable Cash Yields”). Depending on the unlisted infrastructure strategy, the correlation to other major asset classes can be lower than that of listed infrastructure vehicles.

Cons:

Of course, there are a number of potential downsides too:

- **Likely No Hedge Against Inflation.** In cases where the cash-flow stream of infrastructure assets is linked to price level indices, there might be a stronger inflation linkage. This, however, does not hold true for the infrastructure asset class as a whole.

- **Moderate Liquidity.**Closed-ended infrastructure funds confront the investor with lockup periods of 10–12 years with only a few options for secondary sales of fund interests. Open-ended funds, which are common in Australia, for instance, will allow for redemptions, generally on a daily basis.

- **Lack of Transparency.** Fund managers have to establish a consistent, independent and transparent valuation process to gain credibility. A common valuation standard for infrastructure investments is not currently available, but it is a mid-term task for a global infrastructure investment association.

- **Solvency II.** If infrastructure investments are categorized as “private equity,” European Solvency II regulations for insurance companies will require an excessive amount of capital to cover the moderate risk of the related infrastructure investment. If infrastructure investments, however, are structured and classified similarly to high-quality bonds, the level of solvency capital required would be more acceptable. A formal credit rating and a bank guarantee would likely help to reduce the amount of capital required as “back up” for the investment product.

Suitable Investment Structures

An institutional investor willing to accept the aforementioned restrictions that come along with real assets to achieve the generally attractive risk-adjusted returns has a number of structural options when it comes to infrastructure investments:

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- **Direct Investments.** Direct investments can save costs on management and performance fees and increase insight and control. This, of course, requires dedicated internal capabilities and resources. It requires solid working relationships with municipalities, utilities, construction companies, etc. The fact that overall infrastructure allocations are and will likely remain to be relatively small also has to be taken into account. A high number of sovereign wealth funds gain some exposure to infrastructure through debt and equity investments that were made to aid the development of their home economies.

- **Listed Infrastructure Funds and Bonds.** Listed infrastructure funds offer daily liquidity, generally lower fees, lower leverage and more transparency. But a January 2012 Preqin survey revealed that 81 percent of infrastructure investors are seeking unlisted investment opportunities, and 31 percent want to pursue direct investments, whereas only 9 percent were interested in listed infrastructure investments. Apparently, listed infrastructure funds are an option primarily attractive to retail investors. The Canadian bond market for PPPs debt has developed rapidly in recent years, with bonds issued in the record amount of C$1.47 billion in 2010. High ratings were achieved through simple projects with top contractors, large amounts of collateral and a good liquidity profile.

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- **Private Funds** On November 11, 2010, the EU Parliament approved the Alternative Investment Fund Managers Directive (AIFMD), which will come into force in the EU member states on July 22, 2013. AIFMD will, for the first time, subject managers of alternative investment funds to EU compulsory regulation. In certain infrastructure arrangements, e.g., those involving consortia, it will become a difficult task even to determine who the AIFM will be. AIFMD will require a system for the management of conflicts of interests. This becomes relevant when affiliated parties are to receive varied types of remuneration such as management fees, project management fees, carried interest, concession contracts, etc.

Irrespective of these basic structural options, the institutional investor should be aware of the fact that infrastructure investments can qualify as, e.g., private equity, real estate or fixed income, and may therefore be placed in the respective "bucket" of a portfolio.

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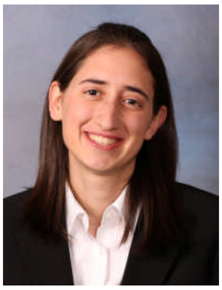

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IRS Changes FATCA Implementation Deadlines

The United States Internal Revenue Service (IRS) recently issued Announcement 2012-42 (the Announcement), changing the deadlines for meeting due diligence and other requirements under the Foreign Account Tax Compliance Act (FATCA). The Announcement also clarifies the scope of so-called "grandfathered obligations," which are exempt from at least certain FATCA requirements. Awareness of the FATCA provisions is critical for investment fund sponsors and investors.

FATCA generally requires foreign financial institutions (FFIs), which, as defined, include most investment funds, to enter into an agreement with the IRS (FFI Agreement). FFIs that enter into an FFI Agreement are "participating FFIs." Under the FFI Agreement, participating FFIs are required to (i) identify and report certain information about their US accounts to the IRS, and (ii) withhold on "withholdable payments" and "foreign passthru payments," defined below, made to "nonparticipating FFIs" (FFIs that do not comply with FATCA) and "recalcitrant account holders" (certain account holders that do not furnish required information to FFIs or that fail to provide waivers of foreign laws that would prevent reporting by FFIs to the IRS).

The term "withholdable payments" includes (i) US-source interest, dividends, wages and similar (fixed and determinable annual or periodical) payments, and (ii) gross proceeds from the sale or other disposition of property that can produce US-source interest or dividends. The term "foreign passthru payments" refers to payments made by participating FFIs that are attributable to withholdable payments received by them.

The delayed effective date of an FFI Agreement under the Announcement (January 1, 2014 instead of July 1, 2013 under the Proposed Regulations) is significant because, as noted above, the due diligence deadlines are based on the FFI Agreement's effective date.

FFIs that fail to satisfy the requirements of the FFI Agreement in a timely manner are subject to a 30 percent withholding tax on withholdable payments made to them. The tax is withheld by a "withholding agent." The term "withholding agent" generally refers to US (or certain non-US) persons that have the control, receipt, custody, disposal or payment of a withholdable payment or foreign passthru payment.

On February 15, 2012, the IRS released proposed regulations (Proposed Regulations) that set forth rules to follow in satisfying requirements under FATCA. The IRS has also released several model intergovernmental agreements intended to provide FFIs in jurisdictions that enter into such agreements with alternative approaches to satisfy FATCA requirements. The Announcement modifies certain due diligence deadlines contained in the Proposed Regulations, thereby aligning such deadlines with the due diligence deadlines contained in the model intergovernmental agreements.

I. Due Diligence Deadlines

A. Participating FFIs

The Proposed Regulations require participating FFIs to complete certain due diligence procedures by specified deadlines to (i) determine whether their account holders are US persons, subject to FATCA reporting, or recalcitrant account holders, subject to FATCA withholding, and (ii) determine whether any payees are nonparticipating FFIs, also subject to FATCA withholding. In the Announcement, the IRS modifies these deadlines, generally extending them.

The Proposed Regulations and Announcement both base the due diligence deadlines on the "effective date" of the FFI Agreement. Under the Announcement, an FFI Agreement entered into before January 1, 2014 has an "effective date" of January 1, 2014, while all other FFI Agreements are effective when entered into. The delayed effective date of an FFI Agreement under the Announcement (January 1, 2014 instead of July 1, 2013 under the Proposed Regulations) is significant because, as noted above, the due diligence deadlines are based on the FFI Agreement's effective date.

In setting forth the due diligence deadlines for participating FFIs, the Proposed Regulations and Announcement distinguish between "preexisting obligations" and other obligations. The term "preexisting obligation" means accounts, instruments or contracts executed prior to the effective date of the participating FFI's FFI Agreement (i.e., now January 1, 2014 under the Announcement). All other obligations are "new" obligations.

The applicable due diligence deadlines under the Announcement for participating FFIs are discussed below.

- **Preexisting obligations held by prima facie FFIs.** A participating FFI is required to document payees and account holders of preexisting obligations that are "prima facie FFIs" (generally, entities as to which the participating FFI has certain information indicating their status as FFIs) by the later of June 30, 2014 or six months following the FFI Agreement's effective date.

- **Preexisting obligations held by entities other than prima facie FFIs.** A participating FFI is required to document payees and account holders of preexisting obligations held by entities other than prima facie FFIs by the later of December 31, 2015 or two years following the FFI Agreement's effective date.

- **Preexisting high-value individual accounts.** A participating FFI is required to document "high-value" individual accounts (generally, accounts with a balance exceeding $1 million) by the later of December 31, 2014 or one year after the FFI Agreement's effective date.

- **Preexisting individual accounts other than high-value accounts.** A participating FFI is required to document individual accounts other than high-value accounts by the later of December 31, 2015 or two years after the FFI Agreement's effective date.

- **New accounts.** New accounts are accounts opened on or after the FFI Agreement's effective date (i.e., January 1, 2014, under the Announcement). A participating FFI is required to implement due diligence procedures by such date. These due diligence procedures are to be used to document new accounts for FATCA purposes when such accounts are opened.

B. Withholding Agents That Are Not Participating FFIs

The Proposed Regulations also require withholding agents that are not participating FFIs (e.g., US withholding agents) to complete certain due diligence procedures by specified deadlines to determine whether their payees are nonparticipating FFIs subject to FATCA withholding. In the Announcement, the IRS modifies these deadlines, generally extending them.

In setting forth the due diligence deadlines for withholding agents, the Proposed Regulations and Announcement distinguish between "preexisting obligations" and other obligations. With respect to withholding agents aside from participating FFIs, the term "preexisting obligation" generally means accounts, instruments or contracts executed prior to a specified date, i.e., now January 1, 2014 under the Announcement. All other obligations are "new" obligations.

The applicable due diligence deadlines under the Announcement for withholding agents that are not participating FFIs are discussed below.

- **Preexisting obligations held by prima facie FFIs.** A withholding agent that is not an FFI is required to document payees of "preexisting obligations" that are "prima facie FFIs" (generally, entities as to which the participating FFI has certain information indicating their status as FFIs) by June 30, 2014.

- **Preexisting obligations held by entities other than prima facie FFIs.** A withholding agent that is not an FFI is required to document payees of preexisting obligations held by entities other than prima facie FFIs by December 31, 2015.

- **New accounts.** New accounts mean accounts opened on or after a specified date, which, under the Announcement, is now January 1 2014. Withholding agents other than participating FFIs are required to implement due diligence procedures by such date. These due diligence procedures are to be used to document new accounts for FATCA purposes when such accounts are opened.

C. Additional Observations

The deadlines contained in the Announcement provide participating FFIs and other withholding agents with a reasonable period of time to document pre-existing obligations. It is important to note, however, that once participating FFIs and other withholding agents document an obligation, they must begin to withhold or report, as appropriate, with respect to that obligation, even if they have documented the obligation in advance of the applicable deadline.

The Announcement aligns the due diligence deadlines for (i) participating FFIs in countries without model intergovernmental agreements, (ii) participating FFIs in countries with model intergovernmental agreements, and (iii) withholding agents aside from participating FFIs (e.g., US withholding agents). This alignment of deadlines should serve to reduce the complexity of administrative compliance with the FATCA rules.

II. Other Deadlines

Under the Proposed Regulations, participating FFIs generally are required to report information to the IRS about their US accounts by March 31 of the year following the calendar year to which the reporting relates. Under the Announcement, participating FFIs are not required to report with respect to the 2013 and 2014 calendar years until March 31, 2015.

The Announcement also delays withholding on withholdable payments that are gross proceeds from the sale or other disposition of property that can produce US-source interest or dividends until January 1, 2017. **The Announcement does not extend the deadline with respect to withholding on other withholdable payments, including US-source interest, dividends, wages and other (fixed and determinable annual or periodical) payments**.

Under the Proposed Regulations, an "obligation" outstanding on January 1, 2013, or any gross proceeds from the disposition of such an obligation, is not subject to withholding (i.e., is a "grandfathered obligation").

III. Grandfathered Obligations

Under the Proposed Regulations, an "obligation" outstanding on January 1, 2013, or any gross proceeds from the disposition of such an obligation, is not subject to withholding (i.e., is a "grandfathered obligation"). The term "obligation" generally means a legal agreement that produces or could produce a withholdable payment or foreign passthru payment, but does not include (i) stock or other equity interests, or (ii) agreements that lack a definitive expiration. Note that, under this definition, investor interests in investment funds are **not** grandfathered. The Announcement does not change this.

The Announcement does provide the following three provisions, designed to expand and clarify the scope of grandfathered obligations.

- The scope of grandfathered obligations under the Proposed Regulations was unclear given that the Proposed Regulations did not define the term "foreign passthru payments." The term generally means payments attributable to a withholdable payment, but under the Proposed Regulations, the IRS is still considering rules for when a payment will be treated as so attributable. To address this uncertainty, the Announcement provides that an obligation that produces or could produce a "foreign passthru payment," and that cannot produce a withholdable payment, will be treated

- as a grandfathered obligation, provided the obligation is outstanding six months after the final regulations defining the term "foreign passthru payment" are issued.

- Under Section 871(m) of the US Internal Revenue Code (the Code), certain payments (dividend equivalents) specified in the Code and/or applicable proposed regulations that are determined by reference to the payment of US-source dividends are treated as US-source dividends and, as such, may be subject to FATCA withholding. The proposed regulations under Section 871(m) are not expected to be finalized until January 1, 2014. Thus, the scope of "dividend equivalents" currently is uncertain. To address this uncertainty, the Announcement provides that a grandfathered obligation will include any instrument that gives rise to a withholdable payment solely because the instrument is treated as giving rise to a dividend equivalent under Section 871(m) and the regulations thereunder, provided the instrument is outstanding six months after such instrument is first treated as giving rise to a dividend equivalent. Accordingly, instruments that give rise to dividend equivalents under Section 871(m) proposed regulations (as opposed to under the Code itself) will be grandfathered, assuming they are outstanding six months after the regulations are finalized. Presumably, however, instruments that give rise to dividend equivalents under Section 871(m) itself (i.e., the Code, rather than proposed regulations) are subject to the general grandfathering rule and, as such, are required to be outstanding on January 1, 2013 in order to qualify as a grandfathered obligation.

- The Announcement expands the scope of "grandfathered obligations" to include an obligation to make a payment with respect to collateral posted to secure obligations under a notional principal contract, provided the notional principal contract is itself a grandfathered obligation.

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Kaye Scholer Investment Funds Group

With offices in many of the world's major financial and business centers, Kaye Scholer advises a diverse group of international clients. We provide effective and practical solutions to a range of business, financial and transactional problems, including some of the most complex and challenging issues in the local and international marketplace. By capitalizing on the firm's global capabilities, we provide efficient and cost-effective solutions to cross-border issues.

Kaye Scholer's Investment Funds group, which includes members in New York, London, Chicago, Frankfurt, Los Angeles, Palo Alto and Shanghai, serves the needs of the global investment management industry by providing a full range of legal services and experience in a wide variety of jurisdictions. We focus on the organization, fund raising, compliance and administration of investment funds, as well as on the structuring, operation, purchase, sale and financing of investment managers and advisers.

The Investment Funds group follows a multi-disciplinary approach to its representations. We work closely with lawyers across the firm's practice groups, including tax, mergers and acquisitions, litigation, restructuring, ERISA, benefits and compensation, real estate, trusts and estates, financing and capital markets, to ensure our service is comprehensive and all of the legal implications of any business transaction are examined fully and taken into account.

We help structure and document a variety of pooled investment vehicles. We advise on structuring and registration matters for US, UK and European funds and their advisers. We also advise on a wide range of compliance and exemptive issues, including discussions with the SEC, the FSA and other regulators.

The Investment Funds group includes the following focus areas:

- **Private Equity Funds** — Representing sponsors and managers of private equity funds and funds of funds, venture capital funds, distressed asset funds, leveraged buyout funds and real estate funds.
- **Hedge Funds** — Advising clients in all aspects of the structuring, offering and ongoing operations of hedge funds, funds of hedge funds and related products, as well as in the structuring and negotiation of derivatives.
- **Ownership and Compensation Arrangements** — Helping structure investment management and advisory firms and advising in their day-to-day business operations.
- **Compliance** — Creating compliance programs, reviewing existing procedures, and assisting clients in examinations and inquiries by securities and financial regulators.
- **Representation of Investors** — Advising institutional investors in their investments in private funds, including US and global financial institutions, family offices, university endowments, pension plans and funds of funds, in numerous industries.
- **Secondaries Transactions** — Advising on secondary direct portfolio sales and acquisitions, as well as secondaries effected in connection with spin-offs of private equity business units of major financial institutions.

We have worked on many collective investment vehicles for a variety of markets, taking into account the tax and regulatory implications of attracting investors from the United States, Asia, Latin America, the Middle East and Europe, and making tax-efficient investments in many different countries. In addition, many lawyers in our Litigation Department have substantial experience in representing investment managers and advisers, broker-dealers and other service-provider clients.

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